CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 14, 2010 Bellevue City Hall
6:30 p.m. City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Nicholas Matz, Department of Planning and Community Development; Michael Paine, Heidi Bedwell, David Pyle, Development Services Department; Phyllis Varner, Brian Ward, Utilities Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:34 p.m. by Chair Sheffels who presided.

2. ROLL CALL

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

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3. PUBLIC COMMENT

Mr. Jerry Baruffy, 9236 SE Shoreland Drive, stated that in addition to attending the Planning Commission meetings in Bellevue on the Shoreline Master Program topic, he has been attending the Planning Commission meetings in Tukwila where the same topic has been addressed. In Tukwila, those who addressed the Planning Commission and voiced concerns were emailed notice of when those concerns would be specifically addressed. He said he has attended 16 meetings in Bellevue and to date nothing has changed. Shoreline property owners are vehemently opposed to the draft plan, yet the issues are not being addressed and no one is saying why. Staff seem to have their own vision and seem unwilling to listen to the shoreline property owners. Some of the information presented by the experts brought in by staff has been irrelevant, specious and embarrassing. The experts brought in by the property owners, on the other hand, had very specific and relevant information.

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

Senior Planner Nicholas Matz commented that an incorrect subject heading had inadvertently been included in the packet material. On page 1, the heading "Introduction to the Eastgate/I-90 Land Use and Transportation Project" should in fact read "Shoreline Master Program Presentation on Phantom Lake."

8. STUDY SESSION

A. Shoreline Master Program Update

Environmental Planning Manager Michael Paine noted that in previous meetings there have been a lot of issues raised around Phantom Lake, particularly with the lake level and water quality issues that are functions of the much larger watershed and which cannot be addressed through the Shoreline Master Program. He said he hoped the presentation by Utilities staff on Phantom Lake would allay concerns with respect to the Shoreline Master Program.

Phyllis Varner, NPDES Permit Coordinator, said Utilities staff have agreed to meet with the Phantom Lake homeowners to review their issues and to determine if there is interest in restarting a broader conversation about forming a lake management district to implement additional lake management activities.

Phantom Lake is located in East Bellevue to the north of I-90 and west of Lake Sammamish. Larson Lake is located to the northwest of Phantom Lake. Originally, Phantom Lake and Larson Lake were a single lake formed by a melting glacier. Over time vegetation washed into the lake and decayed, and the lake filled in to a depth ranging from five feet to twenty-one feet. Eventually, a shallow area filled in forming two separate lakes. The area between the two lakes is called the Lake Hills Greenbelt.

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Ms. Varner said the geologic formation of the two lakes accounts for why they are naturally nutrient rich. There is a lot of phosphorus input from the peat soils that underlie the lakes; they are naturally low in water clarity and experience low oxygen levels.

In 1890 a farmer changed the outlet of Phantom Lake from Lake Washington to Lake Sammamish by hand digging and blasting a channel. The result was a lowered lake level and the formation of wetlands around the lake and between the lakes. The majority of residential area in the watershed was developed prior to any storm detention and water quality requirements. The I-90 Business Park development began in the 1980s in an area that was formally the site of an airfield and a King County landfill. In 1985, in response to concerns about the quality of the lake, the city secured grants to fund lake studies and capital projects aimed at improving water quality.

Phantom Lake covers 63 acres and has a maximum depth of 54 feet and a median depth of 21 feet. It has 7392 feet of shoreline. The beneficial uses include aesthetics, wildlife, fish and recreation. The lines for the properties that surround the lake include the lake bottom, making all of it privately owned. The water is designated water of the state. Public access to the lake is a relatively recent thing; in 1985 when the city secured grants to conduct lake management studies and projects, one of the conditions was for public access.

Ms. Varner said the list of questions raised during the Shoreline Master Program process with regard to Phantom Lake include: has the lake level measuring system changed?; are the water quality goals being met?; and what is the city's role with regard to lake management?

Brian Ward, Senior Engineer, Watershed Planning Division, Department of Utilities, explained

the concept of vertical datum. He said anytime someone talks about the elevation of a structure or mountain the reference is to above mean sea level. A vertical datum attempts to set the zero mark for mean sea level. In 1988 a new vertical datum was established and is referred to as NAVD88, or the North American Vertical Datum; the previous vertical datum was established in 1929 and is referred to as NGVD29, or National Geodetic Vertical Datum. Between 1929 and 1988 there were a great deal more sea level zero marks gathered all around the country. The adoption of NAVD88 shifted the vertical zero mark by plus 3.58 feet.

Continuing, Mr. Ward said if one goes to the library and looks up the FEMA flood insurance rate map, the numbers shown will be based on NGVD29. All of the elevations shown in the 1987 Phantom Lake management report are based on the 1929 vertical datum. Whenever lake elevations are discussed, the first thing that must be done is to establish which vertical datum is being used. All references to NGVD29 can be converted to NAVD88 by adding 3.58 feet.

With regard to the question of whether or not lake level ranges have changed, Mr. Ward said the utilities department has not been monitoring Phantom Lake with an eye on answering a trend analysis question. The department has collected some data, but it does not represent a continuous record prior to 2000.

