

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

October 20, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Hamlin, Lai

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioners Hamlin and Lai, both of whom were excused.

3. PUBLIC COMMENT – None

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

Comprehensive Planning Manager Paul Inghram indicated that concurrent with the Commission meeting there was an open house regarding a greenway along Main Street at the Botanical Garden. The design concepts under review will improve pedestrian access in a way that will enhance the entrance to the garden. Information about the project is available on the project website.

Mr. Inghram reported that no decision has been made yet by the city with regard to hiring a new planning director. The candidates are Nathan Torgelson, who works for the city of Seattle; Ray Gaskill, who has a consulting firm; Stephanie DeWolf, deputy director for the city of Pasadena; and Mike Chinn, who works for the city of Tampa Bay. The candidates have been interviewed by a staff panel and by the city manager and deputy city manager, and an open house was held at which the public was invited to meet the candidates.

7. STUDY SESSION

A. Shoreline Master Program Update

Land Use Director Carol Helland reminded the Commission of the need to complete the drafting of the update and release the revised draft by the end of the year. She outlined the agenda for the meeting and the process for getting to a revised draft. She noted that the code language asked for by the Commission at its June 9 meeting had been included as Attachment 3 of the packet materials. She also commented that the menu options for reducing the 50-foot setback to 25-feet were provided in a table in preliminary regulatory form on pages 24 and 25 of the packet materials, and in Attachment 6.

Ms. Helland said staff also clearly heard from the Commission that any code approach will need to address the variety of issues of interest to the regulated community along the shorelines, including legally nonconforming structures and uses; a fast, predictable and inexpensive process for minor expansions and modifications; accommodations for recreational uses; accommodations for new and legally existing accessory structures; accommodating ornamental landscaping in the vegetation conservation areas where native plants are the preference; and view protections and landscape preservation.

Associate Planner Heidi Bedwell reminded the Commission that under the current rules there is a no-touch buffer scenario as well as a structure setback. The current rules also include the concept of a footprint exception that allows existing primary structures to be reconstructed on their footprint, which is something the Commission in June indicated it would like to see retained. There are performance standards for the buffer area and specific provisions for the maintenance of existing landscaping which should be clarified and retained in the code. There are provisions in place that limit the repair of accessory structures, which has been a hot topic as the code has been applied over the last four years.

The regulatory concepts discussed in June included an overall setback dimension of 50 feet. The revised language includes the footprint exception. The setback is divided into two areas defined as the vegetation conservation area and a primary structure area, both of which are 25 feet. The vegetation conservation setback focuses on the area with the most functions and is defined as the area landward 25 feet of the ordinary high water mark. As envisioned, up to 40 percent of the vegetation conservation area can be used for recreation uses, including patios and storage of personal watercraft. The concept includes a provision for no new structures within the vegetation conservation setback. Generally, vegetation is required to be preserved, and the removal of any vegetation within the 40 percent would have to be mitigated. The standard tree preservation requirements for the rest of the site require the retention of 30 percent of the significant trees within the shoreline jurisdiction.

The primary structure setback is measured from the edge of the vegetation conservation setback and is intended to protect the vegetation conservation setback as well as the ecological processes and functions in the second 25 feet landward of the ordinary high water mark. The primary structure setback has a more flexible range of uses allowed. The regulatory concept would allow new accessory structures up to 200 square feet to be placed in the setback without any commensurate mitigation. The provisions also allow for minor lateral expansions defined as up to 500 square feet over the lifetime of the development. Additional expansion, either waterward or greater than 200 square feet, would trigger a list of prescriptive menu options. The public has been clear about wanting to know what it will take to reduce a setback or place a structure in a particular location. The setback reduction allowed under the menu options corresponds to the

ecological function or benefit provided.

Ms. Bedwell noted that the nine menu options in the table included in Attachment 3 were based on other codes, including those from Kirkland and Sammamish. She reviewed the options with the Commissioners and noted that the greatest relative setback reductions would be allowed where the highest ecological contributions exist or are created along the shoreline. Conversely, where the ecological contributions are lowest, the relative setback reduction allowed will be lower. No specific dimensions have been determined yet, but staff believes reductions of ten to fifteen feet could be allowed in the higher category, five to ten feet for the medium category, and two to five feet for the lower category.

The Commissioners were informed that the regulatory concept also includes a landscaping standard. It is similar to other Land Use Code regulatory regimes that apply when development or redevelopment triggers compliance with development standards. A portion of the conservation vegetation setback would be required to be planted with vegetation, but there are a limited number of circumstances in which that requirement would be triggered; even then the requirement would apply only to 60 percent of the first 25 feet. Totally new development on a site that does not currently have any development would trigger a requirement to bring the site up to all current development standards for landscaping; an increase in the footprint size would do the same, as would the expansion of an existing primary structure waterward and closer than 50 feet from the ordinary high water mark, an accessory structure greater than 200 square feet, and impacts to the vegetation conservation setback. Lateral expansions up to 500 square feet would not require mitigation or trigger the landscape standards.

Ms. Bedwell demonstrated how the regulations would apply by using specific examples.

Chair Ferris asked how the setback reductions would be evaluated based on the ecological contribution. Ms. Helland said the range provided by staff was intended to be a starting point. She said it would be necessary to eventually get a specific square footage plugged into the chart in place of the high, medium and low designations.

Commissioner Sheffels observed that encroachment into a setback can be very small and for a good reason. She asked if a weighted system could be devised. Ms. Helland agreed the topic should be given some attention. She commented that an existing structure could extend into the setback and the property owner might want to take advantage of the 500 square foot expansion in the primary structure setback without mitigation.

Commissioner Turner said he saw little in the proposed language about employing incentives. He suggested establishing something like a 25-foot setback and including incentives to move back. Ms. Helland said that approach would be different and would change the analysis required for the cumulative impacts; it would essentially entail going back to the drawing board. She reminded the Commission that about 60 percent of the primary structures along Lake Sammamish currently are more than 50 feet back of the ordinary high water mark. The proposed approach in essence provides them the option of moving closer to the water. The framework of the critical areas approach is similar to what is proposed for the shorelines and it includes a great deal of flexibility. The shorelines regulations could employ the same kinds of flexibility.

Senior Environmental Planning Manager Michael Paine said options could be incorporated that would allow people to encroach into a critical areas hillside as opposed to going toward the shore. He suggested, however, that it would be very difficult with any package of incentives to encourage a structure to move back from the first 25 feet if they are already there.

Commissioner Mathews commented that the regulations applicable to shoreline areas will need to treat property owners the same way all property owners in the city are treated. To take the opposite approach with incentives to move back would certainly not be on a par with homeowners in critical areas.

Commissioner Mathews asked if the menu options are intended to be cumulative. He pointed out that a property could have a soft structure shoreline, Option 1, and a lot of vegetation covering more than 20 percent of the lot, Option 6. Ms. Helland said the contemplation was that under certain conditions one could get down to 25 feet. Mr. Paine added that if someone were to pay for a study showing that a different approach would work, they will certainly be allowed to do so.

Ms. Helland stressed that none of the regulations will apply where no new development or redevelopment is contemplated. One must do something to trigger the application of the regulations. Existing legally created structures will be allowed to remain and be maintained and repaired even if they are nonconforming. The proposed regulatory regime mimics others that exist in the city for reasons of consistency citywide.

Ms. Helland noted that the public had expressed concern about nonconforming uses and developments would have to be removed. She reiterated that the provisions will not apply if no changes are made, and legally established uses and developments will be allowed to remain and can be maintained and repaired. There is no intention to require such structures to be torn down.

With regard to process simplification, Ms. Helland said the provisions include minimal requirements relative to permitting and process which is evident in the context of the allowed primary structure expansions and lateral expansions, and in allowing accessory structures to expand up to 200 square feet. There is also allowance for minor building elements, such as bay windows and chimneys.

The provisions address the call by the public for gathering spaces, walkways and recreational uses by allowing for up to 40 percent of the vegetation conservation area to be used for those purposes, provided there is an offset of appropriate vegetative mitigation.

There are restrictions that apply to locating new structures within the setback. Structures are allowed within the primary structure setback, and up to 200 square feet can be added to existing accessory structures without having to turn to the menu options. No new accessory structures will be permitted within the vegetation conservation area.

Ms. Helland allowed that the public expressed concern about the vegetation conservation rules that could prevent the maintenance of existing ornamental landscaping. She clarified that as drafted the rules allow for the maintenance of existing landscaping, and the vegetation planted in the 60 percent of the vegetation conservation area that must be in landscaping is to be primarily native, though ornamental vegetation that is compatible with native vegetation will be deemed appropriate and will be allowed.

The concern that the landscaping rules will require the placement of tall trees directly in view corridors is addressed by including templates similar to those in the critical areas ordinance for planting plans that include view corridors. The landscape standard allows for flexibility in siting vegetation, especially trees.

The setbacks proposed total 50 feet, and through incentives property owners can buy down to 25 feet through a menu of options through a concept not dissimilar to buying up additional FAR.

B. Shoreline Master Program Update – Public Comments

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said the proposed approach will work well for anyone not intending to do anything with their property, but anyone who so much as turns around will face the full force of the regulations. The regulations as outlined by staff sound palatable, but they will not be so by the persons having to comply with them. Table 2 in the staff report lists two references, the first by C.W. May which is 80 pages long and mentions lakes and lake shores only six times, but never pertinent to Puget Sound lakes. The listed Vermont study has no technical scientific references at all. With regard to ecological functions, hyporheic functions are stream based and have nothing to do with lake shorelines. There has been very little testimony provided with regard to hydrologic function; shoreline property owners are not the cause of the hydrologic problems and the proposed regulations will not solve those problems. The overall message appears to be that the shorelines are places where humans should not be. The city must recognize that humans already live along the shorelines and in an urban setting, not a wildlife setting; it would be very difficult to return the shorelines to a natural wildlife setting. The options matrix in Attachment 6 has three attainable objectives: linking upland and aquatic resources in an urban setting, though rationale and feasibility have not been justified; providing space for wildlife, though clear goals and objectives are needed; and pollutant removal and improving the water, though it has been shown that introducing large woody debris and leafy debris will produce both safety and pollution problems. Shoreline property owners should not be burdened with extraordinary or unreasonable attempts to solve municipal water quality issues. The proposed 50-foot setback is unreasonable; the current Shoreline Master Program setback is only 25 feet. The setback in Redmond is less than 50 feet and the proposed Bellevue setback will result in a tunnel effect. The 60/40 split for the vegetation conservation zone is arbitrary; there should be no vegetative requirement at all beyond what the stormwater code requires. The templates are onerous with regard to the type of vegetation required.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, demonstrated from aerial photos that there are differences in vegetative cover from neighborhood to neighborhood. That should be taken into consideration when establishing setbacks and other shoreline regulations. Bridle Trails has a park associated with it where it is appropriate to retain trees and significant vegetative cover; that neighborhood is also less densely populated, which means there is far more room on which to retain vegetation. Surrey Downs has become far denser over the years, and the vegetation has been replaced with manmade objects such as houses, driveways and roads. Significant tree removal has occurred in most of Bellevue's non-shoreline neighborhoods. Even so, shoreline properties in Meydenbauer Bay have as great or greater retention of vegetation as elsewhere. Newport Shores has little native vegetation since the area developed from what was once a lakeside airstrip. The Somerset neighborhood stipulates that the trees on one person's property cannot block the views from another person's property, thus giving favor to views and reducing the number of mature trees. Lake Hills, one of the older neighborhoods, has a surprising retention of trees and other vegetative cover. Phantom Lake residents have shown good stewardship by retaining vegetation in an exemplary fashion. The Tam O'Shanter neighborhood is zoned three units per acre but can only be given passing grades on its vegetative cover. The East Lake Hills area has succumbed to the desire for views, thus there is far less tree coverage than the immediately neighboring areas along the edge of the lake. The pattern persists moving north, even in areas such as Bass Cove where lot depth is much shallower. Lochmore residents above the lake have much less vegetative cover than the neighbors on the lakeshore. The Urban Forest organization's report on tree canopy loss, delivered at last year's Commission retreat, attests to the fact that shoreline property owners have not been responsible for the losses witnessed over the last 20 years. The conclusion is obvious: development has been accompanied

by the removal of vegetation, with more recent higher elevation neighborhoods contributing greatly to tree removal, while shoreline properties provide exemplary coverage even down to the shoreline itself. That fact, along with the lack of fact-based wildlife needs and documented safety needs, and the very real potential for actual increases in phosphorous loading to the water bodies, should help the Commission conclude that tree requirements for shoreline properties should be dropped, and only sensible levels of vegetation should be required.

Ms. Elfi Rahr, 16509 SE 18th Street, said she has been luckier than most Phantom Lake shoreline property owners in that extensive monitoring of the food rep interaction has been done. For the past ten years it has been astounding to see how quickly the food rep has changed and shifted as the lake columns have warmed. The food supply is not available for July, August and September. When it comes to ecological functioning, the food rep must be considered because in the end it is what feeds the animals and the fish. Woody debris is not needed in Phantom Lake. A distinction must be made between peat bottom lakes and gravely lakes. In Phantom Lake the peat is 20 feet deep and to add to it would not be wise. With regard to vegetation along the shoreline, the focus should be on plants that are flood adaptable, especially for the Phantom Lake shoreline given that the water level fluctuates. A single approach will not fit all lake shorelines.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway SE, spoke on behalf of himself and the board of the Washington Sensible Shorelines Association. He said there were a few positive points in the staff presentation, but the organization still has issues with regard to setbacks and vegetation. There still has not been an answer to the most basic question, which is what existing ecological functions will be harmed on the highly developed urban shorelines. The current staff report continues the mistaken references to large woody debris, temperature regulation, and vegetation as salmon necessities. Professor Pauley has pointed out that those are stream functions. Flawed science was the basis for the 25-foot vegetative shoreline buffer. The draft code refers to the critical areas handbook for the landscape standard; that requires trees for every nine feet that will grow to a height of 120 feet. The purported ecological basis is to create shade that will regulate water temperature, create a food source, and create large woody debris when trees die, all of which are needed by streams, not lakes. The concepts proposed by staff are not acceptable to WSSA. Staff stated previously that buffers would not be used and that lake shorelines are not critical areas, yet the code language creates a 25-foot buffer and then regulates it using the same highly restrictive critical area buffer rules. The rules requiring the planting of trees on 60 percent of the shoreline are not acceptable. The impetus for imposing a setback as outlined in the staff report is that projects near the shoreline will harm ecological functions, yet the specific harms are not identified, thus the requirement for a new 25-foot setback beyond the existing 25-foot setback is arbitrary. It is unacceptable to use minor construction projects to leverage planted buffers and other restoration projects. It is unacceptable to impose vegetation conservation buffer requirements on existing developed properties; even the WAC shoreline guidelines do not require that. The 25-foot historic setback is adequate and there has been no science shown to require a larger setback.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said reading the staff reports is like reading past agendas. Presenting the same information over and over will not make it become true. The setback information presented by staff contains a new twist: it gives property owners only one choice from which to select, which is 50 feet. There should instead be a discussion about available choices. Prior to 2006, the structure setback was 25 feet. The staff said new science called for revisiting the standard and thus the critical areas ordinance 25/25 standard was created. At the June meeting staff said they cannot say if 25, 30 or 50 feet is better or what is necessary, but came down on the side of more being better. The staff report states that there are a limited number of studies regarding width and effectiveness of lakeshore setbacks, but claims that the

many studies done for wetlands and streams are relevant because lakes provide many of the same functions. That ignores the fact that there have been science presentations that clearly showed that stream, wetland and marine functions as distinct from lake shoreline functions. The Commission in fact previously instructed the staff to stop using inappropriate science references to support their positions. WSSA believes a 25-foot setback is sufficient; it is what has been in place for many years and to which most residential properties conform. Unlike the critical areas ordinance, the Shoreline Master Program is required to be based on valid science. If the shoe does not fit, it does not fit. The guidelines are only guidelines, not rules as staff seems to believe. The Commission must make its decisions based on science; no one should try to make the available science justify the guidelines, regardless of how much the Department of Ecology might like that. The same is true for the issue of vegetation; staff has not yet presented any science that validates the need for increased vegetation along the shoreline. Even if there were science to show more vegetation is needed, there is no science to show how much is needed. The guidelines simply state that vegetation conservation standards are not to apply retroactively to existing uses and structures. With regard to the issue of no net loss, the WAC is quoted as stating that local jurisdictions are to evaluate and consider the cumulative impacts of reasonable future development and draft policies, programs and regulations that address those impacts and which fairly allocate the burden of addressing cumulative impacts among development opportunities. Unless it can be shown that there are impacts from 25-foot setbacks and the current patterns of vegetation, the staff are only wildly speculating that intense urban development will come to the shorelines from which a vegetative mote is needed for protection. The guidelines require regulatory and non-regulatory actions. Where the city deems regulations are necessary, they should fall within the guidelines and do so responsibly.

Mr. David Radabaugh with the Department of Ecology, 3190 160th Avenue SE, said the department is willing to consider the notion of drawing buffers around existing residences, especially given that the provision is included in the existing critical areas ordinance. He said the staff has asked the department about the approach, and the department is considering it largely because of the efforts of city staff. He stressed that in fact the WAC guidelines are mandatory. The guidelines state that master programs shall include provisions to address vegetation conservation and regulatory provisions that address conservation of vegetation. When the city's draft Shoreline Master Program is finished, it will be given a thorough review by the department. The review of the vegetation conservation provisions will include an analysis of the cumulative impact analysis. He observed that Option A proposed by staff has a lot of merit; the concept is good in that it seeks to conserve vegetation on the shoreline while allowing of use of the shoreline. With regard to the issue of allowing additions of up to 500 square feet to structures within the setback without any mitigation, he said during his review he will look at what the cumulative impact could be; appropriate vegetation conservation measures should be considered along with additions in the setback area. The 60 percent vegetation conservation proposed for the first 25 feet landward of the ordinary high water mark may be a bit low and will need to be further reviewed. The area of most concern is the area closest to the ordinary high water mark; in theory, the 60 percent provision could yield a scenario in which the ten feet closest to the ordinary high water mark would have no vegetation at all. The menu options appear to have merit; many of them are in the approved Kirkland Shoreline Master Program.

Mr. Richard Johnson, 2824 West Lake Sammamish Parkway SE, read into the record a letter from Mr. Tom Shafer, a shoreline resident. The letter noted that in previous meetings the Commission asked staff to explain why certain rulings were applied and the staff was unable to provide answers, and no follow up has been done. Staff has not been able to say why a 50-foot setback would be better than a 25-foot setback, and there has been no follow up. Many other questions have been asked and never answered, and just seemingly discarded. Staff should be asked to explain why. Staff has presented an options list but is not able to explain the options or

their long-lasting consequences. The Commission will not be able to reach appropriate conclusions if the staff does not answer question or research answers and report back. The consequences are too great to do a poor job. The issues are great and the long-term consequences are even greater. The Commission may want to do its best, but has not been given the tools or the time to become informed and knowledgeable. The Commission should not just ask the questions: it should insist on getting answers. If the right answers are not forthcoming, the process should be stopped until those answers are provided. Staff has succeeded in creating a code that is exceedingly simple. It simply neglects water level changes; simply neglects trying to get plantings to survive; and simply neglects the issue of blocking the views of neighbors.

Mr. Norman Ballinger, 16226 SE 24th Street, said he is a resident on Phantom Lake. He stressed that one regulatory approach will not fit all circumstances. Phantom Lake is a different lake and the rules that apply to Lake Washington and Lake Sammamish do not apply. Phantom Lake is mostly developed and very few lots are left to develop. The area is largely wooded and vegetated, so setbacks are not even applicable. The lake is impacted by stormwater runoff and the plant material in the lake that contributes to the phosphorous loading. Nothing is said about how to measure ecological benefit and adverse impacts, nor the impacts of mitigation efforts. Steep slopes are not addressed at all but they should be.

Mr. John Strong, 1604 West Lake Sammamish Parkway NE, said he supports the work being done by WSSA. He said the organization has smart people who are problem solvers and he encouraged the Commission to work closely with them. He said he was not satisfied with the Option A approach for many of the reasons stated. He said he lives in Rosemont where there are 50-foot lots. The view corridors are already very narrow, and the notion of having to plant more trees will not be welcomed. Trees on a larger waterfront might be a good idea, but not on a 50-foot property.

Mr. Terry Lemke, 2016 West Lake Sammamish Parkway SE, said his family has lived on the lake for 90 years. In years past there was much more wildlife, including bears. He said his property on the west side of the lake is still more forested than other areas along the lake, but more habitat that would encourage additional wildlife is not wanted. Children live along the lake and play fearlessly along the lakeshore and in the woods. There are some deer in the area, but deer in greater numbers would possibly attract cougars and other predators. Consideration should be given to families and pets ahead of enhanced wildlife habitat that may attract dangerous animals. There has been an explosion in the mountain beaver population, and they would become even more prevalent with more dense habitat to hide in.

Mr. Brian Parks, 16011 SE 16th Street, said sometimes things sound good on paper but do not work well in real life. On Phantom Lake the ordinary high water mark is so high that vegetation required in the first 25 feet would basically yield a lot of lawn, the native planting area, and more lawn. That would seem out of place. What is not broken should not be fixed. The trees and vegetation coverage along Bellevue's shorelines is very well preserved, which is remarkable given that the shorelines are mostly developed with residential uses. That is particularly true along Phantom Lake where the highest shoreline analysis scores were given. Some clarification from staff is needed given that the draft states that buffers will no longer be required except on Phantom Lake. The 40/60 split is also confusing with regard to how it will be imposed on Phantom Lake. If lawns are properties are allowed to go native with willow trees and bramble, the phosphorous levels in Phantom Lake will escalate. The USGS white papers support that notion. It makes no sense to consider such an approach when Phantom Lake properties are intentionally being flooded by Utilities in an attempt to reduce the phosphorous levels. The consulting firm Entraco was hired by the city in 1996 to produce a report assessing the restoration activities being done on Phantom Lake. In their summary conclusions they stated

that improved consistency of performance on the restoration program could probably be achieved by maintaining high lake levels to reduce shallow groundwater nutrient loading. There is not, however, any data to support that notion. Responding to a letter from a Phantom Lake resident complaining about the higher water levels, Utilities staff stated that a minimum of two full years of data would need to be collected before any conclusions could be drawn as to the impacts or effectiveness on lake levels and water quality. Due to the kettle topography of Phantom Lake and the problems with nutrient loading, there is no practical reason for requiring additional vegetation. The average lake levels should be lowered by six to nine inches, and the phosphorous levels should continue to be monitored.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said much has been said about shoreline stabilization. He said staff and the Department of Ecology are simply not acknowledging the fact that Lake Sammamish is unique and different from Lake Washington. The Kirkland coves approach simply would not work on Lake Sammamish given that the water level during the summer is more than two feet lower than during the winter months. If the cove were to be established at the summer levels, it would be wiped out during the winter storms for most of the shoreline. The high water mark is so far above where the water line is during the summer there is about 20 feet of shoreline that is not being taken into account. A structure may need to be as much as 70 feet back from the shoreline during the summer months. The current regulation regime does not work for people on Lake Sammamish. A soft shoreline treatment simply will not work, especially during the winter months when the storms will wipe them out. Bulkheads are needed to hold back parts of the shoreline. The WSSA has been instrumental in getting the weir cut back by working with King County. With regard to the Department of Ecology, the fact is the buck will stop with Mr. Radibaugh. City staff graciously agreed to take a guided tour of the shoreline to see how the Kirkland shoreline differs from the Bellevue shoreline, but Mr. Radibaugh has refused to do the same. It is disingenuous for him to say one approach or another looks good to him without really seeing the shoreline for himself.

C. Shoreline Master Program Update – Commission Discussion

Commissioner Turner asked if the proposed 25/25 buffer is directly the result of the critical areas ordinance. Mr. Paine said the city has never had a 50-foot buffer for developed sites; there has been a 50-foot buffer for undeveloped sites. The critical areas ordinance has a 25-foot buffer and a 25-foot structure setback. The proposal does not include a buffer, only a vegetation conservation area of 25 feet that is only applicable with development, 40 percent of which can be used as the property owner sees fit for recreational purposes. In the critical areas ordinance the first 25 feet landward of the ordinary high water mark is truly a buffer and touching it in any way triggers a requirement for restoration. Commissioner Turner suggested that regardless of what it is called, the proposal appears to be for a 50-foot buffer. Mr. Paine said the overall dimension is 50 feet, and that was established primarily on the GIS data and the fact that the city cannot backslide from its prior regulation, which is the critical areas ordinance. Most of the functions in need of regulation are encompassed in the 50 feet. The proposed approach is different in that it does not involve a buffer, which must be held inviolate without triggering restitution.

Commissioner Turner asked how taking a less aggressive approach, by calling for a vegetation conservation area and a building setback, is not backsliding from the city's prior regulation. Mr. Paine said the issue with shorelines is the cumulative analysis process. All of the regulatory pieces of the program must be balanced, but that approach allows for giving a little in one area provided the loss is made up somewhere else. The critical areas ordinance aims at particular best available science standards, so each individual critical area has its own bundle of science attached to it. The shoreline approach is focused on balancing what is being done with docks, bulkheads, setbacks and vegetation. It will be up to the Commission to decide what the right

balance is.

Ms. Helland further explained that the Shoreline Master Program requires equivalency with prior regulations. What staff has been focused on is formulating a package of tradeoffs which will achieve equivalency from a cumulative impacts standpoint while allowing for some flexibility. Under the adopted critical areas ordinance, for developed sites in shoreline critical areas there is a 25-foot buffer and a 25-foot structure setback; for undeveloped sites there is a 50-foot buffer and no structure setback. Currently, 60 percent of all dwellings are located more than 50 feet from the shoreline. The proposal allows structures to be closer to the water through a series of incentives.

Commissioner Himebaugh said it was his understanding that the 50-foot number was chosen based on the fact that the city currently regulates shorelines as critical areas. He also noted that the intent is to not treat shorelines as critical areas but asked if they will be defacto critical areas if the new approach simply adopts the old 50-feet, even if the area is less aggressive in that it is not called a buffer. He asked if there is an ecological basis for doubling what previously applied to the shoreline, which was 25 feet. Ms. Helland said the 50 feet was identified as an appropriate buffer and setback combination in critical areas to address the functions and values that occur in that range landward of the ordinary high water mark. The effective buffer for terrestrial habitat has been shown to range from 300 to 820 feet; no one is proposing a buffer anywhere near that width. The call for a 50-foot vegetation conservation and building setback combination is aimed at addressing the most functions and values as possible without being too onerous. Science does not work in minimums: it works in optimums. Scientists focus their work on optimal conditions; accordingly, there is little or no research aimed at determining the minimum a system can bet by with before tipping the balance in favor of being fatally flawed. That is where the policy discussion and the application of a cumulative impacts analysis come into play.

Commissioner Himebaugh commented that the Commission has been told a number of times that it will need to weigh the facts as presented in making a policy decision. The effective buffer range for terrestrial habitat width shown in the staff report is based on stream science, which was used to develop the critical areas ordinance. That in essence ties the hands of the Commission. The Commission must make decisions based on the science, particularly applicable science, but it has not been given any applicable science. He asked if the city should follow the precautionary principle in developing the Shoreline Master Program update, and if so how it should be interpreted, and how it relates to the protection of private property rights, which the Shoreline Management Act requires be promoted. Ms. Helland the precautionary principle is embedded in the cumulative impact analysis. The starting point is the functionality for the use that is to be accomplished, such as recreational uses; everything works upward from there. It will not be possible to know how any of the elements will fit together until a regulatory package is developed on which a cumulative analysis can be run. It would be safe to say that allowing a structure within 25 feet of the shoreline on every property along Lake Sammamish would create an unacceptable impact. The code adopted in the 1970s included a 25-foot setback. The legislature in its wisdom concluded that the shoreline regulations needed to be updated. During the intervening time the city updated its critical areas code.

Ms. Helland said she understood the concerns of the Commission with regard to the science, and the comments of the public to the effect that the science is flawed. However, the city must use the information it has. The Sammamish Council grappled with the same issue when holding a public hearing on its proposed Shoreline Master Program update and came to the conclusion that the various systems cannot be looked at in isolation. The available science from wetlands, rivers and streams and shorelines offer the best starting place. Staff has provided the Commission with science, as has the public.

Mr. Paine said he recognized the concern of the public over using stream science and applying it to lakes. He said there is no question that lakes have unique biological characteristics. That, however, is not what is in question. What is in question is the individual functions. For example, sediment removal occurs in a buffer from a stream and a buffer from a lake in exactly the same way. Staff agrees that vegetative lawns properly designed with a certain slope are great for removing sediment. Sediment loading from shoreline areas is not a huge issue given that most of the sediment load coming into the lakes is coming from storm pipes, Issaquah Creek and other streams. Pollutants are filtered by soil particles in the same way for streams and lakes. Terrestrial habitat adjacent to streams serves exactly the same functions as terrestrial habitat adjacent to lakes. With aquatic habitat, however, there are differences. There is no question that large woody debris in a salmonid stream is critical to habitat; good salmon habitat simply does not occur without it in the Northwest, particularly in the upper reaches of the streams where the salmon breed. That does not mean that coarse woody debris is not important in lakes, it is just not as important. He said the Commission can decide not to require the introduction of coarse woody debris into the lakes through the planting of large trees on the shoreline that will eventually die and fall into the lake, but it can still decide that bank stability is vitally important and can be enhanced through root structure. The Commission can show its interest in aquatic habitat by not allowing for the creation of a swimming pool in the lake. The Commission may also be interested in pollutant removal that can be brought about by having a certain amount of open, non-impervious area where rainwater and runoff can penetrate and be filtered.

Mr. Paine said the science indicates that a buffered area of 50 feet can do a pretty good job of protecting and providing the necessary functions. He said 60 feet might be better but there is no specific study to support that notion, in the same way there is no study that says the same functions can be provided in only 40 feet. The genius of the critical areas process was that it allowed for studies to be done on specific sites to support specific proposals and appropriate levels of mitigation.

Commissioner Himebaugh suggested it all comes down to buying the premise. He said that was where he was having trouble and is also why the Commission early in the process requested a matrix that would connect regulation with ecological functions.

Commissioner Turner said the economic or financial impact on property owners will be a big deal. He said he fully understood the need for regulation but needed to know more about the impacts in all senses of the word. He asked if the desired matrix would be forthcoming. Ms. Helland said the preliminary matrix that had the menu options was included on page 42 of the packet materials. She allowed that it did not include the economic side of the issue. When the options are narrowed down, some economic analysis will be included, at least with regard to the relative cost of some of the options. It will make the most sense to conduct that analysis after the revised draft is in hand. With regard to property rights, she said the legal department has been asked to provide an analysis with respect to code regulations. That analysis should be delivered to the Commission on November 3.

Chair Ferris suggested that it would be very difficult to provide a cost analysis given that every site along the lakes is different. It is unlikely that it will be possible to apply commonalities. The analysis may in fact open more points to argument than it will solve because everyone will look at the issues differently.

With respect to the information in the packet regarding the vegetation conservation area, Commissioner Sheffels noted that the language used talks about "...to protect and restore ecological functions." She suggested the no net loss concept does not necessarily include

restoration of functions. Mr. Paine agreed. He said the primary purpose of the vegetation conservation setback is to protect existing riparian or lake shoreline vegetation. The phrase in question comes from the WAC. The guidelines blend the protect and restore concepts frequently, but clearly the drafters and the agreement between the environmental and development interests never fully got their hands around the issue of restoration. Commissioner Sheffels suggested that since the definition of restore is fuzzy, the word should be removed if possible. Mr. Paine agreed.

Chair Ferris said his reading of the language was that someone with a shoreline property intending to take no action that would change the ecology would not need to do anything. However, if the same property owner were to seek to encroach into the setback or otherwise disrupt an existing ecological function, restoration would be required as a mitigation. Ms. Helland said that was her reading of it as well. She allowed the language could be more clear.

Commissioner Sheffels commented that the same section states that "...conserving vegetation provides additional benefits, such as protecting human safety and property..." and suggested the concept is too fuzzy. The language should be more indicative of what is to be accomplished.

Answering a question asked by Commissioner Himebaugh, Ms. Bedwell said the paragraph in question was taken from Section 173.26.221.5 of the WAC. The references to restoration and human safety are included there, and the latter appears to be a reference to stabilization areas that might be prone to erosion or landslides.

Commissioner Himebaugh asked how the vegetation retention standard would affect the owner of a shoreline property not wanting to make any changes to the shoreline after the new Shoreline Master Program takes effect. Ms. Bedwell said the property owner would be required to retain the vegetation, except that up to 40 percent of the vegetation could be removed to accommodate recreation uses having a pervious surface. Any existing lawn and ornamental vegetation could remain and could be maintained over time.

Commissioner Mathews asked if a property owner could remove existing vegetation and replace it with another type of vegetation provided a workable plan were submitted to the city. Mr. Paine said that could be done. The process already exists in the critical areas ordinance. An approved vegetation management plan is required. Ms. Bedwell added that the focus must be on the significant trees and native vegetation. A property owner wanting to remove some ornamental landscaping in order to replace it with some other type of ornamental landscaping can do so as routine maintenance.

Commissioner Sheffels pointed out that the proposed language prohibits the use of fertilizers, herbicides and pesticides and suggested that anyone with roses growing in the setback area will want to use an appropriate fertilizer on them. She also asked how the city would go about enforcing such a provision. Mr. Paine agreed to take a look at that issue, commenting that the language sounds overly broad. Ms. Bedwell added that the emphasis would be on education over enforcement.

Answering a question asked by Chair Ferris, Mr. Paine suggested the issue of course woody debris has been largely misunderstood. He said where space should be carved out for course

woody debris is in the building of the integrated stabilization structures; all of it would be anchored and unable to move about. He said there is no interest in just randomly throwing trees into the lake, nor is anyone wanting to see trees cut and placed vertically out in any lake; that is not and never has been a proposal made by the city.

Commissioner Sheffels said the public has often raised the differences between Lake Washington and Lake Sammamish, and certainly Phantom Lake. She noted that the Newport Shores area has been singled out for the way in which they are handling things. She said she would support creating a matrix approach aimed at treating the different shorelines differently by condition. Mr. Paine said specific site conditions are taken into account in permitting the construction of bulkheads. He agreed that Phantom Lake is simply not the same as the other lakes and should be looked at and treated separately. It must be kept in mind, however, that for Phantom Lake the Shoreline Master Program is not the primary regulatory driver, and what is done in the Shoreline Master Program must not upset other regulations already in place. He also agreed that parts of Lake Washington have very high winds and very high waves, and those areas will get special treatment with regard to how bulkheads are addressed. All existing bulkheads will be allowed to remain in place and be maintained over time, but if they degrade to the point of being replaced, a different approach will need to be considered.

Commissioner Sheffels commented that several from the public have pointed out that high winds and high waves will only wipe out any vegetation homeowners may be required to plant. Mr. Paine said the argument is relevant, though he added that staff had not been given direct evidence of that happening. He pointed out that wave heights and wind forces are much higher along the shores of Puget Sound where integrated stabilization is also used. It is all a matter of design.

Chair Ferris said one of the major differences between Lake Washington and Lake Sammamish is the fact that Lake Sammamish has a variable water level. He agreed that design will have the greatest impact on how structures hold up over time.

Commissioner Himebaugh asked why certain activities under the proposal would trigger a 60 percent landscaping requirement and how the trigger activities were selected. He said it appeared the requirement was quite onerous, even though the Department of Ecology representative testified that he did not think it was enough. Ms. Bedwell called attention to the bullet items on page 8 of the packet that describe the scenarios that would trigger the landscaping standard. She reviewed the list with the Commissioners and noted that each entails a significant action. However, she said the Commission would be free to determine if the entire 60 percent would need to be planted for a given action, or if there should be a relative scale based on the amount of expanded footprint.

Ms. Helland said the 60 percent figure was arrived at because it represents a majority of the shoreline without being overly restrictive. Ms. Bedwell stressed that the 60 percent does not all have to be in a single block; there can be patches of vegetation scattered around so long as the total reaches the 60 percent mark.

Commissioner Himebaugh said he could not see how the requirement to vegetate up to 60 percent of an area fits with the notion of no net loss, unless one is very careful about establishing what activities are going to trigger the planting requirement. He suggested it should be proportional to the actual impacts of development. Ms. Bedwell said in Redmond, new development adhering to the 35-foot setback, or redevelopment that involves more than 50 percent of the existing value of improvement, triggers a requirement for 50 percent of the minimum 20-foot building setback to be planted in vegetation.

Commissioner Turner expressed some confusion about the relationship of the critical areas ordinance to the Shoreline Master Program. He said it would be useful for staff to show how they are different or the same. Ms. Helland said the chart on page 40 of the packet materials gave some details but said staff would be willing to provide a more robust comparison between the existing code and Option A.

Commissioner Himebaugh said he would not be in favor of going forward with the proposal. It is generally too restrictive, and there are portions of it that are borderline arbitrary based on gaps in the science. He said he did not think the city should err on the side of regulation if it cannot be said for sure how something will affect something else.

Commissioner Mathews said he would favor moving ahead with the general proposals, specifically Option A, so many of the blanks can be filled in. He suggested that improvements have been made since the Commission last discussed the topic, including more flexibility. There are no costs associated with doing nothing, and the flexibility kicks in when some changes are desired. With some creativity things can be allowed for fairly minimal cost.

Commissioner Turner voiced concern about moving forward with the current proposal. He said there is little in the language about the shorelines already being urban environments and even less about leaving them that way; there is the potential that things could be reversed in terms of making the shorelines less urban, particularly with regard to the vegetation conservation area. The property owners have not been given enough credit for being good stewards of the shorelines. The staff have said they do not want to over-regulate, yet the proposal appears to do just that. There are no real incentives included. For each regulatory category, there needs to be an explicit tie to the science, as well as to the economic impacts. While the proposal will not in any way seek to regulate stormwater runoff, it must be noted that those systems are negatively impacting the shoreline environments.

Commissioner Sheffels agreed that the newest draft is more positive than the last version. The vast majority of properties on the shoreline will not be affected in any way by choosing the status quo. A small percentage, however, will want to build something new or redevelop a property, they will be subject to the new regulations. She suggested the menu options do represent incentives in the form of tradeoffs. She said she looked forward to seeing the next iteration of the proposal.

Chair Ferris concurred that the document has come a long way from where it started out. He said he had come to conclude that science is not always a measurement of specific factors; it is

often judgmental factors that contribute to the overall ecological functions. The staff have answered most of the questions asked along the way. The matrix captures what the Commission talked about in June and gives a measurable way to show how incremental contributions can offset functions that have been taken away through development or redevelopment. He agreed that the stormwater system and associated regulations do have an impact on the lake systems; many of them were not in place when the upland areas were developed, and as they redevelop they trigger compliance with the new regulations. He voiced support for moving ahead with Option A, the 25/25 setbacks, and the revisions called for by the Commission.

Motion to extend the meeting to 10:15 p.m. was made by Commissioner Sheffels. Second was by Commissioner Himebaugh and the motion carried unanimously.

10. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said a comment made by staff at a WSSA meeting about the vegetation conservation area was that the WAC guidance is not clear but the Department of Ecology will not let an Shoreline Master Program pass without that component. She said there is already wildlife along the shorelines, including coyotes near Meydenbauer Bay; an increase in wildlife is not desired. The whole point of the Growth Management Act was to concentrate growth in urban areas; it makes no sense to take areas that are developed as urban and force them to become more rural. The WAC says that replacement is a form of maintenance and repair; there is no reason for incremental actions to trigger some of the things that are being suggested by staff. The statement that the city cannot backslide from its current position makes no sense in light of the fact that one of the options offered the Commission included a setback of 35 feet, which is less than what is required by the critical areas ordinance. Too much vegetation along the shoreline will block views from the nearby homes, which could mean mothers will not be able to see what their children are doing there; that is a safety concern.

Mr. Brian Parks, 16011 SE 16th Street, said the critical areas committee had a CAC that did not even mention lakes. Accordingly, there was no citizen input regarding lakes in the critical areas study. That would seem to be a legal liability issue for the city. Language should be included stating that fire, earthquakes and other acts of God will not trigger the regulations. Two Phantom Lake residents have been told they must leave large fallen trees in the lake; there are active beavers on Phantom Lake so the number of trees in the water could pile up. About ten percent of the residential lots on Phantom Lake are undeveloped currently.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway, showed the Commissioners photos depicting the loss of trees over a ten-year period. He pointed out that Weowna Park includes a large greenbelt. The property was acquired from Warehouse by private citizens and in the 1970s it was sold to King County for use as a park area. Stewardship of the land was paramount from the start and it still is for waterfront property owners. The regulation concept should be thrown out in favor of education and incentives.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, said there will be economic impacts associated with the proposed approach. Over the last four years applicants have faced stiff fees

associated with the critical areas ordinance. With just the looming potential of new regulations, many shoreline property owners are questioning if they want to stay on the lake, and people who are looking at properties are hesitant to buy them. Property values could fall, and that is an economic impact that should be considered.

Mr. Don Kirth, 408 West Lake Sammamish Parkway SE, said he has lived on the lake since 1978. He said he was under the impression that his floating dock had been grandfathered, but he said he was approached about taking the dock out. The dock is out of the water from the first of November through the first of June. To go through the process of getting the dock re-permitted cost more than \$50,000. Staff says they have leeway to do certain things, but they do not abide by it; they see everything as very black and white. It was disheartening to have to spend so much money only to end up with what was already there.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, said the slogan “It’s Your City” does not seem true. The Commission should think carefully about how the proposed regulations will stifle economic growth. People will choose not to remodel their homes or redo their docks. There will not be any long-term consequences for staff, but there will be for the property owners, the taxpayers.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway, said he was puzzled by the non-answers provided by staff. Staff just dances around the issues, such as how they came up with the arbitrary 60 percent figure and 50-foot setback. The fact is there are only 30-some properties on the lake that are not developed. He said since he has lived on the lake, four of the six homes near his property have been either rebuilt or completely leveled and started over. That is a lot of economic activity. The proposed setbacks and buffer zones will have a huge impact on redevelopment activities and on property sales. The shoreline area represents only 0.2 of one percent of the total watershed area for Lake Sammamish and it is totally arbitrary to choose 60 percent of the first 25 feet versus 50 percent, or 40 percent, or 30 percent; the actual land area is only a very small fraction of the total.

8. OTHER BUSINESS – None

9. APPROVAL OF MINUTES

A. September 22, 2010

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

11. NEXT PLANNING COMMISSION MEETING

There was agreement not to meet on October 27 and to meet next on November 3 and then again on November 17.

12. ADJOURN

Chair Ferris adjourned the meeting at 10:18 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Hal Ferris
Chair of the Planning Commission

Date

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

November 3, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Elizabeth Stead, Ken Thiem, Carol Helland, Michael Paine, Heidi Bedwell, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present.

3. PUBLIC COMMENT

Mr. John Haynes, CEO of the Tateuchi Center, shared with the Commission that over the past couple of days the design team has been looking for architectural and structural ways to add pedestrian cover along 106th Avenue NE for most of the length of the building. He said the \$160 million project will be a tremendous amenity for the city and will increase the level of activity during the day and during the evening as a result of the concert hall, the cabaret, and by the ancillary uses. The Seattle Symphony will play part of its season in the facility, the Pacific Northwest Ballet will use the building, and about 100 nationally and internationally renowned artists will appear there annually. The design of the building does not fit neatly under the current code definitions, and that is why the proposed code amendment is needed.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS

Commissioner Hamlin said he had been selected to serve as co-chair of the Eastgate/I-90 CAC. He said the group will have its first meeting on November 18.

Comprehensive Planning Manager Paul Inghram said the City Council has appointed all of the

CAC members. The group will meet over the next year to talk about options for the Eastgate/I-90 area and how to maintain the area as a healthy economic center for the city.

6. STAFF REPORTS

Mr. Inghram informed the Commission that on November 9 there would be an open house for transportation projects.

Mr. Inghram said recently a concern was raised about the Commission meeting minutes. He stressed that they are not intended to be a verbatim transcript of the proceedings; they are intended to capture the nature of the conversations and actions taken for the use of the Commission. He allowed that anyone with a concern about the minutes should bring the issue to his attention or to the Commission. He added that the audio recording for each meeting is kept on file and is always available for anyone to listen to.

7. STUDY SESSION

A. Performing Arts Code Amendment

Land Use Director Carol Helland noted that at the previous study session on the topic the Commission indicated a desire to see brought about the entertainment avenue vision contemplated in the Downtown Implementation Plan, and wanted a response to issues raised, including location and scope reductions, façade setback, the proposed public hearing draft language, building floor plate per floor language, floor area ratio language, building height, and the proposed design and use requirements.

Ms. Helland said staff clearly heard from the Commission concerns voiced about the scope and applicability being too broad. She noted that staff had since narrowed them. Staff also agreed that the dimensional flexibility needed to be tied to functional need and not be written so broadly as to be overly expansive. Staff further agreed with the importance of activating the street level.

Planning Manager Elizabeth Stead said the vision for the entertainment avenue concept in the Downtown Implementation Plan involved 106th Avenue NE between NE 2nd Street and NE 10th Street. The policy language calls for including a concentration of shops, cafés, restaurants and clubs, all of which should provide for an active pedestrian environment both during the day and after hours. There is already a strong pedestrian sense on 106th Avenue NE and adding the Tateuchi Center will enhance that. A midblock crossing is planned for the area near the Tateuchi Center to connect to Washington Square.

Ms. Stead said the revised language narrows the scope of the code amendment to properties abutting 106th Avenue NE between NE 2nd Street and NE 10th Street, and adds a definition of performing arts center reading “Any facility intended and designed for the presentation of live performances of dance, drama, and music.”

With regard to dimensional flexibility, which is a key component of the proposed amendment, Ms. Stead presented revisions to the language that were more clearly defined. She noted that modification of the façade setback requirement for floors above 40 feet in height were continued, but building would have to demonstrate that the proposed impacts to the abutting structures have been mitigated. The proposal included allowing unlimited floor area per floor up to a maximum permitted building height of 100 feet for performing arts uses only, provided buildings demonstrate conformance with the design guidelines for Type A streets to assure there is no compromise of the pedestrian environment.

The proposal is to increase the maximum FAR from 3.0 to 4.0 in the Downtown MU zone specifically for performing arts center uses. Projects would need to earn the additional FAR through participation in the FAR amenity bonus system.

The proposal is to control building height to accommodate performing arts uses to maintain a 100-foot threshold in every land use district where permitted, with the ability to increase the maximum height by an additional 15 feet or 15 percent, whichever is greater. A height increase beyond 100 feet would be granted only if the applicant demonstrates the additional height is needed to accommodate superlative design features, which is an option allowed under the current code.

Ms. Stead said the design requirements for performing arts center projects had been tightened up. The language calls for such facilities to meet the requirements for Type A frontage, which means the street-level edges of the entire project must incorporate retail activities. In the design guidelines, theater is considered to be a retail activity within the Building Sidewalk Design Guidelines. Characteristics to be incorporated into the design of the structures include windows providing visual access, street walls, multiple entrances, differentiating ground levels, canopies, awnings and arcades.

The design of the Tateuchi Center has a height of 114 feet, which meets the proposed requirements given that an extra fifteen feet would be earned. The project would have an FAR of 3.3, so the project would have to show how it intends to earn amenity points. The floor plate size of 400 feet would not be regulated. Under the proposal, no façade stepback would be required. The project meets the criteria for retail activity, and partly meets the requirement for windows providing visual access. The project complies with the street walls requirement. It does not have multiple entrances, but given the type of building with a single activity that requirement is less applicable. There is differentiation of ground level. The current design does not provide canopies, awnings or arcades, though work is under way to include those elements. Weather protection is provided at the main entrance, as is some outdoor seating.

Commissioner Sheffels suggested that performing arts centers should not be required to include extra retail activity, though it should be allowed. With regard to the proposed definition language, she noted that requirement for live performances would preclude the facility from being used for something like the Seattle Film Festival. Under certain circumstances, uses of that sort should be permitted. Ms. Helland said staff talked about that and concluded that through the subordinate use requirements and the requirements for flexibility that are already contained within the code would allow performing arts centers to include non-live performances. However, the predominant nature of the performance space being planned is to accommodate live performances. Commissioner Sheffels said she would like to see the definition language broadened.

Answering a question asked by Commissioner Mathews, Ms. Helland said performing arts center opportunities do not come along frequently. As such, the city is not expecting to see many applications for the downtown area. That said, the vision for the downtown is to help direct them into the entertainment street area. The other place they could be sited would be the convention center district. She added that staff has the objective of conducting a tune-up for the downtown Land Use Code, and as part of that the broad range of amenities could be reviewed and revised.

Chair Ferris said 106th Avenue NE offers good opportunities for becoming a pedestrian-oriented street. It is not dominated by cars like most of the other downtown streets are. The Tateuchi

Center will add to that image, but as drawn it does somewhat turn its side to where the pedestrian activity is desired; the building fronts NE 10th Street, not 106th Avenue NE. Ms. Helland clarified that in the current code 106th Avenue NE is classified as a Type D street, which has the lowest requirements for pedestrian orientation. That issue, however, is one of the reasons staff wants to see the downtown regulations tuned up; the regulations do not appear to be completely in sync with the adopted Downtown Implementation Plan policies. Chair Ferris pointed out that the Tateuchi Center will be only three blocks from the transit center; patrons could easily arrive in the downtown via transit and walk to the facility but they would want a pedestrian-friendly atmosphere, including continuous weather protection.

Commissioner Lai noted in the letter from Pfeiffer Partners, the architect for the center, that they are considering the inclusion of five large digital screens at eye height along 106th Avenue NE as a way to activate the pedestrian space. He allowed that while that might work very well, it could also backfire and give a Las Vegas impression instead. He asked if the city's sign ordinance would cover what could and could not be shown on the screens. Ms. Helland said it would be difficult to regulate content through the sign code. The code does, however, specifically prohibit moving objects. A sign code change would be required to permit the showing of images related to a performance or other advertising associated with the use.

Commissioner Himebaugh disagreed with the idea of reorienting entry points for the center on 106th Avenue NE. Those issues should be driven more by architectural design and feasibility. He agreed that retail uses should be allowed but not required.

There was consensus in favor of moving forward to public hearing with the language as proposed.

8. STUDY SESSION FOR SHORELINE MASTER PROGRAM

A. Shoreline Master Program Update

Ms. Helland outlined the topics to be covered and briefly reviewed the project schedule. She reminded the Commissioners that the nonconforming concepts are common in the city's code, though they are described differently in different areas of the code. The general nonconforming requirements speak to what happens when code changes occur after a use is established and a repair, expansion or remodel is required. Some of the provisions are geographically specific. The provisions are tailored toward helping the city reach its long-term visions while allowing property owners to make use of the investments they have made over time.

Associate Planner Heidi Bedwell said there are more than a thousand primary residential structures within the within the collective jurisdictions of Phantom Lake, Lake Sammamish and Lake Washington, as well as some 295 residential accessory structures. Of the primary structures, 402 are located within 50 feet of the ordinary high water mark, 157 within 25 feet. Of the accessory structures, 126 are within 50 feet, and 79 are within 25 feet. Primary structures in residential areas are those that contain the residential dwelling unit; garages, sheds and stand-alone mechanical equipment buildings are not considered to be primary structures.

A nonconforming use or development is a use or development that was permitted by code at the time it was established but which does not conform to the current code owing to a change in the code subsequent to the establishment of the use or development. Such uses can continue to be maintained until there is voluntary action that triggers compliance with the current code provisions.

Ms. Bedwell said the current code contains a provision known as the footprint exception. The exception was crafted to help keep primary structures from being deemed nonconforming. The provision allows for modifying a buffer to exclude the footprint of the primary structure. Accessory structures are not afforded the same exclusion. Staff has discussed with and recommended to the Commission incorporating the footprint exception into the updated Shoreline Master Program, though staff does not recommend allowing the exception to occur within the vegetation conservation setback; structures within the vegetation conservation area would be considered nonconforming, in part because the original 1974 Shoreline Master Program contained a 25-foot setback, which means any structure developed since then would have had to comply.

Legal nonconforming status can be lost through abandonment or discontinuance of a use. Generally, failure to maintain a use for 12 continuous months is the standard that is applied. Loss due to storm or disaster, however, is not necessarily abandonment provided there is an action initiated to reconstruct.

Commissioner Sheffels asked what the ruling would be on a structure being held for sale but not inhabited for a year or more. Ms. Helland said that would not be considered abandonment because the structure would still be adequate for its intended use.

Commissioner Lai asked what action must be taken following a storm or other natural disaster to prevent a structure from being deemed abandoned. Ms. Helland said following a disaster time is often needed in which to negotiate with insurance companies and take other steps before getting to the place where they can file for a building permit. So long as the city understands steps are being taken to reestablish the use for its intended purpose, the abandonment clock is not started.

Ms. Bedwell said allowable activities must be defined before determining what activities are nonconforming. Accordingly, the definitions apply to primary structures within the vegetation conservation setback, accessory structures within either the vegetation conservation setback or the primary structure setback, overwater structures, and piers, docks, and shoreline stabilization. It is also important to have a common understanding of the activities which the city considers routine maintenance not subject to the nonconforming rules. Such activities include the ordinary and routine actions undertaken to prevent deterioration. For the purposes of the nonconforming standards, the term “repair” refers to the returning of a structure to good condition after decay or damage not involving any change to the structure’s dimensions or functions. The suggestion of staff is that such repairs should be no greater than 50 percent of the replacement value of the structure. Repair activities exceeding the 50 percent threshold would be deemed reconstruction, which would trigger compliance with the standards. Compliance with the standards would be triggered when repairing damage from a fire or natural disaster will be more than 75 percent of the replacement value.

If the 50 percent threshold is exceeded by a repair, the portion of a primary structure that lies within the vegetation conservation setback would need to be removed. The property owner could under the footprint exception rebuild the remaining portion of the structure without having to meet any other compliance standards. The property owner could also take advantage of the lateral expansion provision by adding up to 500 square feet; to add more than 500 square feet in a lateral expansion would trigger the landscaping standard and would require selecting something from the option menu. In any event, the option for a variance will be available.

Ms. Helland said the 50 percent threshold for maintenance and repair, and the 75 percent threshold for structures that have experienced destruction by storm or other natural event, are both taken directly from the WAC with respect to nonconforming structures. The variance

process serves as the safety valve for when there are issues involved in meeting the requirements imposed.

Ms. Bedwell said one approach that could be taken with regard to the 75 percent threshold would be to allow the structure to be rebuilt within the vegetation conservation area, but with some sort of compensatory mitigation.

With regard to accessory structures, Ms. Bedwell noted that they are allowed without mitigation within the primary structure setback when limited to 200 square feet. The provisions would not, however, allow any new accessory structures within the vegetation conservation setback. An existing 200-square-foot accessory structure could under the proposal be reconstructed, provided it is still no more than 200 square feet. The concepts of repair and reconstruction do not apply to accessory structures that are 200 square feet or less.

Accessory structures in the primary structure setback that are greater than 200 square feet can be maintained and repaired up to the 50 percent threshold, and can be rebuilt if damaged or destroyed up to the 75 percent threshold without triggering the compliance standards. Reconstruction that involves reducing the size of the structure to 200 square feet or less would not trigger the other development standards. If rebuilt to its original size, however, some mitigation would be required, such as landscaping. The variance option would kick in absent feasible alternatives.

Accessory structures of 200 square feet or less that are located within the vegetation conservation setback can also be maintained and repaired up to the 50 percent replacement value threshold. When that threshold is exceeded, the option would be to move the structure out of the setback. If the intent is to have a structure greater than 200 square feet, it would be allowed in the primary structure setback, but the standards that would apply would be those applicable to entirely new structures.

Ms. Helland called attention to the language on page 15 of the packet and noted that the recommendation of staff was to allow through the variance process reconstruction of an accessory structure that is damaged by storm or natural disaster beyond the 50 percent threshold.

Ms. Bedwell said new accessory structures will not be permitted in the vegetation conservation setback. Structures of greater than 200 square feet within the vegetation conservation setback that are damaged or destroyed beyond the 75 percent threshold would not be allowed to be reconstructed within the setback.

Commissioner Sheffels asked what the process is for a variance. Ms. Helland said a shoreline variance involves a process that is stipulated by and involves affirmative action by the Department of Ecology. It includes an opportunity to appeal to the Shoreline Hearings Board.

Answering a question asked by Commissioner Lai, Environmental Planning Manager Michael Paine explained that accessory structures are not allowed in the vegetation conservation area. The threshold has been set lower because it is easy to rebuild existing accessory structures than it is to rebuild an existing primary structure. The lower threshold should also encourage property owners to remove damaged or destroyed accessory structures out of the vegetation conservation setback entirely.

Commissioner Lai said it would make more sense to allow property owners to replace structures damaged or destroyed by means beyond their control. Ms. Helland said that has always been a concern and one that staff has tried to accommodate. As drafted, the primary structure houses the principal use on the site and should be allowed to be reconstructed in all cases. Accessory structures are not permitted in the setback and have not been permitted since 1974. The act of setting a new vision for the shoreline includes incentives to have accessory structures within the vegetation conservation setback disappear.

Ms. Bedwell said the proposal allows for maintenance and repair of legally established overwater structures up to the 50 percent threshold. Action that exceeds the threshold, however, would need to be done in full compliance with the code. The structures can be maintained and repaired to the point of needing significant work.

Ms. Bedwell said the approach with regard to docks, piers and shoreline stabilization is slightly different, though the concept of allowing existing legally established structures to remain and to be maintained and repaired holds. However, modification will trigger compliance with certain performance standards. The replacement value thresholds do not apply to those structures.

B. Shoreline Master Program Update – Public Comments

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, said regulations carry with them a cost. The cost of owning a home is dramatically affected by land use regulations; such regulations can also have the effect of reducing the value of homes by making them less attractive to prospective buyers. The issue is particularly evident where there are layers upon layers of regulations, where permits take a long time to obtain and are costly, where expensive reports are required, and where legal actions may ensue. The Wharton School of Business residential land use regulatory index includes that information. Locally, an economics study done by the University of Washington looked at over 250 cities over a period of more than 15 years and employed the Wharton index. The study isolated out the supply and demand effects versus regulatory effects. Seattle topped the negative index list, and the state regulations were listed as the most onerous relative to driving the price of homes. Incentives have a far greater potential for effecting change than do costly regulations, though to date there has been very little discussion regarding incentives. A list of possible incentives was shared with the Commission.

Mr. Mike Lunenschloss, 2242 West Lake Sammamish Parkway SE, asked the Commissioners to imagine standing on the curb in front of their homes, and to consider the curb to be the ordinary high water mark. He asked them to consider taking another six to eight steps and consider that spot to be the new ordinary high water mark under the Bellevue regulations. He noted that in Bellevue the mark is different for every property and no one has any recourse. If a permit is required to do something, everything from another five steps forward must be removed, including landscaping and retaining walls. The property would no longer look the same, but the city will allow the property owner to use 40 percent of the property. Of course, the property owner will have to shoulder 100 percent of the costs. The very same month one of the city's environmental experts testified in favor of throwing Christmas trees and logs into the water, the City Council approved an ordinance that makes that very action illegal. Currently, the going rate

for a property owner to fix a dock is \$40,000; it is \$50,000 for a new dock, and all the planning work and other requirements will add about \$40,000 more. Planting predators in the lake and following that up by building predator habitat will result in a lake full of predators. The coho and the chinook are currently running, and the hatchery has collected its target number of eggs. The two species that are doing well are in the hatchery and are protected from predators while they are small; the species that is not protected is not doing well.

Mr. Ralph Guditz, 3929 179th Lane SE, said he spent all of 2003, all of 2004 and half of 2005 engaged with the Shoreline Hearings Board based on a frivolous appeal by a neighbor to an application to replace a one-room house. In all, ten years was required for all the litigation and permitting, and the cost came close to a quarter million dollars, even without a variance or conditional use permit. No one would reasonably undertake the Shoreline Hearings Board process just to press an issue on a dock or accessory structure.

Mr. Brian Parks, 16011 SE 16th Street, said he is a resident on the shoreline of Phantom Lake where there are many older homes and large mature trees which are falling due to utilities raising the lake level. With regard to nonconforming uses, he said it was important to reiterate that due to an increased average lake level and ordinary high water mark, structures that were not previously nonconforming have been made so by the city's use of Phantom Lake for stormwater detention purposes. He said he was continuing to acquire evidence and testimony regarding increased lake levels despite the city's inability to bring forth any pre-1990 lake level data showing otherwise. The lake level increases were implemented in 1990 as part of a restoration efforts. There were two subsequent lawsuits, one on Phantom Lake and another regarding property at the base of Phantom Creek on Lake Sammamish; both property owners were gentlemen approaching the age of 90, and both lawsuits ended without a decision absent historic lake level information from the city. That data has since been collected from other sources. Comparisons of photos taken around 1990 and recently show vegetation changes that are the result of lake increases. The evidence suggests an increase of at least nine inches since the late 1980s and more in peak conditions. The staff's ordinary high water mark approximation of 262 NAVD is a foot over the original northwest outlet's valley high point of 261 NAVD before the berm was built. He said the lake level increase has shifted the ordinary high water mark on his property about 85 feet landward. The lake level should be lowered by 0.8 feet and see if the phosphorous levels remain unchanged significantly. There should be an exclusion from the new regulations for any loss of property caused by government action or inaction, such as mismanagement of a kettle lake without a natural inlet or outlet for stormwater detention purposes, and the regulation of water levels with a weir that was put in for other purposes. The landowners have not caused the problems and should not suffer as a result. Homes, sheds, patios and vegetable gardens should not be labeled as nonconforming when the waterline has been brought landward as much as seven horizontal feet for every inch of lake elevation increase.

Mr. Charley Klinge, 11100 NE 8th Street, spoke representing the Washington Sensible Shorelines Association. He pointed out that when it comes to nonconformance, uses and structures are not the same thing. Nothing in the proposal seeks to change the allowed uses along the shorelines, which are primarily residential areas. The footprint approach is good, though a simpler approach would be to freely allow expansion along the existing building setback unless in a critical area or

a critical area buffer, which is what the code allows in the rest of the city. The Shoreline Hearings Board in the Fox case allowed an overwater deck to be enclosed and turned into a room; they found that the action would not increase the nonconformity given that the deck was already over water. The 12-month discontinuance provision applies only to uses, not structures; if a person were to die and it took the family two years to sell the property, an accessory structure could be deemed to have not been used. That language should be cleaned up. There should also be some clarification as to what structures can be maintained and repaired; while the intent is probably buildings, the word is broad enough to include stairs, patios, and barbeque facilities if they are over three feet high. The replacement value thresholds are just too complicated to apply to a barbeque pit. The WAC guidelines do have the 75 percent threshold, but does not appear to include the 50 percent threshold. Regardless, the language needs to be clarified to include damage resulting from fire and accidents in addition to storm or other natural disasters. The provisions that apply throughout the city should apply along the shorelines given that they are not critical areas.

Mr. Terry Dodd, 3404 West Lake Sammamish Parkway SE, said he recently completed a build on his property. He said things like patios and decks are not addressed very well. He said he found out during his recent build that the footprint rule did not apply to the concrete deck that was adjacent to the exit from his house on the water side. A deck should be considered part of the overall footprint. Many houses have patios that are not directly connected to the main structure, and those should not be thrown by the wayside if a small change is needed because of normal wear and tear or deterioration. Variances are not easily obtained, and most homeowners are not able to get them without costly professional help. The cost of the professionals as well as the staff time is all paid for by the homeowner seeking a variance.

Mr. Fred Weiss, 3410 97th Avenue SE, Mercer Island, said his interest in the subject stemmed from the fact that whatever happens in Bellevue will likely happen in Mercer Island. He called attention to the fact that every year property owners have a little more of their property rights taken away. He said he was not sure what is driving the changes but was concerned about the cavalier attitude toward increasing regulation and meddling by all forms of government, both local and national. It appears that the taking clause is being violated all the time. He said he loves his country but is afraid of his government. The ones who are being overregulated are the very ones who are paying the taxes that pay the salaries of government officials.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, said he was curious to know who would decide what a nonconforming use is. It should be up to the people of Bellevue, or the people who live along the lake, not some bureaucrat that comes up with an opinion. He urged the Commission to seek proofs whenever people start talking about trees and where they ought to be. He said recently he stood on his dock and watched salmon coming in to spawn pass underneath his dock; they did not seem to be having any trouble going around the pilings. Some have suggested that the shade cast by docks causes problems for the salmon while the shade from trees does not, but no one has offered any proof. He said his waterfront property has a dock in the middle, a sandy beach on one side, and a rockery on the other. Behind the rockery is a garden with both flowers and vegetables. Under the proposal, the rockery and the garden are nonconforming uses.

Meydenbauer Bay is being threatened by silt and milfoil, and those problems have nothing to do with setbacks and vegetation. No one is addressing the problem.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said there is a real need to establish baselines and to monitor conditions over time. The state will require it, and property owners along the lakes will be impacted. If there is no testing to determine current ecological functions, an opportunity will be missed. Staff has said there is no budget for doing that work. A wish list should be put together, one that does not worry about a budget. At the Planning Commission retreat, Mayor Davidson directed the Commission not to worry about budgetary concerns but rather to plan big and to leave the budget concerns to the Council. The Commission should include a requirement for determining the baselines and monitoring in the Shoreline Master Program. Without that data, it will simply not be known if the setbacks and the vegetation conservation requirements are actually accomplishing anything.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said from the beginning she suggested to the Washington Sensible Shorelines Association that the issue is about land use rather than science. A lot of time has been spent on science, in part because the WAC requires it, but also to underpin the perception that there is a reason for the proposed regulations. One Commissioner recently was brave enough to state that he had come to accept the fact that the science is indefinable. At its last meeting, the Commission was directed to make policy decisions based on a subjective sociopolitical orientation, not on rational thinking or cause and effect, but on the principle of caution. The precautionary principle espouses the belief that under conditions of substantial scientific uncertainty, environmental regulation should err on the side of caution in order to prevent harm. That moves the burden of decision making from scientists to policy makers and advises them to take action even in the absence of evidence of harm and notwithstanding the costs. All life involves risk, so the approach leaves only a standardless strategy. Staff continues to claim that the WAC requires caution, but the fact is all law is subject to interpretation. If science is not going to provide the base, a rational person might assume decisions will be made based on reason. That, however, would mean the government would have to show a cause-and-effect relationship between the proposed solution to the identified problem that is roughly proportional to the part of the problem that is created or exacerbated by the landowner's development. The Washington State Court of Appeals has said a condition on development must mitigate a direct impact that has been identified as a consequence of proposed development. Under RCW 82.02.020, the burden rests on the government to prove the essential nexus or rough proportionality has been satisfied to prevent the development condition from constituting an illegal tax, fee or charge. The creation of regulatory nonconformity is the focal point of the whole Shoreline Master Program. It is significant that it is a non-legislative anomaly; that means jurisdictions and agencies have used the courts to influence nonconforming land use codes without due legislative process. The Shoreline Management Act does not specifically address nonconformance, so the Department of Ecology adopted default rules that apply only if a jurisdiction does not address nonconforming uses. It is also noteworthy that the Commission has not actually accepted the proposed 50-foot setback because changing the setback is the key to creating a regulatory framework for the proposed nonconformity. The options matrix is only a smokescreen to make it appear the residents will not be damaged too badly because they have choices and options. Just what it would take to get down to a 25-foot setback, but most rational

property owners would certainly not elect to remove 75 percent of a bulkhead to get there. The option matrix is not designed to allow for flexibility but to disincentivize a property owner from deviating from the new 50-foot setback. The staff report says that the continuation of nonconforming uses can interfere with the ability to achieve new policy, and that property improvement must be allowed in the early years of policy implementation, and that the purpose of the shoreline setback is to phase out residential uses in the setback area. It is not about science or the environment, it is about a sociopolitical policy shift. Rational regulations are possible. If it does not make logical sense, it should not be done.

C. Shoreline Master Program Update – Commission Discussion

With regard to the footprint exception, Commissioner Himebaugh said he felt the Commission had been clear about wanting to incorporate it. He suggested a discussion about extending it might be in order, but the footprint exception for the primary residence within the primary structure setback should serve as the baseline. The other Commissioners agreed.

Staff asked the Commission to develop a position with regard to continuing to label as nonconforming structures located within the vegetation conservation setback as they have been since 1974.

Commissioner Himebaugh said he could support rejecting the idea that structures within the first 25 feet from the ordinary high water mark, which is the vegetation conservation setback, should be nonconforming. Mr. Paine said when the shoreline was treated as a critical area, the Planning Commission, after a lot of debate, realized that the additional buffers that were being created by the critical areas code warranted a different treatment. That was because people were being captured by a setback or a buffer who had previously never been regulated. The footprint exception was developed in part to address that issue. The buffer, however, was a no touch zone, so the property owner got the footprint but that is all. The current approach does not involve a no touch buffer. The Commission also excluded accessory structures completely from the footprint protection and ruled them nonconforming in the buffer zone.

Commissioner Himebaugh said what concerns him is the fact that 12 percent of the primary structures and 26 percent of the accessory structures along the combined shorelines are within the vegetation conservation setback. He suggested those numbers are significant. Mr. Paine said one option the Commission could take would be to recognize the nonconforming status but provide remedies with an impact similar to that of the footprint exception process. It is not known how many of the nonconforming structures within the vegetation conservation setback along the shorelines were created legally; those that were not would not qualify for legally nonconforming status under any scenario.

Commissioner Himebaugh said he did not have a specific proposal but suggested the Commission should at least discuss the issue.

Commissioner Turner added his support and said he was curious about where the information for the existing conditions chart in the staff report came from. Mr. Paine said the data came from the GIS analysis.

Commissioner Mathews suggested the Commission should not look at the footprint exception without also looking at the reconstruction abilities that are allowed. Mr. Paine clarified that the reconstruction threshold of 75 percent has been in place since 1974. The proposal does not reflect a change.

Commissioner Lai said it was his understanding that the 75 percent threshold as it applies to accessory structures did represent a change. Ms. Helland said before the critical areas update there was no distinguishing between primary and accessory structures.

Chair Ferris commented that in the event a nonconforming structure were to be destroyed, the homeowner would receive from their insurance provider the full value of the structure, but under the proposal they would only be able to replace 75 percent of the structure. In the past, the Commission has heard testimony from commercial property owners who indicated they were not able to obtain insurance coverage for nonconforming structures. Ms. Helland said staff fully understands that point and noted that the Commission is free to look at a different threshold. She pointed out that as drafted, the regulations would allow a structure destroyed up to 75 percent of the replacement value, to be reconstructed on its original footprint. The Commission could, however, select any percentage threshold.

Chair Ferris said the 50 percent threshold is a common number that is used all the time. Reconstruction or remodeling work that exceeds that threshold generally triggers compliance with the existing code. Someone could have a fire destroy a structure and then find that their existing foundation does not meet the current code, and in that instance they would be required to rip out the foundation and put in a new one, which essentially would cause the project to exceed the 75 percent threshold. He suggested that the threshold for legally nonconforming structures should be increased to 100 percent.

Commissioner Hamlin noted his preference for continuing the nonconforming status within the first 25 feet from the ordinary high water mark. Commissioner Sheffels concurred.

Commissioner Turner asked how the city goes about establishing that a structure was legally established. Ms. Helland said that issue arose during the Bel-Red study and as a result staff put together a list of items that can be used to demonstrate that a structure was established legally. One of the easiest methods is the use of aerial photographs, most of which are very accurate. She suggested the Shoreline Master Program update should include the list of documentation that can be used.

With the exception of Commissioners Commissioner Himebaugh and Turner, there was agreement that structures within the first 25 feet should continue to be recognized as nonconforming.

With regard to how legally nonconforming status could be lost, the proposal of the staff was that failure to maintain a use for 12 continuous months is the standard indication that abandonment has occurred. Ms. Helland said staff was willing to clarify the language concerning use versus structure and the type of event that caused the loss.

Commissioner Himebaugh suggested an argument could be made for increasing the number of months beyond 12 to either 24 or 36. He said he could see a situation, especially during difficult economic times, in which a person may want to comply within 12 months but is simply not able to do so for financial reasons.

Commissioner Turner asked if the clock could be stopped by merely allowing the property owner to state his or her intentions within the 12-month period. Ms. Helland said notice by a property owner that they are pursuing an insurance claim can be deemed to be continuous progress. Simply allowing a property owner to announce that they will not have the money to rebuild for several years would create duration problems; it would be easier to just allow up to 24 months.

Commissioner Lai said he did not see a strong argument in favor of moving beyond the 12-month period. He said he would like to see detailed out the actions a homeowner could initiate to extend the time period. Ms. Helland commented that there are geographic differences in the city's nonconforming regulations; the 12-month period is the only one that is consistent citywide.

With regard to maintenance, repair and reconstruction, Commissioner Sheffels suggested that the line between maintenance and repair is somewhat fuzzy. She also noted that the words "development" and "structure" are used somewhat interchangeably in the text, which is confusing; she suggested the latter should be used. Mr. Paine said the word "development" was used because it is commonly used in the WAC. He agreed, however, that more precision might help to provide clarity.

Commissioner Lai said he could see no plausible reason to distinguish between maintenance and repair. Mr. Paine said he generally agreed but pointed out that it is the value of the work that triggers one definition or the other. Commissioner Lai suggested the scenarios would work exactly as intended if the category were called maintenance and/or repair; no general maintenance work would cost 50 percent of the value of a structure.

Chair Ferris pointed out that with the two separated, the costs of maintenance do not count toward meeting the 50 percent of value threshold. So a property owner could replace the siding on one wall, caulk all the windows and paint everything, but count only the cost of replacing the siding. Ms. Helland said that was the intent behind distinguishing between the two. She added that there is some confusion with regard to what actions require a permit and what actions do not. Staff wants to force as many things as possible into the non-permit category and to make them easily understood. There are some repairs that would not trigger the 50 percent threshold that would still need an exemption letter under the WAC rules.

The Commissioners were in agreement regarding the definition of maintenance.

Referring to the definition of repair, Commissioner Mathews suggested that the phrase “actions taken within a reasonable time period” could be open to interpretation. Mr. Paine said necessary repairs need to be made within a reasonable timeframe to avoid deterioration of a structure; if neglected for too long, a homeowner may find their structure facing serious permitting problems. Ms. Helland agreed to take a closer look at the language in order to clarify it.

There was agreement with regard to the definition of repair and the notion of a functional definition of repair broad enough to allow for minor substitutions of material, such as steel piles for wooden ones, even when those changes may result in a modest change in the dimension or appearance of the structure. It was noted that substituting materials may bring a project closer to or over the 50 percent threshold.

With regard to the definition of reconstructing and remodeling, Ms. Helland noted that the 50 percent threshold is the inverse of the repair definition. She said the language tied to the 75 percent threshold related to damage from storm or natural disaster was intended to encompass anything not planned by the property owner. She asked the Commissioners to indicate whether there should be a different standard for houses that are destroyed, and if the threshold should be 75 percent of replacement value or some other number. The 75 percent threshold is used citywide.

Commissioner Himebaugh suggested the list of things homeowners are not responsible for should include damage caused by mismanagement of a public utility and accidental flooding. Ms. Helland said the same approach was taken in Bel-Red and the focus was entirely on damage not caused by the owner.

There was general agreement to increase the threshold to 100 percent for instances involving damage or destruction outside of the homeowner’s control. The Commissioners clarified that they wanted to see such structures allowed to be rebuilt regardless of percentage of replacement cost, and to allow for the substitution of materials.

Ms. Helland clarified that accessory structures up to and including 200 square feet located in the primary structure setback are legal conforming structures. She added that the 200 square feet is a cumulative total, so one could not have several accessory structures of less than 200 square feet each.

Commissioner Sheffels suggested that legally established accessory structures should be allowed to be replaced without regard to percentage of replacement value where the structure was destroyed through no fault of the homeowner. The Commissioners concurred, but agreed that any brand new structure constructed in the primary structure setback would have to comply with all applicable code requirements.

Commissioner Himebaugh asked what the thinking was behind including the options menu or special shoreline area report approach for reconstruction or expansion above the 75 percent threshold. Mr. Paine said the thinking was that rather than to go to the hundred percent mark, the Commission could choose the options menu approach whenever the 75 percent threshold is

exceeded, for anything above 200 square feet. Ms. Helland added that the proposal fundamentally creates a different hierarchy for accessory structures and seeks to either keep them at 200 square feet or less or allow them to increase through mitigation. She allowed that the approach would not apply with the threshold set at 100 percent, except that it would apply to structures not damaged by means outside the control of the homeowner. Ms. Bedwell clarified that the options menu would kick in only for non-damage projects exceeding the 50 percent threshold and gives some flexibility to expand the nonconforming use.

Commissioner Himebaugh said he would be in favor of expanding the footprint exception to cover uses such as decks and patios. At the very least, what is included and what is not included in the exception should be made very clear to the public. Mr. Paine said at the time the footprint exception was created, the Commission determined that it should apply only to primary structures, not accessory structures, patios or decks. In practice, however, those with decks attached to their primary structure found it ludicrous that the deck was not included, especially where the focus was on simply repairing or rebuilding the existing deck. Essentially the city winked and approved the projects provided that they did not seek to expand the original deck. Taking that approach in the Shoreline Master Program would not meet with an objection from staff. Decks that are not attached to the primary structure, however, should not be afforded the same latitude.

Commissioner Lai raised the notion of a deck cascading from the primary structure down a hill to the waterfront and asked if the fact that the top part of the deck is attached to the primary structure would by extension make the entire deck a part of the footprint. Mr. Paine suggested that there would need to be some reasonable way to make the distinction. He said staff would give it consideration and bring some language back to the Commission at a later date.

Mr. Paine added that a patio is not a structure by definition and as such would not be part of the footprint. Ms. Bedwell said patios are impervious surfaces under the code and can be taken up and replaced. The proposal also makes some allowance for adding impervious surface area within the first 25 feet and in the primary structure setback area to the limits of the amount of impervious surface allowed on the total site.

Commissioner Himebaugh suggested it might be a good idea to extend the footprint exception to include patios as well as decks. Chair Ferris said his concern with taking that approach would be intensification of use. Someone could have a patio, then build a gazebo over it, then the walls get enclosed and what was a patio becomes a place to put a day bed in the summer months. The same would be true for accessory structures, and what was a lawnmower shed could become a guest room. Commissioner Himebaugh said he did not see a huge problem with that.

With regard to legally established accessory structures in the vegetation conservation setback, Ms. Helland noted that the proposal included the 50 percent threshold for maintenance and repair, would require the structure to be moved out of the setback if the threshold were exceeded, and would require a variance in the event relocation outside the setback were not allowed. In no case would reconstruction be allowed.

Commissioner Lai suggested that in order to be consistent, homeowners should be able to replace accessory structures lost to circumstances beyond their control, even if the structure is within the first 25 feet. He noted that the structure in question could be a boathouse which could not be moved outside of the vegetation conservation setback. Ms. Helland said the long-term vision is to protect the setback area. The preexisting 25-foot setback requires nonconforming status for structures in the first 25 feet in any case. The proposal allows for some more flexibility in the next band, and more absolute protections for primary structures. Commissioner Lai said he would agree that in cases of neglect or deterioration structures should be removed, but a distinction should be made in cases of natural disasters.

Commissioner Hamlin concurred. He said it is not the homeowner's fault when a legally established accessory structure is located in an area that subsequently became a setback zone. In the event of the structure being destroyed through no fault of their own, it would be an undue burden to require removal of the structure from the setback. They should be able to replace such structures without mitigation. The other Commissioners agreed as well.

Commissioner Lai said he would support taking the same approach for legally established overwater structures. Ms. Helland pointed out that the city has not allowed overwater boathouses to be constructed legally since 1974.

Photos of a boathouse structure were shared with the Commission and Mr. Paine said though the issue has been disputed, such structures have more of an impact on the aquatic area. He suggested that the ideal time to consider another approach would be following the destruction of the structure.

Commissioner Turner commented that the process began with the acknowledgement that Bellevue is an urban area and that attempts to turn back the clock would not work well. The notion of requiring destroyed nonconforming structures to be removed violates that principle. Mr. Paine reiterated that overwater boathouses have not been allowed since 1974. Ms. Helland added that there are view blockage issues associated with overwater boathouses. Overwater covered moorage is allowed and would be permitted under the proposed regulations.

Commissioner Lai asked how many legal overwater structures there are on the shorelines. Mr. Paine said he did not have an exact number. He said there is a fair number of overwater party platforms and structures for boat covers, and the city does receive complaints about them because of the view issue. Even if the city were to allow such structures to be rebuilt, the homeowner would have to obtain permits from the Army Corps of Engineers and from Fish and Wildlife.

Commissioner Hamlin said his opinion was that homeowners should have the right to replace any legally established structure that is destroyed through no fault of their own. The other Commissioners concurred. Commissioner Turner suggested the situation would be the perfect opportunity for the city to offer incentives for the homeowner to move toward compliance.

Ms. Helland clarified that all overwater structures on the shorelines of Bellevue are currently nonconforming and as such they are disfavored. She said they all serve as barriers to what the city is ultimately trying to accomplish. Allowing the structures to be rebuilt if destroyed would be far more lenient in an environment that is more susceptible to environmental impacts than any other nonconforming provision in the city.

Commissioner Himebaugh referred to the memorandum on the legal opinion and noted that it included a listing of the provisions that will be reviewed after there is a proposed Shoreline Master Program. One item missing from the list was RCW 82.02.020, the impact fee ordinance. Ms. Helland said she anticipated the city would be reviewing that issue as well but said she would clarify that with the legal department.

There was agreement to revise the agenda to allow public comment next.

11. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said her cabana is just under the 200-foot mark, however it has a deck that protrudes into the 50-foot setback. She said she was not clear whether or not the size of accessory structures outside of the setback matters, and whether or not she would be allowed to rebuild it if it were to burn down.

Ms. Helland said under the recommended approach the structure could be rebuilt.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, referred to the photo of the overwater structure that was presented by the staff and said he would not want to have it blocking his view. He allowed, however, that putting decks over the docks in lieu of boat canopies is popular. Whether they are legally established or not, they serve as popular places for kids and group gatherings. He said he agreed homeowners should be allowed to replace legally established overwater structures. He said the list of approaches for establishing whether or not a structure was legally established will be very helpful.

Mr. Mike Lunenschloss, 2242 West Lake Sammamish Parkway SE, said he has heard it stated over and over that what is needed is to return the shorelines to what they looked like when Adam and Eve were living. The minute predator fish were put into the lake, all the rules changed. He said he found it interesting that it takes about 18 months to get a permit to fix a dock, yet a structure can be deemed abandoned after only 12 months.

Mr. Terry Dodd, 3404 West Lake Sammamish Parkway SE, suggested that as long as the issue of what can be done in the shoreline areas is on the table, it would make sense to address the rules regarding patios as well.

Mr. Dave Radibaugh with the Department of Ecology, 3190 160th Avenue SE, said other jurisdictions have looked at the issue of replacing structures following natural disasters. By and large the issue has not been a major concern because it does not happen that often. He expressed concern, however, with allowing overwater structures to be reconstructed. Such structures do

experience damage more often as a result of windstorms and wave action. He said the structures do have ecological impacts on the nearshore area. The Commission was asked to reconsider that point.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, suggested Mr. Radibaugh should indicate whether he knows whether or not a fish can tell the difference between the shade of a tree and the shade of a dock.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said he is a dock owner. He said putting in steel pilings instead of wood pilings would be far more expensive, but they would last many years longer and in that way benefit the environment. Additionally, if flow-through decking is such a benefit, it should not count toward the 50 percent threshold; those would be good incentives.

9. OTHER BUSINESS

Mr. Inghram said the electric vehicle code amendment recommended by the Commission was carried forward to the Council earlier in the year. Since then there has been additional discussion and some guidance from the Puget Sound Regional Council, and staff is proposing a modification for how the code is structured; the change will be to use a footnote in the use table rather than a line item. With the change, the item will need to be the subject of another public hearing.

10. APPROVAL OF MINUTES

A. October 13, 2010

Motion to approve the minutes as submitted was made by Commissioner Lai. Second was by Commissioner Sheffels and the motion carried without dissent; Chair Ferris and Commissioner Hamlin abstained from voting.

12. NEXT COMMISSION MEETING

A. November 17, 2010

13. ADJOURNMENT

Chair Ferris adjourned the meeting at 10:00 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Hal Ferris
Chair of the Planning Commission

Date

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

November 17, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Carol Helland, David Pyle, Heidi Bedwell, Department of Planning and Community Development

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:33 p.m. by Chair Ferris who presided.

2. ROLL CALL

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

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

5. COMMUNICATIONS FROM CITY COUNCIL, COMMUNITY COUNCILS, BOARDS AND COMMISSIONS

Commissioner Hamlin said the first meeting of the Eastgate CAC will be held on November 18. At that meeting the focus will be on introductions and background information concerning the study.

6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram reported that the four transportation-related Comprehensive Plan amendments were the subject of a brief study session the City Council held on November 15. The recommendations of the Commission were presented by Chair Ferris. The amendments are slated for Council action on December 6.

Mr. Inghram said part of the Council meeting on November 15 included a public hearing on the budget. He said he would provide updates as the budget process moves ahead.

7. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

A. Shoreline Master Program Update

Land Use Director Carol Helland said the coming study sessions would focus on the consolidated code for review. The draft will be revised further if necessary and eventually be set for public hearing.

Senior Planner David Pyle explained that adjustments to the environment designations and use charts were centered around the consolidation of the marina and marina civic environments into one new environment. He said the use charts and the range of uses identified were revised to follow the Land Use Code, and new definitions for several recreation uses were also added.

Mr. Pyle reminded the Commissioners that as part of the original working draft there were several environment designations: aquatic, urban conservancy, urban conservancy/open space, shoreline residential, residential canal, and the two marina designations, marina/civic and marina. The marina environment provided opportunity for recreational boating. It was established where ecological functions were already relatively degraded due to existing marina uses. Marina/civic was similar but added additional opportunity for public access and enjoyment of the shoreline; it was to be located in the area that is targeted as part of the Meydenbauer Bay park master plan, as well as the SE 40th boat launch.

Continuing, Mr. Pyle reminded the Commissioners that by way of response to comment and feedback, a new split approach was considered. The new approach creates a new environment designation and consolidates the marina and marina/civic environments into a single environment: recreational boating. The split environment designation concept was unnecessary and complex to administer. The term "marina" had a tendency toward a more intense range of uses than is currently in existence or envisioned in the city. The difference between the two environments was not distinct, and there was no real compelling reason to maintain two separate environment designations. The new designation does not rely on ownership as a qualifying factor the way the old designation did. The new designation also gives recognition to the parks master plan process.

The purpose of the recreational boating designation is to provide for a variety of water-dependent and water-oriented uses. The primary focus is on activities associated with recreational boating. It is intended to include a range of uses similar to those previously included, although it has been categorized and defined to reflect existing conditions, community needs and current planning efforts.

Mr. Pyle said staff was proposing to restructure the use charts presented in the working draft. The modifications are intended to more closely align the use charts with those found in other city documents and follow the standardized land use reference guide to simplify interpretation and administration.

Activities are broken into two categories: minor maintenance, which does not require a permit, and repair, remodel or expansion, which typically does. When there is a permit required there are three levels: shoreline exemption letter, shoreline substantial development permit, and shoreline conditional use permit. With each increment of complexity comes additional cost in terms of time and money.

Ms. Helland said staff heard from the community the need for examples of the kinds of things that could be done without having to contact the city, and the kinds of things that require progressively more complicated permit processes. She said a template will be created in

preparation for the open house.

Mr. Pyle explained that a shoreline exemption letter is fairly simple to process and is the most typical permit issued. If someone meets the performance standards and falls within the threshold of what is considered a shoreline exemption, the city issues the letter indicating that the project is exempt from the shoreline substantial development permit. The shoreline substantial development permit has more process requirements and appeal opportunities; the city is required to process the permits with the Department of Ecology, and an appeal can be filed with the Shorelines Hearings Board. The shoreline conditional use permit is different in that it starts out being local but ultimately must be approved at the state level.

Commissioner Sheffels asked if there is any cost associated with obtaining a shoreline exemption letter. Ms. Helland said the cost is about \$200. She said staff would bring to the Commission an outline of what the various permits cost. She added that many of the permit processes and costs are actually stipulated by the state.

Mr. Pyle shared with the Commissioners the proposed use charts and noted that they employ a system of footnotes similar to the Land Use Code. If a footnote is listed, the use must comply with the stated additional requirements. He called attention to footnote 9 and noted that it is related to the parks master plan process and the city's Meydenbauer Bay park master plan and the public marina use.

The Commissioners were told that under the proposal public marinas would only be allowed in conjunction with a parks master plan, as required by footnote 9. The range of uses allowed would be consistent with the master plan, and any public marina development proposal would be reviewed for consistency with the park plan through a shoreline substantial development permit.

Mr. Pyle said there were four essential use categories added under the recreational heading: private marina, public marina, yacht club and community club. The private marina use generally supports recreational boating activity and is the most intense marina use under recreation. The category includes boat moorage, boat storage, boat maintenance, boat repair, retail boat sales, sale of boat parts, boat launching, boat fueling stations, administration and facility office, and the retail sale of boating-related items, which includes food and beverages. The category does not intend to support heavy commercial or industrial uses, though limited non water-oriented commercial uses would be allowed when developed in conjunction with a mixed use marina development.

Public marina is a category that encompasses publicly owned recreational facilities and the primary emphasis is on providing moorage and public access. Public marinas will only be able to be established through a parks master plan. The range of uses will be similar to those for private marina, and they will be determined by and limited through the master plan process.

The Yacht club use category refers to a water-dependent private recreational boating club that provides water access and moorage to members and guests. The use includes social gathering space and facilities, small boat storage and launching, sanitary waste collection, service and repair to moored boats, member and guest parking. Yacht Clubs can also provide food and beverage services for members and guests, social gatherings, and meetings. Additional activities may include cultural, educational, and charitable elements related to recreational boating, including the hosting of water-related public/private organizations and events, boating and sailing instructions, and providing water enjoyment experiences to some who would not otherwise have access to the water. The Yacht Club use is limited to a moorage and social function and is not intended to support commercial, retail, industrial, or mixed-use uses.

Mr. Pyle said staff had had several discussions with the Meydenbauer Bay Yacht Club to discuss what an appropriate designation would be for their site. At the most recent meeting the club representatives requested that the range of uses appropriate for their site be narrowed to what was previously identified under the marina use category. As a yacht club, they would be restricted to the range of uses allowed by that use category. If they wanted to redevelop their site in the future, it would have to be through a conditional use process, but if they wanted to maintain or update their facility consistent with the range of uses allowed under yacht club, they could do so as a permitted use, provided no expansion was involved.

Community Club is defined as a private community organization that provides water-related experiences. The uses include moorage facilities, social gathering space and facilities, administration and facility offices, group activities, social support, public information, facility parking, and other community uses. Community Clubs also provide food and beverage services for members and guests, social gatherings, and meetings. Community Clubs may also include limited non-water oriented recreation facilities when proposed in conjunction with a moorage facility. Community Clubs are generally limited to moorage, recreation, and social function and are not intended to support commercial, retail, industrial, or mixed-use uses.

Ms. Helland allowed that the public had concerns about the marina designation because it brought to their minds an intensity of use that would spring up everywhere the designation was applied. She agreed that the nomenclature was incorrect, and their concerns led to the recommendation to rename the use as recreational boating. Within that category the proposal includes a range of use intensities that more appropriately reflect what people were thinking.

Commissioner Hamlin said he did not see a lot of difference between the yacht club and community club uses. Mr. Pyle said the community club use includes non water-oriented uses when developed in conjunction with a moorage use, whereas the primary function of a yacht club is a social gathering place for boat owners. Where community clubs serve the whole community, yacht clubs serve the boating community.

Commissioner Turner said he could not see a need to provide a distinction between the two use categories. He added, however, that if the local residents want to make the distinction he would not argue against doing so. Ms. Helland said the distinction was made in part through discussions with the Newport Shores Community Club which wanted its use defined with specificity. They have boating-related uses, but they also have community gathering spaces that allow neighbors to enjoy the shoreline.

Commissioner Himebaugh asked which use the more intensive, yacht club or community club. Mr. Pyle said it could be argued that the range of uses for community club is more expansive because it can include upland uses such as tennis courts that would not be allowed as part of yacht club. Commissioner Himebaugh asked if there is a process by which a yacht club could become a community club. Mr. Pyle said it would be necessary to seek a redesignation, which likely would require a conditional use permit.

Chair Ferris voiced support for the designations, suggesting that they make things a lot clearer. He asked how vegetative and building setbacks and overwater structures are applicable to the four uses. Ms. Helland said those are performance criteria, which each of the uses will have attached to them in the code.

Mr. Pyle said the environment maps were changed to respond to the marina and recreational boating facility changes, and to respond to individual property designation comments. The sites specifically analyzed were Vasa Park and Sambica/Strandvik. Vasa Park was originally proposed to be urban conservancy but it has since been proposed to be changed to shoreline residential. The Vasa Park site is categorized as a park and the property representatives do not support the urban conservancy designation. Private parks are an allowed use under the shoreline residential designation and all facilities can be maintained. A conditional use permit would be required to redevelop, however, which would not be the case under urban conservancy. The property representatives believe shoreline residential will accommodate their needs.

The Sambica/Strandvik property is jointly owned with access granted only to property owners in the Strandvik community and for use by the Sambica Bible Camp. The primary use of the property is private park with water recreation activities. The community representatives expressed some concern regarding an emphasis on ecological restoration and provisions for public access if the site were designated urban conservancy. The property owners do not envision a change for the site. Because existing parks can continue under the shoreline residential designation, the owners believe the designation will accommodate their needs.

Commissioner Turner asked if an entirely new designation could be crafted for the Sambica/Strandvik and Vasa Park sites, something like urban waterfront recreational, that would specifically accommodate their actual needs by preserving the recreational uses but eliminating the ecological restoration intent of the urban conservancy environment. Ms. Helland said the Commission could direct the staff to go in that direction. She said the shoreline characterization study yielded a lot of information about existing conditions on all three lakes. The Shoreline Management Act guidelines state that the lands within the shoreline characterization are to be characterized according to their functions and values and how the land is currently being used. Under the process alone, the conclusion reached was that the sites should be designated urban conservancy. That designation would actually allow both sites more flexibility to continue as a park since park uses would be permitted outright. However, the staff are comfortable with shifting to shoreline residential largely because of the surrounding residential properties.

B. Shoreline Management Plan Update – Public Comments

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, called attention to the revised use charts, specifically the aquatic column in the residential land use classification category, and pointed out that every use listed includes an “X”. He stated that Map 1 of 22 on page 11 of the staff report in the lower right-hand corner says in a note that all areas waterward of the ordinary high water mark have an aquatic designation. He suggested some clarification would be in order with regard to which presides, the chart or the map. The Commission was urged to provide assurance that monitoring will be an integral part of the Shoreline Master Program. The 2006

critical areas ordinance should have included monitoring, and because there was no such requirement four years of information has been lost. Science attempts to answer questions where facts are not readily available. Facts can be established by science, but facts are not science. Facts have been missing from the update process and for the last four years. Monitoring cannot be relegated to the least common denominator. If the objective is to protect fish, then fish numbers must be reported. If a reduction in pollutants is an objective, then the sources of those pollutants and the quantities should be reported. Monitoring is needed to reflect the changes the program induces and the overall effectiveness and whether or not other more serious problems have been induced. With regard to cost, he said more than a few landowners have spoken of their experiences over the last four years under the critical areas code. The staff have indicated they will bring to the Commission an outline of routine costs, but few who have gone through the process would say that any of the costs are routine. Those who have been through the process over the past four years could easily be contacted and asked to share what their costs were. The city has actually accumulated historic information regarding the cost of maintaining or restoring ecological functions. There is a note in the staff report that it might cost as much as \$2 million or \$3 million to remove and restore one hundred linear feet of bulkhead; that cannot be considered a routine cost. The community has limited avenues for input and so has continued to appeal to the Commission.

Mr. Chris Stanson, 2668 West Lake Sammamish Parkway SE, said he purchased his waterfront property in 2004. At the time there was a concrete slab in the yard averaging between four and six inches thick that covered about two-thirds of the yard. He said he broke up the slab and carried it away piece by piece. At the same time he said he applied for a dock permit. The city determined the removal of the concrete slab was unacceptable and a stop work order was issued. It took almost eight months of review time, at the end of which the city directed the planting of a row of five trees across the yard and create a 15-foot swath of native vegetation between the house and the water. That did not seem fair given that the desired outcome was the removal of impervious surface area so it could be replaced with grass, which is what the neighboring properties all have. The city required a survey and a landscape designer had to be hired, in addition to paying for all the review fees. In the end close to \$10,000 was spent to remove the concrete and plant grass, and \$2000 had to be posted in the form of a bond that the city required to be held for three years. The property has a large retaining wall that limits the interaction between the yard and the water. Any requirement to take out the wall would be financially ruinous.

Mr. Mark Peterson, 9840 SE Shoreland Drive, spoke as president of the Meydenbauer Bay Neighborhood Association. He thanked the Commission and the staff for responding to the comments offered by the association regarding the marina civic environment. He said the concern was that less restrictive rules were being developed for the marina under the master park plan public process that was originally proposed. Some of the more intensive uses have been eliminated from the use chart, and the description of public marina clearly says that uses allowed for each public marina are determined and limited through the park master plan process. The use chart for recreational boating environment includes uses not appropriate or planned for the Meydenbauer Bay park, but as long as the park master plan prevails the resulting marina park should be in keeping with the park planning efforts that have been in the works for the past three

and a half years. The incompatible uses still on the use chart that would not apply to the Meydenbauer Bay park include single family dwelling, accessory dwelling unit, commercial float plane or ferry terminal, water-dependent, water-related, water-enjoyment commercial, wholesale or retail, retail boat sales, marina fueling stations, eating and drinking establishments, non-moorage boat storage, boat launch ramps, and motorized boat rental. The Commission was thanked for modifying the civic marina environment.

Mr. Terry Dodd, 3401 West Lake Sammamish Parkway SE, noted that he previously raised a concern about decks and patios. He observed that the meeting minutes indicate that the decks issue has been addressed as being included as part of the home, but there is no mention of patios. The issue should not be lost. Things like patios, fire pits, stairways and even trams should be addressed relative to their maintenance and repair. He said he had a critical areas issue that had to be addressed in the development of his home, and that cost on the order of \$20,000 for specialists, lawyers, city staff, and the mandated vegetative plantings.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, read to the Commission a communication between city staff and an unknown individual, possibly from the Department of Ecology in regards to an Shoreline Master Program white paper. With regard to the concept of no net loss, the writer indicated that the notion is a poor candidate upon which to hand the entire regulatory program because it is difficult to define and almost impossible to measure in any real-world permitting situation. It is one thing to argue that the basic concept is that any loss of ecological function caused by an action must be offset by an equivalent gain in ecological function, but what if the problem resulted from a prior action, such as the installation of a bulkhead that removes or disrupts an ecological process. The argument that damage is ongoing is self evident, but if the property owner is proposing no action to what has been in place for years, there is no foul. To ask the property owner to rectify the impacts absence some movement on his part to significantly repair or replace the bulkhead would be met with legal arguments and hostility. The reality is that no net loss is a loser from a regulatory perspective absent some significant action on the part of the property owner with a clearly identifiable and measurable outcome. With regard to shoreline armoring, the communication allowed that Ecology's rules are very specific in allowing hardened stabilization only when there is a demonstrated and imminent threat to an existing residence. However, property owners are inclined to defend every bit of dirt they own, irrespective of whether or not it should have been placed there in the first place. Much of what they defend is fill placed many years previously below the ordinary high water mark. The difference between what is allowed and what is desired sets up a significant conflict for the future, and local politicians are not inclined to support rules that do not ensure the sanctity of all property possessed by a property owner. The permanence of bulkheads, especially in freshwater environments, is significant, and the replacement interval may be 50 years or more. The decision to allow an existing bulkhead to be replaced with a similar one will guarantee that there will be continued loss of function for years to come. Government should explore every option for technical assistance, incentives and permitting support, it could best ensure a gradual shifting to more ecologically friendly stabilization choices by setting thresholds for minor maintenance at a relatively low level, and if those thresholds are exceeded the new standards must be met unless it can be demonstrated that hardened stabilization is the only technically feasible option. In an urban environment, restoration planning is plagued by many constraints, not the least of which is

the cost of acquiring property on which to conduct restoration. When the property costs are calculated, it may cost as much as \$2 million or \$3 million to remove and restore 100 linear feet of shoreline on Lake Washington or Lake Sammamish. Not enough work has been done to identify and prioritize restoration actions. Local governments should tread carefully with regard to nonconformity, especially where a primary residence is concerned. The footprint exception is very important relative to primary structures, but less so for accessory structures.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway, continued reading the letter. He read that recent efforts by a coalition of groups to detail the Shoreline Master Program planning process have been aided by considerable misinformation and misunderstanding, including outright fabrication and misrepresentation. Part of the problem is that practitioners have considerable difficulty communicating the reasons and the scientific justification for the regulatory changes they propose. Ecology has helped somewhat, but most of what they have provided is coming too late to be of much help for many. Their direction, especially with regard to no net loss, has been of little or no help in translating a difficult concept into a useful set of principles and rules. The lack of high-quality scientific deliverables from Ecology has hampered this effort and led to considerable confusion on the part of the decision makers regarding the robustness of the science supporting the regulatory edifice. The process of building an expensive inventory and characterization, while well meaning, is needlessly complicated and obscure. Building the Shoreline Master Program on a detailed inventory and characterization is supportable if the methodology is rigorous and the level of investigation is up to the task. The problem is that most jurisdictions cannot afford to staff the highly technical effort, thus the work is completed by consultants using readily available information, and the result is generally not comprehensive or methodically standardized. The Shoreline Master Program would be better served by simply adopting the best available science standard that applies to critical areas. A review of the available literature would lead to an appropriately designed regulatory scheme and cumulative impacts would be estimated by using standard land use planning techniques. Parcel-by-parcel mitigation is generally unsuccessful and leads to ridiculous results. Shoreline Master Program rules are typically enforced on a complaint basis, which means on balance that the city is privy to only a portion of the potential infractions that occur. The city needs strategies to help create other methods of compliance while ensuring that the permitting and enforcement program does not create the perverse incentive to violate.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, suggested that no net loss is a poor candidate for a regulatory structure. In the RCW, no net loss only applies to critical areas located within the shorelines of the state. For the past year and a half, the public has been led to believe that the regulations apply to all the shorelines. With regard to shoreline armoring, under the WAC replacement of a structure may be authorized as repair where replacement is the common method of repair. Setting the thresholds at a relatively low level reinforces the arbitrary nature of the proposed regulations, and the city is thus put in the situation of creating random and subjective triggers to create the regulations. Even though there is no historical data, even though whether or not there is a problem cannot be determined, and even though there are no measurements to determine if there is a problem or determine if a problem has been solved, staff says land use changes must occur. So random low-threshold criteria are selected that will guarantee the city will be able to carry out its sociopolitical agenda, and the regulations are then applied to all

shorelines even though only those in critical areas apply. The Planning Commission and the City Council are part of the system of checks and balances to avoid developing laws that are arbitrary and capricious. Given the high cost of removing and restoring bulkheads, and given that the basic premise is indefinable and targets only a very small segment of a small area, a rational person must ask if the proposal is reasonable or if other alternatives could be pursued. The concept of restoration does not appear to have been thought through. With regard to nonconforming structures, the proposed 50-foot setback arbitrarily includes an additional 40 percent of waterfront properties in nonconforming status. By changing the setback from 25 feet to 50 feet, the city has harvested 528 more properties into nonconforming status that will be subject to unsubstantiated and arbitrary regulations. The notion of the allocation of private property where an owner gets to decide how to use his own property is disturbing; it truly oversteps land use change and constitutes a blatant reallocation or redistribution of property rights. She agreed with the notion that no net loss is a loser from a regulatory perspective, and that Ecology's lack of science has hampered the effort. Staff are to be applauded for recognizing that the foundation for the Shoreline Master Program, the shoreline analysis report, does not provide an adequate standard from which to rationally form regulations and set a foundation for the cumulative analysis. It is true that parcel-by-parcel mitigation is generally unsuccessful and leads to ridiculous results. The staff knows that Ecology is forcing a land use agenda that ultimately will result in unreasonable, nonsensical and ridiculous results. The proposed regulations will ultimately lead to violations, unsubstantiated land use, and the undermining of property rights.

Mr. Dave Radabaugh with the Department of Ecology, 3190 160th Avenue SE, noted that uses that are not listed in the use matrix automatically are subjected to the shoreline conditional use process. There may be items the city should consider adding to the use matrix, even if they are shown as not permitted. Mining is listed in the use matrix but is prohibited in all environments. Industrial uses are not listed at all, and if an industrial use were to be proposed for a site in a shoreline district, the rules would require a shoreline conditional use permit, though the use may ultimately be denied. With regard to marinas, he commended the Commission and the staff for working out uses that are specific to the city. With regard to the Sambica/Strandvik site, he said it would be difficult to classify it as shoreline residential. The designation criteria for the category in the WAC guidelines are very specific to property that is planned and platted for residential uses, and those properties may not fit that criteria.

Chair Ferris pointed out that in the city of Bellevue the underlying land use designation for every single park is single family residential. There is no park land use designation. Mr. Radabaugh said he would be happy to look into that issue a bit more but said ultimately he would have to be able to show how the site meets the criteria.

Mr. Brian Parks, 16011 SE 16th Street, said it will be essential for the Commission to take into account the use by Utilities of Phantom Lake for storm water detention purposes. The use was recommended in the 1972 CAC review and status report on the stream protection program, and in the 1976 Bellevue master drainage plan. Both included a recommendation for an outlet control structure, the weir, more than ten years previous to the mid-1980s Phantom Lake/Larson Lake restoration report recommendations. The report allowed for a 50 percent reduction of the

1979 airfield detention Pond A sizing for engineering calculations. In the 1976 master drainage plan document, it is stated that a control structure at the outlet of Phantom Lake is recommended, and that it would have a positive effect on the water quality rating. The report went on to say that the change in land use under projected future conditions, which referred to developing the airfield with commercial uses, would be minimal. The lack of present drainage problems, the report suggested that a limited number of drainage system improvements would be required under each alternative. The report concluded that by utilizing detention ponds nearly all parallel pipes could be eliminated, and with the addition of runoff control in Alternative Plan A, the storage pond sizes could be reduced by approximately half from those required in Plan 2. With fewer pipes needed, capital costs would be lower. The various recommendations to raise the Phantom Lake water levels were implemented in the 1990 restoration efforts. There were two separate subsequent lawsuits, one on Phantom Lake and one at the base of Phantom Creek, yet Utilities has on several occasions denied that the average lake levels have risen. Given that the lake is used as a detention pond and that there are no endangered species in Phantom Lake, the aquatic designation may not be appropriate. The current average lake levels on Phantom Lake indicate that if the berm were not in place more than half of the time the natural outflow would be towards Larson Lake. The berm is more than a foot over the original northwest outlet's high point of 261, and no more water can go out the main eastern outlet into Lake Sammamish. One proposal would be to install a one-way flap where the berm is, lower it with a cement structure to what CH2MHill had as the peak storage capacity of the lake, allowing anything that exceeds that level to flow naturally as it originally did towards Phantom Lake.

C. Shoreline Master Program Update – Commission Discussion

There was consensus in favor of the recreational boating environment designation.

With regard to the use chart, Commissioner Turner suggested the structure is acceptable but indicated he would reserve judgment on the specific content.

Ms. Helland noted that the public had raised a concern about uses permitted in the aquatic environment. She clarified that the aquatic environment starts at the ordinary high water mark and moves waterward, and none of the uses shown are permitted over the water. With respect to moorage, she noted that boat moorage excludes single family residential docks and piers which are a permitted use pursuant to the development standards for residential docks and piers. The uses that belong in the water will be permitted.

Commissioner Himebaugh referred to the single family dwelling land use classification and Footnote 2 in the recreational boating environment and asked for clarification. Mr. Paine said in Meydenbauer there is a structure that currently provides quarters for a caretaker. That residential use is allowed only as an accessory use to a permitted use.

Commissioner Himebaugh noted that Private, non-commercial float plane landing and mooring facilities are permitted in the aquatic zone and asked if footnote 12 would be a better fit for the use, making it clear that the use would be allowed in the aquatic area so long as the upland use allows it. Ms. Helland said the clarification would be helpful.

Commissioner Himebaugh asked for clarification with regard to the utility uses. Ms. Helland said the utility uses are all defined terms. The chart as drafted was aligned with the work done by the Commission a couple of years ago. The regional utilities are the systems that cross jurisdictional boundaries; as drafted, those facilities are directed not to look first at shoreline areas. She said it would make more sense to have the definitions available.

Mr. Paine added that the intention is to include footnote 6 to the utility facility use.

Commissioner Himebaugh referred to the services grouping of uses and asked what constitutes a religious activity. Ms. Helland said religious activities is the way churches are broadly classified in the Land Use Code. Religious activities are conditional uses in just about every zone in which they occur, with the exception of commercial zones and the downtown. As a land use classification, religious activity relates to development activities not religious practices.

Commissioner Himebaugh asked about the P/C(10) designation for private marina, yacht club, community club and public/private park. He said it was his understanding that the uses are permitted in the recreational boating environment, but footnote 10 must be followed for expansions of more than 20 percent. Ms. Helland said that was a correct understanding. She further clarified that the 20 percent threshold is exactly the same as the expansions of conditional uses that occur in the existing code. Any nonconforming use that wants to expand by more than 20 percent must seek a conditional use permit. The approach is in part intended to provide surrounding property owners with certainty and predictability.

Commissioner Himebaugh referred to the agriculture and nurseries uses and asked what they are and if the proposal would exclude someone living on a shoreline from being able to have a garden. Ms. Helland said the Land Use Code is structured after the basic land use classification manual and the standard industrial classification manual. A garden, a pea patch, and all yard landscaping must meet the performance standards, but they are not considered an agriculture use.

Commissioner Himebaugh asked if the staff considered the use chart to be complete or if additional uses should be included. Ms. Helland said the chart will be subjected to additional scrutiny in the drafting phase. Consideration will be given to expanding the chart to include industrial uses and the like. One approach would be to include a statement indicating that any use not specifically identified is prohibited. She said the shoreline jurisdiction is an overlay and the underlying land use zoning has a separate set of rules that could be more restrictive or provide additional information. Some of those details are yet to be worked out.

Answering a question asked by Chair Ferris, Mr. Paine said the staff proposal for the Sisters of Saint Joseph Peace site is shoreline residential. Their objection to urban conservancy was valid. While the uplands on the site are in very good shape, the property includes a very large bulkhead which keeps the site from scoring as high as it otherwise might.

Commissioner Turner asked why there should be a difference between public marina and private marina. Ms. Helland agreed that makes no sense to have different zoning categories based on

ownership. However, there is a completely different expectation from citizens about the outreach and public participation that will be undertaken to identify the range and intensity of uses associated with public marinas. There is no requirement for a private marina to undertake a master planning and outreach process, but there is for public marinas, so it made sense to separate the two.

Commissioner Himebaugh said he was generally satisfied with the definition for private marina but was somewhat troubled by "...limited non water-oriented commercial uses should be allowed when part of a mixed use marina development that incorporates public access and ecological restoration." He asked why it should be assumed that incorporating a mixed use development in a marina area should necessitate the giving of public access or engaging in ecological restoration, unless it could be demonstrated that a proposed project would trigger a need for those actions. Ms. Helland said just about any expansion or redevelopment of a marina will require attentiveness to some restoration and some public access according to the WAC guidelines.

Mr. Paine added that the marina uses are focused on the water, and the WAC says any departure from the water is more of a traditional commercial use, and as a consequence some restoration or allowing public access is required. Ms. Helland allowed that the terminology should be changed from restoration to mitigation.

Chair Ferris commented that the risk for the greatest ecological damage associated with marinas is tied to the fueling operations. He asked how that risk is captured. Ms. Helland reminded the Commission that there will be performance standards attached to each use. She pointed out that controlled and regulated fueling operations offer better ecological results than someone simply fueling their boat with a hand-carried gas can. She agreed to have staff give some consideration to when older fueling operations should be upgraded.

Chair Ferris voiced concern that the public marina definition appears to put more of the onus on the neighborhoods and local community over time to keep up with whatever potential uses might be allowed. Ms. Helland said the section could be made more robust by attaching the footnote that allows permits to be issued only in conjunction with an adopted park master plan. While the code is the broader instrument, the master plan narrows things down to the specific site conditions. She agreed that a park master plan should be defined in the Comprehensive Plan.

Chair Ferris said he participated in the process of developing the park master plan for the Meydenbauer Bay park and found it less detailed than the land use zoning process. No time was spent going through a list of uses that would not be permitted. Ms. Helland said the park planning process really was a land use study; a park master plan process is yet to occur for the site that will focus on what the actual development will be. The master planning process will ferret out the operational details. A park master plan operates like a development regulation as opposed to a plan; it has the effect of being the law as it applies to the specific site and trumps whatever is in the use charts.

The Commissioners had no questions or comments about the definition for yacht club or community club.

With regard to the environment designation for Sambica/Strandvik, Commissioner Turner noted that the nature of the site is urban, it is on the water, and it is used for recreational purposes. He asked if a designation should be sought that would more closely match what is happening on the sites currently. Ms. Helland said staff would not recommend seeking a new classification; she said staff would recommend choosing between urban conservancy and shoreline residential. The property owners indicated a preference for shoreline residential. Commissioner Turner suggested that if the property owners had had more than two designations to choose from they may have chosen differently.

Mr. Paine pointed out that whatever designation is chosen must be compatible with the underlying zoning, which is currently residential. The Sambica site will be changing over to the new camp and conference center designation, though not down at the shoreline. The ideal choice for a property where recreation is the primary use and which is in fairly good ecologic shape is urban conservancy.

Chair Ferris commented that the Sambica shoreline does not look substantially different from the abutting residential shorelines. Ms. Helland added that the site is actually part of the Strandvik plat and is the parcel that is identified for community use as a component of the plat.

Commissioner Hamlin said his preference for the site would be shoreline residential. The designation makes the most sense for the site. The other Commissioners concurred.

Commissioner Hamlin said shoreline residential would be the right designation for the Vasa Park site as well.

Chair Ferris asked if the term “camping” should be more clearly defined as meaning both RV and tent camping. Currently most of the camping that occurs there is in RVs. Ms. Helland said the use designation for camping does not distinguish between the two.

The Commissioners agreed the Vasa Park site should be designated shoreline residential.

8. OTHER BUSINESS – None

9. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, thanked Chair Ferris for raising the concerns about the description for public marina. She said of the definitions of water-oriented, water-enjoyment, water-related and water-dependent, the only one that does not lap over into commercial uses is water-dependent. She said she was waiting to see the final draft to make sure that somehow loopholes for commercial uses are not allowed to sneak in. She said she was happy to see some uses were removed from the use charts, including hotels and mixed use. It is disconcerting that eating and drinking establishments and fuel docks are still in the chart.

10. NEXT PLANNING COMMISSION MEETING

A. December 1, 2010

11. ADJOURN

Chair Ferris adjourned the meeting at 8:40 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Hal Ferris
Chair of the Planning Commission

Date

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

December 1, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland, Matthews Jackson, Liz Stead, Ken Thiem, Catherine Drews, Sally Nichols, Antoinette Pratt, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:33 p.m. by Chair Ferris who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present.

3. PUBLIC COMMENT

Ms. Diana Thompson, 3115 103rd Avenue NE, said she opposed expanding the accessory dwelling unit provisions for a number of reasons. Rental units lower the value of homes in neighborhoods. For many people, their home is the only valuable asset they own. While the units are intended to benefit low-income individuals, they will also harm property owners. For example, a senior intending to sell their home and use the proceeds to move into a condominium or a fancy retirement home could receive less for their home and thus be limited in what they can purchase. During the Bel-Red corridor study, some groups were lobbying for compulsory low-cost apartment housing, but that did not come about. Similarly, the city should not impose the right to build low-cost housing in neighborhoods designed for single families. Those who purchase single family homes should be able to rely on the zoning in place at the time of their purchase. Any change in zoning is simply unfair. Accessory dwelling units could cause a change in neighborhood character and appearance. People purchase homes in a particular area because they like the home but also because they like the neighborhood. Neighborhoods will become less homogenized if accessory dwelling units are allowed everywhere and the neighborhoods become home to both property owners and renters. Renters in general lack neighborhood pride and often do not care for their homes or yards. A neighborhood would change completely if accessory dwelling units are allowed to be constructed in front yards and in styles totally different from the main home, and if the units were rented to single young persons who have not yet determined the direction of their lives and like to party. Allowing accessory dwelling units to be constructed on single family lots will lead to crowded lots. The open space treasured by suburban residents will be lost. It would make no sense at all to allow an accessory

dwelling unit of 800 square feet on a lot where the main home is only 1200 square feet. There will be parking and traffic problems as well. With regard to the survey, the first question was very unclear and should be revised.

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. COMMITTEE REPORTS

Commissioner Hamlin reported that the Eastgate CAC met for its first meeting on November 18. The staff reviewed with the members the goals to be achieved, provided some background information, and outlined some of the issues to be addressed. The group will meet again on December 2.

7. STAFF REPORTS – None

8. PUBLIC HEARING

A. Single Family Code Amendments

Motion to open the public hearing was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

Planning Manager Matthews Jackson noted that the nonconforming lot building height Land Use Code amendment had been before the Commission on October 13. At the time the staff was directed to return with a recommendation and potential ordinance to be transmitted to the City Council. Currently, section 20.20.070 of the Land Use Code limits the maximum building height for lots that are less than 70 percent of the minimum lot size for the zoning district in which they are located. A formula is employed to determine the maximum height. Typically, the maximum height in single family zones in Bellevue is 35 feet to the peak, but under the current approach homes on lots that are substantially smaller than the minimum lot size are limited to a maximum height of 15 feet. The code section also limits the use of a variance to modify the restrictions.

The proposed amendment would allow the variance process to be used to exceed the building height resulting from application of the formula. The process involves a Process II application which requires public notice and a public hearing. There are specific criteria based on neighborhood context, special circumstances, and making sure there is no grant of a special privilege.

The objective of the proposed amendment is to allow reasonable development of nonconforming lots consistent with the neighborhood character code amendments that were adopted in 2007 and 2009. The amendment would allow for development flexibility that is compatible with neighborhood context.

Mr. Jackson said there are approximately 200 lots throughout the city that are less than 70 percent of the minimum lot size. They are predominantly located in older plats, often in areas annexed from King County. They are typically near the shorelines and in lower-density single family zoning districts. Photos of example lots were shared with the Commissioners.

Staff conducted an environmental review on the proposal and issued a Determination of Nonsignificance on November 11. Public testimony was provided by two parties at the October 13 study session, one in support of the proposal and one against. Staff have received additional written comments in support. The proposal will be before the East Bellevue Community Council for a courtesy public hearing on December 7.

Mr. Jackson said staff had found the proposed amendment to be in accord with the Comprehensive Plan, bears a substantial relationship to the public health, safety and welfare, and is not contrary to the best interests of the city. He said the staff were recommending approval.

Chair Ferris called for any public comments

Mr. Bill Stalzer, 603 Stewart Street, Suite 512, Seattle, spoke representing Jean and Bobbi Goodboy. Mr. Stalzer voiced support for the proposed amendment. He noted that in the vicinity of the Goodboy property near the Sambica park there are six lots that are all 5000 square feet. The underlying zoning has a minimum lot size of 7200 square feet. The Goodboy house is modest in height as well as in footprint. The formula in the code restricts any remodel of their home to only 12.6 feet of height.

Motion to close the public hearing was made by Commissioner Mathews. Second was by Commissioner Sheffels and the motion carried unanimously.

B. Performing Arts Code Amendments

Motion to open the public hearing was made by Commissioner Lai. Second was by Commissioner Mathews and the motion carried unanimously.

Planning Manager Liz Stead noted that the topic had been before the Commission twice previously for study and discussion, and that as directed a proposed ordinance had been drafted. The proposal seeks to allow performing arts uses along 106th Avenue NE in the downtown between NE 2nd Street and NE 10th Street. The ordinance addresses the dimensional requirements, floor area ratio, and height, in addition to the definition of a performing arts use which allows for ancillary uses.

Ms. Stead commented that following the November 3 study session a change was made to the language of the proposal to make the 106th Avenue NE relationship to Entertainment Avenue stronger. The new language is "Where feasible, projects will provide an entrance on 106th Avenue NE."

Ms. Stead said the staff were recommending initiation of the code amendment.

Commissioner Sheffels noted that she has previously voiced concern about performing arts centers being allowed to show art films or videos of performances that are occurring live somewhere else. She asked if the definition is too limited to allow for those kinds of performances. Ms. Stead said the Land Use Code allows for ancillary uses. Provided the main use of a project is a performing arts center, there would be the opportunity to show movies and host gala events.

Comprehensive Planning Manager Paul Inghram commented that movie theaters are an allowed use under the current downtown zoning regime. The intent of the proposed ordinance is to impose different requirements on live performance spaces. Ms. Stead said performing arts

centers have different needs with regard to high rigging spaces and orchestra pits that require large volumes of space. Movie theaters do not require the same volume.

Senior Planner Ken Thiem pointed out that the Land Use Code definition of a live performance is clear as to its intent. Such uses, however, are permitted to have ancillary uses, including films, training sessions and the like, provided they are not the dominant use. No special permitting is required for the ancillary uses.

Commissioner Himebaugh asked if the current design proposal for the Tateuchi Center includes an entrance on 106th Avenue NE. Ms. Stead said that project will be addressed off of 100th Avenue NE and will not have an entrance on 106th Avenue NE. Their situation is somewhat unique given their corner location on the entertainment avenue. Mr. Thiem added that the rectangular building will be located with its long axis oriented north and south. An entrance on 106th Avenue NE would be on the long side of the building and would not be feasible.

Chair Ferris called for any public comments

There were no persons wishing to address the Commission during the public hearing.

Motion to close the public hearing was made by Commissioner Lai. Second was by Commissioner Himebaugh and the motion carried unanimously.

C. Electrical Vehicles

Motion to open the public hearing was made by Commissioner Lai. Second was by Commissioner Mathews and the motion carried unanimously.

Legal Planner Catherine Drews commented that the proposed electric vehicles code amendments were before the Commission for public hearing on May 26. The Commission developed and forwarded a recommendation to the City Council which was the subject of a study session on June 14. Council raised questions during the study session about the code and the siting and location of electric vehicle infrastructure, which includes charging stations and battery exchange stations. Staff revised the proposal based on Council's direction.

Ms. Drews said the substance of the amendments remained unchanged, but a different approach has been charted that will more effectively capture the areas in which it would be desirable to site and permit electric vehicle infrastructure. The original intent was to add a new line to the land use charts and footnote it. Based on the feedback from the Council, the new proposal associates electric vehicle infrastructure with uses that allow parking, Park and Rides, highway and street right-of-ways, auto repair and services, gas stations, and vehicle maintenance and repair facilities. The infrastructure would be permitted through the applicable review for the specific use.

Ms. Drews said the proposed amendments will be before the East Bellevue Community Council for a courtesy public hearing on December 7.

Commissioner Mathews asked how the battery exchange process works. Ms. Drews said the concept is similar to a quick lube facility. Electric vehicles drive in and their entire battery packs are swapped out while the driver waits.

Answering a question asked by Commissioner Turner, Ms. Drews said the purpose of the proposed amendment is to remove any perceived barriers to siting electric vehicle infrastructure

in the city. There are some large projects related to electric vehicles that are preparing to roll out. On November 29 Coulomb Industries donated two electric vehicle chargers to the city and both have been installed in the Visitor parking garage. The intent is to allow the private market to install electric vehicle infrastructure at locations they feel people will use the most. The Nissan Leaf pilot program will roll out in December; approximately 900 cars will be released, and the owners of the vehicles have agreed to participate in the test.

Commissioner Hamlin asked why the auto rental/leasing services use is not proposed to be footnoted. Ms. Drews noted that the use has allowed parking, and the infrastructure could fall under that.

Commissioner Himebaugh asked if the amendment as written would allow an auto dealership to have both a charging station and a battery exchange station. Ms. Drews said the definition of motor vehicle transportation, maintenance and garages is broad enough to encompass both.

Chair Ferris called for any public comments

There were no persons wishing to address the Commission during the public hearing.

Motion to close the public hearing was made by Commissioner Sheffels. Second was by Commissioner Lai and the motion carried unanimously.

9. STUDY SESSION

A. Single Family Code Amendments

Chair Ferris asked if the variance process would limit building height to no more than what is allowed on conforming lots. Mr. Jackson allowed that the process would do that.

Commissioner Lai asked how the Commission would address any significant issues raised during the courtesy public hearing before the East Bellevue Community Council. Mr. Jackson suggested the Commission should act to recommend the amendment. If the Community Council does not raise any significant issues, the matter will be forwarded to the City Council, but if significant issues are raised the matter will be brought back to the Commission for an additional study session.

Motion to recommend to the City Council approval of the proposed Land Use Code amendment related to nonconforming lot building height, file number 10-124743 AD, as proposed in the draft ordinance included in Attachment A was made by Commissioner Mathews. Second was by Commissioner Sheffels and the motion carried unanimously.

B. Performing Arts Code Amendments

Land Use Director Carol Helland said the staff considered the comments raised during the last study session regarding a performing arts center being allowed to show films. She noted that the Commission raised the issue of narrowly tailoring the language, but by doing so it becomes less likely that someone could take advantage of the flexibility provided to essentially build a movie theater. The proposed language is specific to facilities intended and designed for the presentation of live performances, with the corollary requirement relating to the minimum necessary to accommodate the need. Facilities built with a fly loft, orchestra pit and other amenities will undoubtedly be used predominantly for live performances.

Commissioner Sheffels indicated that her concerns had been allayed.

Commissioner Lai suggested there is a fine line between spot zoning and tailoring language to fit only a narrowly defined use. Ms. Helland said spot zoning is specific to single properties and result in an entitlement that is not available to any other similarly situated lot. The proposed amendments take in an entire area that is specifically identified in the Comprehensive Plan for entertainment uses. There are some underdeveloped parcels along 106th Avenue NE that would be suitable to performing arts uses.

Chair Ferris called attention to item 2-b of Attachment A and asked if the reference to 112th Avenue NE was correct. Ms. Helland said the language exists in the current code. She said new code language could be found in Footnote E where an additional exception is included.

Chair Ferris noted that the FAR exceptions are given up to a maximum of a 1.0 FAR so long as there is a retail use, which is not counted against the allowable. Given that theater is a retail use, he asked if someone could achieve an FAR of 5.0. Mr. Thiel allowed that staff had not contemplated that. Ms. Helland agreed to review the issue. She said it was her understanding that the definition of retail includes theater for the design guidelines for pedestrian-oriented frontage, but not necessarily for the FAR calculation. She said if additional language needed to be added it would be recirculated to the Commission.

Motion to recommend to the City Council approval of the proposed Land Use Code amendment related to performing arts uses, file number 10-113270 AD, as proposed in the draft ordinance included in Attachment A, was made by Commissioner Sheffels. Second was by Commissioner Mathews and the motion carried unanimously.

C. Electrical Vehicles

Ms. Helland stressed that electric vehicle infrastructure is no different from any other electrical infrastructure; essentially what is involved is the installation of outlets into which cars can be plugged to recharge. She said staff did not see a reason to make any code changes to allow for the use, but the legislature wanted to make it crystal clear. Ms. Helland explained further battery exchange stations. She stated that a specific manufacturer, which was developing proprietary technology for a vehicle with an exchangeable battery, was able to get its information relative to battery exchange stations embedded in the state bill. Accordingly, state law requires jurisdictions to include provisions for battery exchange stations even though few believe the proprietary technology envisioned will take off. The proposed amendment allows battery exchange stations to locate anywhere a service station or auto repair use is allowed.

Ms. Helland said if the East Bellevue Community Council raises significant concerns about the proposal, the concerns will be brought back to the Commission for review and discussion.

Motion to recommend to the City Council adoption of the proposed and revised electric vehicle infrastructure code amendments was made by Commissioner Turner. Second was by Commissioner Himebaugh and the motion carried unanimously.

D. Accessory Dwelling Units Code Amendments

Associate Planner Sally Nichols said the proposed Land Use Code amendment seeks to allow detached accessory dwelling units in the city. The amendments were included as part of the 2011 code amendment work plan presented to the Council.

Ms. Nichols explained that a detached accessory dwelling unit is a small housing unit on the same lot as a single family house. The unit can be a standalone structure but more commonly is the space above a detached garage. Size, height and all dimensional standards are yet to be vetted; they will be determined as part of the Land Use Code amendment. The current code language requires that the property owner must live either in the primary home or the attached dwelling unit. What makes accessory dwelling units unique is that they can be legally rented out.

The Comprehensive Plan includes language that allows both attached and detached accessory dwelling units; in 2004 the Comprehensive Plan was updated to include the words “attached” and “detached.” The Land Use Code currently allows only for attached accessory dwelling units, which are defined as separate dwelling units within the primary structure.

Ms. Nichols said the reason steps are being taken to amend the code is that there is a requirement for alignment between the Comprehensive Plan and the Land Use Code. Additionally, there is a demonstrated need for affordable housing in Bellevue. The city’s demographics are changing significantly, with the population growing older and the family household size shrinking. There is also a lack of undeveloped land in the city. Bellevue must provide approximately 10,000 new dwelling units by 2022, and the projection is that by that time the city will be close to running out of land on which to site new units. Accessory dwelling units provide one means by which property owners can remain in their homes by bringing in some additional income.

The principles to be achieved by the proposed Land Use Code amendment included allowing for tenure on property and aging in place; improving housing choice for all residents; promoting sustainability; allowing for design flexibility; supporting single family property rights; and dealing with existing illegal accessory dwelling units by bringing them into compliance and making them legal.

Senior Planner Antoinette Pratt commented that Issaquah, Redmond, Kirkland, Mercer Island, Clyde Hill, Newcastle and Kenmore all have allowed detached accessory dwelling units for many years. In December 2009, Seattle added detached accessory dwelling units to its ordinance following the creation of a demonstration program in the south part of the city to measure the interest level, which they found to be very keen.

Ms. Pratt said she and Ms. Nichols had been spending some time visiting accessory dwelling units in the jurisdictions that allow them, looking at the different styles, and the context in which the units have been placed.

A survey was put together to gauge neighborhood interest in Bellevue in partnership with the Neighborhood Outreach group. The survey was included in the October 2010 Neighborhood Outreach newsletter which is sent to the chairs of the various homeowner associations and everyone on the interested parties list. To date, some 233 persons have responded to the survey. A total of 36 comments were received regarding aging in place and having a place for grown children to live, and 33 comments were received regarding housing flexibility and increased housing type choices. Many who responded indicated that they did not want to see the Land Use Code changed to accommodate detached accessory dwelling units, and some said they do not want the code expanded beyond allowing for attached units.

The question regarding neighborhood fit and character garnered the most comments at 60. The majority indicated that while they like the concept of detached accessory dwelling units, they have concerns as to how they will fit into existing neighborhoods. Most wanted the city to ensure that the neighborhoods not be allowed to become visually crowded.

The survey question regarding parking and traffic received 40 comments. Ms. Pratt said there is always the perception that adding units to a neighborhood will add more people and thus more traffic and parking issues. The current ordinance allowing attached accessory dwelling units requires one off-street parking stall.

Finally, with regard to the question about allowing renters in single family neighborhoods, Ms. Pratt allowed that renting single family homes is a common practice for a variety of reasons. The ordinance allowing attached accessory dwelling units requires that the property owner must live in one of the units, and the same will likely be true for detached units. There is the perception that renters coming into a neighborhood will not have a vested interest in the neighborhood; that may or may not be true.

Commissioner Sheffels placed on the table the scenario of the owner of a home that has an accessory dwelling unit and who lives in one of the units as required, but who wants to sell the property but cannot find a buyer, and wants to rent out both the main unit and the accessory unit. Ms. Pratt said as things stand, accessory dwelling units are actually registered with the city. Where there is a change of ownership, the right to have the accessory dwelling unit is lost and must be re-registered by the new owners. It would not be legal for both units to be rented out. Enforcement and inspections are handled by the code enforcement officers and the building inspectors.

Commissioner Turner asked if there have been any problems arise since the code allowing attached accessory dwelling units was approved. Ms. Pratt said she met with code enforcement to ask that question and found that the process has been seamless for the most part.

Ms. Helland allowed that enforcement is carried out on a complaint basis only and there have been very few. The code enforcement officers do not go looking for accessory dwelling units. Most jurisdictions require one of the units to be occupied by the property owner in order to assure some oversight and pride in upkeep. She added that lots over 13,500 square feet are allowed to have guest cottages, which are separate small homes. Under the code, they cannot be rented out for profit. If detached accessory dwelling units are permitted, guest cottages could potentially be legally rented out. The renting out of single family homes to a number of unrelated persons, such as college students, is not uncommon and oftentimes generates far more impacts and thus complaints.

Commissioner Turner asked if an accessory dwelling unit could end up being rented out to a business use. Ms. Helland said there are provisions in the code that allow caretaker quarters in commercial areas under certain circumstances. In a general sense, however, accessory dwelling units are intended to serve as housing units.

Commissioner Lai asked if a home business would be permitted to locate in an accessory dwelling unit in a residential area. Ms. Helland said the issue of how appropriate it would be to house a home occupation business in an accessory dwelling unit should be investigated. Home occupation businesses are not allowed to make the house they are in look like anything other than a house.

Mr. Inghram pointed out that the code already allows property owners to construct a separate structure and to locate an office in it, though all of the home occupation requirements must be met.

Chair Ferris commented that the issue of accessory dwelling units has generated quite a large

amount of public discussion in other jurisdictions. He highlighted the need to keep the neighborhoods informed throughout the process so no one will feel as though they have been left out. Ms. Helland agreed and said that in part was the reason for going out with the survey. All discussions on the topic will be broadly noticed.

Commissioner Sheffels said her home is in a planned unit development that includes a lot of common space. She asked if there would be any restrictions to placing a detached unit in common areas. Ms. Helland said that could be studied. She stated that PUDs and subdivisions often have conditions attached to them that might serve as the overruling factor.

Chair Ferris noted in the survey a maximum size of 800 square feet or a percentage of the existing single family home is mentioned. He commented that 800 square feet is a modest one-bedroom home by most measures. Some might want to have a unit that is one bedroom with a den, which would be more like 1000 square feet. He cautioned against putting a number out there that is too low to accommodate the actual need. Ms. Pratt said the point was well taken. She suggested that the Commission may want to consider a sliding scale approach that would allow larger accessory dwelling units on larger lots. It will be necessary to review each of the zoning districts before making decisions about what will fit the best.

Chair Ferris observed that the public commenter as well as some of the comments included in the Commission desk packet linked rental units and affordability with negative behaviors relative to the rest of the neighborhood. He pointed out that there are many homeowners who do not themselves do a good job of keeping their properties up, and a host of studies have been done to show that rentals degrading neighborhoods is a myth and not a fact. Those facts should be made clear.

Commissioner Lai commented that the tiny home movement is gaining a following across the country and he suggested it would be helpful to see examples of what can be done by way of small structures. Ms. Nichols said the movement is linked to the concept of sustainability and is exciting from a design standpoint.

Commissioner Sheffels asked if more than one detached accessory dwelling unit might be allowed to locate on a property. Ms. Pratt said a property owner would only be allowed to have an attached unit or a detached unit, but not two units in addition to the primary residence. Commissioner Sheffels said she could envision a situation in which a person wants to construct an attached unit in the basement or above the garage and have plenty of room on the site to add a detached unit in the back yard. Ms. Helland agreed that going into the study all options should be kept open.

Chair Ferris said there are a host of inconsistencies between what is stated in the Comprehensive Plan around the issue of affordable housing and what is embedded in the Land Use Code. He suggested that the theme of affordable housing should be paramount in drafting planning documents.

10. OTHER BUSINESS

11. APPROVAL OF MINUTES

A. September 8, 2010

Motion to approve the minutes as submitted was made by Commissioner Hamlin. Second was by Commissioner Sheffels and the motion carried without dissent; Commissioners Lai and

Mathews abstained from voting.

12. PUBLIC COMMENT

Ms. Brit Heath, a Bridle Trails resident, said she was one of the persons who responded to the accessory dwelling unit survey. She indicated her excitement at having Bellevue even consider the topic and said she would welcome having detached accessory dwelling units in her neighborhood. While the topic may generate a lot of public concern, it should be considered as another tool to be used to accommodate the housing needs of the city. In Snohomish County there have been some issues with accessory dwelling units being constructed and the property owner coming in after the fact seeking to condoize the units, so it will be important to have on the title a requirement for the property owner to occupy one of the units. Flexibility should be included to the degree possible, and the sliding scale would be a good idea.

13. NEXT PLANNING COMMISSION MEETING

A. December 8, 2010

14. ADJOURN

Chair Ferris adjourned the meeting at 8:23 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Hal Ferris
Chair of the Planning Commission

Date

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

December 8, 2010
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Lai, Mathews

STAFF PRESENT: Mike Kattermann, Department of Planning and Community Development; Carol Helland, Michael Paine, Kevin LeClair, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:42 p.m. by Chair Ferris who presided.

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Sheffels, who arrived at 6:43 p.m., and Commissioners Lai and Mathews, both of whom were excused.

3. PUBLIC COMMENT – None

4. APPROVAL OF AGENDA

The agenda as submitted was approved by consensus.

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

6. COMMITTEE REPORTS – None

Commissioner Hamlin said the Eastgate/I-90 CAC met on December 2 and continued to receive background information. The focus has been on existing conditions, a preliminary screening analysis, and development opportunities for the Eastgate area that had been grouped into themes. He said a committee tour of the area has been scheduled for January.

7. STAFF REPORTS

Senior Planner Mike Kattermann reported that in a lengthy session on December 6, the Council adopted the 2011-2012 budget. The planning functions made it through the process fairly well intact.

The Council also adopted the 2010 package of Comprehensive Plan amendments. The window for Comprehensive Plan amendment applications for 2011 began December 1 and runs through January 31. He said staff would be coming back to the Commission in January with an update regarding the Enatai tree ordinance.

Mr. Kattermann noted that the Commission would not be meeting again in 2010 and took the time on behalf of Comprehensive Planning Manager Paul Inghram and the entire Department of Planning and Community Development staff to wish each Commissioner a very happy holiday.

8. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

A. Shoreline Master Program Update

Land use planner Kevin LeClair said according to the state rules restoration is defined as the reestablishment or upgrading of impaired ecological shoreline processes or functions accomplished through measures including but not limited to revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. The law is clear that restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions. Restoration refers only to improving existing conditions to some degree.

Mr. LeClair said one required element of the shoreline guidelines is a shoreline restoration plan. The guidelines are fairly prescriptive with regard to what is required to be in the plans, including identification of degraded areas or impairments in the shoreline areas; identification of goals and objectives for restoration; identification of ongoing and existing non-regulatory programs that aid in or support restoration goals and objectives; identification of additional projects in the shoreline jurisdiction that could be implemented over time to further the goals and objectives; and a plan for implementing and monitoring restoration activities.

While the guidelines require having a restoration plan, they do not require the act of restoration. Mr. LeClair said it is the opinion of the staff that the Department of Ecology requirements are met by the city's current restoration plan.

Within the original working draft policies, 213 through 219 were supportive of restoration. Staff has been working to winnow those policies down to only four. The policy framework seeks to develop a restoration plan that would encourage or promote projects the city could do, and which could serve as restoration examples for private property owners; and to protect and restore areas that are sensitive and provide benefits to the community and the environment.

The plan was developed with the Development Services Department acting as the lead, but the parks, utilities and transportation departments all joined the effort. The focus was on making certain that restoration balances public access and the interaction of the community with the water in public spaces. The first goal speaks specifically to that concept. The second goal is aimed at biological functions. It calls for restoration efforts to be focused on maintaining or enhancing watershed processes, including sediment, water, wood, light and nutrient delivery, movement and loss. Maintaining or enhancing fish and wildlife habitat during all life stages and maintaining functional corridors linking the habitats is the focus of the third goal. Each goal is followed by specific objectives aimed at providing clarity and specificity.

The restoration plan is specific with regard to the Comprehensive Plan policies already in place, and there is some dialog around the existing codes and regulations that are supportive of restoration.

Mr. LeClair said the Shoreline Master Program update is intended to ensure through policies and regulations that there will be no net loss of ecological function over time. The restoration plan is supportive of the no net loss intent and ideally will provide some lift above the no net loss baseline.

The list of projects and programs was developed through interdepartmental collaboration. More than 170 ideas for restoration were brought up and discussed by the various department staff. Some were deemed infeasible for one reason or another, and ultimately the list was narrowed to 32 projects. Those projects were then scored and ranked by the resource area they are in: Lake Washington, Lake Sammamish, Phantom Lake/Lake Hills Greenbelt wetland complex, and Mercer Slough/Kelsey Creek. Six projects of the 32 rose to the top and were conceptualized to a higher level.

For each project, the existing conditions are described, and the project goals are outlined, along with the strategies for restoration. The vision for the tool is to have it be used to demonstrate to the public what the city can do in terms of restoration and how restoration can serve multiple goals and objectives, such as improving public access and ecological functions.

While there is no requirement to conduct restoration, the city will receive a lot of mileage from the restoration plan by focusing on ongoing and funded programs the city is already operating. They include the storm and surface water utilities programs aimed at protecting wetlands and managing flooding, and education efforts such as those at the Mercer Slough Environmental Education Center.

Ms. Helland said the proposed plan was drafted to meet the requirements and obligations of the guidelines, and goes further with the conceptualizations that help to facilitate, encourage and remove barriers for city departments by incorporating restoration activities into their projects on public properties. It is hoped that the work done by the departments to identify opportunities will help to tell the story better to the public.

Commissioner Sheffels asked if other jurisdictions have initiated some of the new concepts. Environmental Planning Manager Michael Paine said Seattle has some programs going and has done some projects and are monitoring them. Bringing some of the Bellevue projects online would allow for good tests that could be translated to private situations. Ms. Helland said the conceptualized idea can be used almost as a handbook is a somewhat unique approach in restoration plans. It has not necessarily been tested or approved.

Commissioner Turner said he likes the idea of using a public project as an example for others to follow.

Mr. LeClair pointed out that some of the 32 projects are in fact on private property and that they were scored along with all of the other projects. He stressed, however, that will be no regulatory obligation to enact the restorations as envisioned. In order to be fair and balanced, it was necessary to look at the entire shoreline irrespective of property lines in looking for restoration opportunities. Ms. Helland added that the scoring exercise gave preference to opportunities that will return the most benefit for the improvement made.

Commissioner Himebaugh said he hoped the restoration plan would not become a catalog for mitigation opportunities during the permitting process. Ms. Helland said it will not generally be handled in that way. She commented that when the Kelsey Creek Shopping Center sought to trade off an obligation to do a specific restoration required of them by their concomitant zoning agreement, the plan would have provided a list of projects that could have been done as an offset. The city has not incorporated a fee-in-lieu or arrangement similar to the transfer of development rights; it is always better during development to mitigate for impacts as close as possible to where they are created. Mr. Paine added that for large regional projects where the applicant struggles to find

mitigation opportunities in the city, the list of projects would be very helpful to have. While it might not be classified as restoration, the shoreline improvements probably would not be turned down by the City Council. Ms. Helland noted that Sound Transit and WSDOT projects often struggle to find offsetting opportunities to create new wetland areas or to replace shoreline ecological functions required by mitigation. Regionally the city would rather have the projects undertaken in Bellevue, so where opportunities can be identified the door to conversations with the private property owners could at least be opened.

Commissioner Turner asked if the listed projects include opportunity to conduct some measuring of ecological functions that could be applied to the overall Shoreline Master Program to help it hold together better over time. Ms. Helland said the hope is that there would be monitoring. There are monitoring requirements for projects for restoration purposes, and that would be one way to measure the effectiveness of the techniques.

Commissioner Himebaugh suggested the focus should be on monitoring ends rather than monitoring means. He said it would be far better to understand what improvements to ecological functions have been brought about rather than how much square footage has been converted. Ms. Helland allowed that it is often less expensive to use markers and tags. The Commission could in its recommendation to the Council include a section that speaks to the importance of funding monitoring. The city is limited in its monitoring potential by funding, and that requires figuring out workarounds which often are surrogates for restoration.

B. Shoreline Master Program Update – Public Comments

Mr. Brian Parks, 16011 SE 16th Street, said he attended the December 2 meeting of the Environmental Services Commission during which they discussed issues relative to the Shoreline Master Program update. He said he informed them about the bottleneck situation occurring on Phantom Lake given the limited outflow channel and weir. At the meeting utilities suggested revisions to their comprehensive drainage plan, but they appeared to be skirting many of the issues the Planning Commission has been discussing. The information in the current Commission packet is contradictory to what utilities was saying at the Environmental Services Commission meeting. Two studies were done in the 1970s following which the city decided to go with an economical storm drainage conveyance and detention system by using existing streams and lakes and ponds, rather than running parallel pipes. The two studies recommended the same approach and the master drainage plan was developed accordingly. The decision was made to use Phantom Lake as a detention pond with an outlet weir controlling the outflow, but nothing was done for about a decade. The same consulting firm did the Phantom Lake restoration plan in the 1980s and suggested the weir for water quality purposes. The studies forewarned that an outlet capacity of over 20 cfs would be required. The studies also raised concerns about increased sedimentation buildup from stormwater use and maintenance issues. Utilities is now recommending revisions that will excuse them from all responsibilities relative to sedimentation and deltas and channel infill, at the same time denying environmental stewardship. The current drainage plan says the overall drainage mission of utilities is to manage the storm and surface water systems to prevent property damage and protect water quality. Staff is proposing a change to the language to have it read “The mission of the Storm and Surface Water Utility is to provide a surface water system designed to control damage from storms and to protect water quality.” The current plan defines deltas as deposits of sand and gravel near the mouths of streams and rivers. The new language says delta formation is a natural process and that sediment deposition rates and channel locations are likely to change over time. The current plan says the migration paths of fish may be disrupted and navigation hazards may be created, and delta growth may interfere with swimming or boating and reduce channel capacity and increase flood risks. The proposal is to strike all of that language.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said he understood that restoration will not be required and that the city would not be committing itself beyond its budget. The demonstration concepts should be realistic from the standpoint of private property owners who do not have deep pockets. The transfer of development rights as a concept is acceptable, but the projects should be proximate to the source of the impact. He provided the Commissioners with copies of a graph depicting the number of days the water level on Lake Sammamish exceeded the ordinary high water mark as determined by the Corps of Engineers at 27 feet NGVD. He noted that the average was 100 days per year until the last four or five years. The average is currently 160 and to date in 2010 the water level has exceeded the ordinary high water mark for more than 200 days. The unnatural and possibly illegal rise in water level is encroaching on private property, could trigger a change to the current ordinary high water mark causing additional structures to fall within the shoreline setbacks, and cause the loss of existing shoreline through erosion and established trees falling into the water. Lake water management cannot be disconnected from the Shoreline Master Program and vice versa. Monitoring must be meaningful. Quality and quantity of stormwater flowing into the lakes; the number of feet of shoreline eroded due to the replacement of bulkheads with soft stabilization; the actual costs to permit applicants for studies, attorney fees and actual mitigation; and salmon recovery should all be tracked and monitored.

Mr. Dwight Martin, 5101 East Lake Sammamish Parkway NE, Sammamish, commented on the introduction to the restoration section and the statement that restoration should never be confused with mitigation. He suggested that the point of view of regulators is often different from that of those who are regulated. The document talks about incentives but does not define them anywhere; the Commission was encouraged to create as many incentives as possible, and to be creative in thinking about how the incentives can be used. The document states that adverse impacts from road runoff should be prevented through stormwater best management practices. The Bel-Red corridor is a prime example given all the impervious surfaces there that were created in the 60s and 70s without any detention or water quality treatment features; the city has a huge opportunity there to improve the waters that flow into the lakes. The document includes a comment from WRIA-8 that says enforcement should be increased and nonconforming structures should be addressed over the long run by requiring major redevelopment projects to meet current standards. From the perspective of developed shoreline properties, there is already an impact. Should someone want to put a new house on the property, they would be required to comply with all current rules, including impervious surfaces and setbacks. If deemed a major redevelopment, there would be a requirement to mitigate the impact. The mitigation would look and feel like restoration to a shoreline property owner who would have to spend thousands of dollars just for permits and design work, not counting the cost of mitigation for putting a new home where an existing home is sited. The rules should allow people to use their properties in ways that will not increase the impacts that already exist without forcing them to mitigate for those impacts by requiring full compliance with all the new rules.

C. Shoreline Master Program Update – Commission Discussion

Ms. Helland reminded the Commission that they directed the staff to be most flexible in the area of nonconformance. The footprint exception will keep most properties from being rendered nonconforming. The flexibility allowed there, however, is one of the reasons why a restoration plan needs to be in place so that when the regulations and the non-regulatory elements are bundled it will be possible to meet the no net loss test.

Commissioner Sheffels referred to the Section 2 goals and objectives and commented that people who live on the water report that they experience a great deal of noise pollution from motorboats and jet skis. She asked if there is anything currently on the books that seeks to control noise pollution on the lakes, or if indeed the city receives complaints on a regular basis. Ms. Helland said there is an existing noise goal to make people's lives more harmonious by limiting the overall level of ambient

noise. Jet skis and boats are, however, largely exempt from the noise code; they have traditionally been very difficult to regulate. Commissioner Sheffels said it stands to reason that the faster a boat travels along the shorelines the more noise there will be and the more wave action will result, which is harmful to the beach. She suggested it would be helpful to establish a control area near the shore in which fast boats and jet skis would not be allowed to operate. Ms. Helland allowed that docks to some degree have the effect of keeping boats some distance away from the shore. She added that there are some no wake zones on the city's waterways, including in the Sammamish Slough and in Meydenbauer Bay.

Mr. LeClair said the noise goal is less about boats and more about preventing people from putting speakers out on their docks and blaring music up and down the shoreline. Part of the enjoyment of the lake are the moments of quiet contemplation, which property owners are entitled to be able to enjoy.

Commissioner Turner suggested that any objective should be measurable and asked if the Commission will be able to see what the measurements are going to be. Mr. LeClair agreed that the results of restoration should be measurable. He allowed that some language could be added to the implementation and monitoring section that would call out more specific monitoring parameters. He added, however, that monitoring will require more resources than the city currently has.

Ms. Helland pointed out that in the opinion of staff the restoration document meets the WAC guidelines. The Commission can, however, make changes to the language and provide additional guidance, but to mandate monitoring will require dedicated funding. The Commission certainly could include in its transmittal to the Council a recommendation to see dedicated funding identified and implemented.

Commissioner Himebaugh asked if more flexibility will be gained on the regulatory end of things by asking staff to change the monitoring portion of the document. Mr. LeClair said additional flexibility would not necessarily be gained by going in that direction. The state's focus, fortunately or unfortunately, will be on the linear feet of bulkheads removed and the total square footage of shoreline restored. Dollars for restoration are very limited and the amount of monitoring that can be included will be limited as well.

Ms. Helland said if at the end of the no net loss conversation the Department of Ecology finds that there is too much flexibility in the regulations and concludes that the restoration plan is not robust enough to support them, there could be a Council dialog about dedicating some money to specific projects. That same conversation happened in the context of critical areas.

Chair Ferris called attention to the language that said generally the restoration opportunities identified in the plan are focused on publicly-owned spaces and natural areas, and that on private properties restoration efforts would be voluntary or a means through the redevelopment process. He suggested that language does a good job of framing the plan and as such the paragraph should be moved up closer to the beginning of the document. He also suggested that the objectives should all include the notion of "to the greatest extent practicably feasible."

With regard to the first objective and the notion of managing stormwater runoff, Chair Ferris said the language is not clear as to whether it refers only to the runoff from the adjacent land. He noted that the Shoreline Master Program is focused on the shoreline area only, not the entire stormwater system.

Chair Ferris referred back to the initial evaluation of the ecological function of the shorelines. He noted that there were about six categories, including the hyporheic zone. He suggested that the low, medium and high rating for each of the criteria would be one way to measure the quality of the

shoreline. An inventory could be done prior to a project and then after completion of the project as a means of demonstrating the delta. Mr. Paine said that is exactly what conventional monitoring does. What needs to be known are the habitat functions formed and how successful the formation was, which is a much more complicated effort.

Commissioner Himebaugh asked if the Department of Ecology will consider the city's funding situation when it does its cumulative effects analysis. He added that while it is possible to balance regulatory flexibility with good specific non-regulatory programs, the fact is that some of the programs will be very difficult to fund. Mr. LeClair said now that the budget process for the next two years has wrapped up it will be necessary to get back to the program managers prior to the cumulative impacts analysis to determine which of the programs, if any, will be funded. Parks will also be asked where they intend to conduct master planning of certain sites during the planning horizon.

From the audience, David Radabaugh with the Department of Ecology, said the department will look in the restoration plan for some discussion of funding and timing.

Mr. Paine said from the plans approved to date by the Department of Ecology, it is clear that the majority of their focus is on the regulatory component. They do take into account all of the other elements, but not to the same degree. Mr. Radabaugh agreed. With regard to the restoration plan specifically, he said the department will be looking at what can be accomplished in terms of projects that will restore ecological functions along the shorelines.

Commissioner Turner asked if incentives will count toward regulation. Mr. Radabaugh said they will in concept, provided they are part of a whole package of regulations.

Ms. Helland said the hope in telling the story of what the restoration document does is that by going the extra distance and providing the projects and conceptual designs, barriers for accomplishing the projects will be removed, even if there is no dedicated funding for them. Mr. LeClair added that hopefully the regulations will include the removal of barriers that would prevent a property owner from undertaking a restoration project; several have pointed out that the cost of permits is equal to the cost of the actual work.

Chair Ferris pointed out that the language of the document includes projects and organizations that can become outdated very quickly. Specifics of that sort should be housed in an attachment instead the plan itself. An appendix could be updated as needed without having to reopen the entire plan.

Commissioner Turner called attention to section 4.2 Utilities, Stormwater Management and Planning, and said he did not see how any of the programs would measure or seek to improve deltas created as a result of stormwater runoff. Mr. LeClair said he had personally worked to permit sediment removal projects. The city removes literally thousands of cubic yards of sediment from detention facilities that were created in-stream to deal with the problem. The work goes on annually on a very large scale. Commissioner Turner said it appears as though the effort is not being carried out on Phantom Lake. Ms. Helland said Phantom Lake is a unique situation. The issue belongs to the Environmental Services Commission, not the Shoreline Master Program update.

Commissioner Sheffels commented that there has been a difference of opinion with regard to Lake Sammamish in particular and what should be considered shoreline armoring. She asked if the numbers in Table 1 accurately reflect what is really considered shoreline armoring. Mr. LeClair said the figures in the table are a direct reflection of the shoreline inventory. No additional time has been spent in investigating whether or not the inventory is accurate. Ms.

Helland added that to some degree the issue is one of semantics. The shoreline armoring in the inventory identifies a line that essentially stops the interface between the shoreline and the upland areas, regardless of whether or not it occurred at the ordinary high water mark. In fact, more benefit is received for calling out the armoring and identifying it as an opportunity for improvement in that it denotes a highly urbanized shoreline that is largely bulkheaded. Changing the number in the chart to reduce the amount of armoring would have the net opposite effect on the application of the shoreline code and make it more stringent in some ways by making it appear the shoreline is more natural than it really is.

Commissioner Sheffels called attention to Table 8 and the notion of improving habitat functions and retaining or improving flood control functions in outlet channels. She said she did not know how the city could put a lot of teeth in it, but wanted it to be as strong as possible.

With regard to permitting and incentives, Commissioner Sheffels suggested that reducing the permit fee structure would be preferable and more of an incentive than reducing the amount of time necessary to get permits approved. A matrix should be developed that in a general way shows how much benefit will be achieved from restoration or mitigation projects; the permit fee could be reduced in a way that reflects the ultimate benefits. Mr. Paine said he has been working with staff from other jurisdictions and the state to create a permit process for which there would be zero cost to the private property owner for green shoreline projects. As envisioned, a property owner would submit application to Department of Ecology or fisheries and it would be the only permit necessary; the permit would also be accelerated and approved very quickly. The city would have a few days to comment on the permit but would have no regulatory control beyond that. There is significant interest on the part of the legislature to go in that direction even in the face of the current fiscal environment. For projects that would involve both a green shoreline and something requiring a permit from the city, such as moving a building closer to the water or expanding a structure, the city would need to process the permit to make sure all of the accounting is correct.

Chair Ferris asked if there were any discussions with private property owners in developing the list of projects, some of which are on private property, to determine if there are objections to being included in a public document. Mr. LeClair said he had not personally talked with anyone from the public but said there has been dialog with a number of interest groups by other staffers. He said he would not hesitate to pull projects on private property should a property owner voice an objection.

9. OTHER BUSINESS – None

10. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, thanked Commissioner Sheffels for raising the issue of noise along the shoreline. He suggested that the bigger issue is wave action in part because the design of boats has changed; they are weighted in the back and designed to create a huge wave others can surf on. The logic about artificially raising the amount of armoring along the shoreline being beneficial in the long run is suspect; in the end the decision makers may be presented with an issue that is not as serious as represented. The restoration plan, which is non-regulatory, toothless, and could become dated quickly, will not accomplish anything.

Mr. Brian Parks, 16011 SE 16th Street, pointed out that detention pond A at Airfield Park is 30 years old and has never had any sediment removed from it. It is also located next to a landfill and has limited capacity, so it is not functioning well to protect Phantom Lake. The 1979 Environmental

Impact Statement for the pond states clearly that the city is responsible for its frequent cleaning. Utilities is not following its own rules. RCW 90.58.030 said floodways are not to include lands that can reasonably be expected to be protected from floodwaters by flood control devices and which are maintained by or under license by the federal government, the state or any political subdivision. It would appear it does not matter if FEMA identifies the area as frequently flooded if the water level is controlled by a flood control device. He called attention to project PL-3 and said it does not appear to be a public project given that it is in the middle of Phantom Lake. The city has tried in the past to purchase shoreline property and establish greenbelts; it has not worked and it appears the same issue is on the table again.

Ms. Cheryl Ebertine, 1845 164th Avenue SE, said she has lived on her Phantom Lake property since 1966. She commented that back in 1978 the city tried to take over the lake and construct pathways around it, cutting off homes from the lake. She said it was disheartening to see the city try once again to take the properties.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said she was glad to see the restoration plan would not be made mandatory. It is in fact a work of fiction. It is absurd to think that west-facing properties on Lake Washington can have their bulkheads removed. The sewer line in Lake Washington is in the water, and removing the bulkheads will lead to full exposure of the line. In many ways the restoration plan solidifies the absurdity of much of the Shoreline Master Program.

11. NEXT PLANNING COMMISSION MEETING

A. January 12, 2011

Ms. Helland said the intention of staff is to release the draft Shoreline Master Program update shortly after the first of the year. At the January 12 meeting the Commission will be asked to develop a plan for deliberately working through the draft and moving the topics forward.

12. ADJOURN

Chair Ferris adjourned the meeting at 8:51 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Hal Ferris
Chair of the Planning Commission

Date