References have been made to the data collection work done by Don Miles, a Phantom Lake resident who collected water levels off his dock over a period of time. The highest mark he noted was 262.5 when converted to NAVD88.

The city has a probe located in Phantom Lake that hourly records the lake level and electronically sends it to the Bellevue Service Center where it is logged. Beginning in 2007, the calibration of the instrument and the software used to collect the data were upgraded; the data collected since has a much higher degree of confidence.

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The hundred year flood plain elevation was established by FEMA in 1978 and has not changed, other than being normalized to the NAVD88 standard. The cutoff berm effectively separates Larson Lake from the Kelsey Creek drainage basin. However, during a hundred year storm event, or any significantly large storm event, the lake drainage returns to its historic function by crossing over the berm and draining into the Kelsey Creek basin. Accordingly, the flood plain is depicted as extending north toward Larson Lake.

A graph of the December 3, 2007, storm event was shared with the Commissioners. Mr. Ward noted that the level of Phantom Lake rose quickly as it received runoff from the lake's watershed. During the periods of time when the rain slacked off, the level of the lake gradually decreased. The average lake level during the event was 261.2 NAVD88 as reported by the probe.

Ms. Varner said the water quality goals developed by a consultant were established as part of the Phantom Lake studies and water quality improvements. The goals focus on phosphorus, which is the single most important factor in feeding algal blooms on the lake. The city monitors the quality of the lake monthly and has done so since 1990; additional monitoring is conducted as warranted. For the period 2005-2009, the water clarity goal has been exceeded 100 percent of the time. During the same period total phosphorus in the lake, both from internal and external sources, was better than the goal 80 percent of the time, and measurements of Chlorophyll A, the green pigment in plants produced through photosynthesis, were better than the goal 60 percent of the time.

The goal for depth of lake clarity is two meters (6.5 feet) or greater. The average for 2005-2009

was 3.3 meters (10.8 feet). The earliest lake data is from a study done between June and September in 1971. Samples taken during that study indicate lake clarity was worse than they are currently, and the phosphorus levels were higher than they are currently. The phosphorus goal is 2.5 micrograms/liter or less, and the average of the 2005-2009 data was 18.9; the average from the 1971 study was 46.5 micrograms/liter. The highest reading in the 2005-2009 period was 35 micrograms/liter, and the high value from the 1971 study was 80 micrograms/liter.

Commissioner Lai asked what factors influence phosphorus levels in the lake. Ms. Varner said the levels change seasonally and include seepage through the peat soils beneath the lake as well as inflow from runoff. The largest source of phosphorus in Phantom Lake is the lake sediment. The second highest source is the highly disturbed wetlands soils. Normally wetlands are sinks for pollutants, but once they are disturbed they become a source. The hydraulic gradient towards the lake means the wetlands feed into the lake. Runoff from the watershed in general certainly adds to the phosphorus levels, as does runoff from the immediate residential and commercial areas that flows into the lake. A variety of measures were implemented as part of the lake management improvement program; some of them have worked, and some have not.

Commissioner Ferris commented that the Clean Water Act was implemented in 1974. Prior to that time there could have been mostly septic tanks in use around the lake and in the basin. Connecting homes to the sanitary sewer system could have contributed to cleaning up the lake. Many local residents have highlighted the degradation that has occurred since the office park was developed. He suggested it would be helpful to compare the current water quality data with the data collected prior to the development of the commercial area south of Phantom Lake. Ms. Varner said the first data collected after the 1971 data was collected in 1985. The commercial area began development in the early 1980s, prior to the 1985 data. Commissioner Ferris said he would like to see the comparison made using the best available data.

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Commissioner Lai said he would appreciate knowing a little more about how the goals were set. Ms. Varner shared that the lake study was done to bring about improvements. There were no specific measurable goals established, however, relative to how good is good enough. Citizens raised concerns about algal blooms, and a second watershed committee was set up by the City Council to focus on developing a lake management district. Setting measurable goals was a part of that process. The consultant hired to work with the city evaluated all of the data collected to that point, looked at the natural conditions, reviewed what had been done by the previous consultant, and worked with the committee to identify goals reflecting the meso-eutrophic lake conditions. The goals were adopted and are used to monitor conditions.

Commissioner Lai suggested that some revisions to the goals might be needed given that the algal level goal is being met only 60 percent of the time and the water clarity goal is being met 100 percent of the time.

Chair Sheffels asked if the algal conditions in the lake contribute to health problems. Ms. Varner said blue-green algae is very common in lakes, especially those with high nutrient levels. Blue-green algae is present in Phantom Lake and in fact in most lakes in the Northwest. Blue-green algae can produce toxins, though scientists do not yet know why. The determination of whether or not the algae is producing toxins requires toxicity testing. Both the Department of Ecology and the Department of Public Health take the lead, and their general recommendation is that where blue-green algae blooms are noted people and pets should stay out of the water. Water samples from Phantom Lake have been taken periodically since the 1990s in response to citizen requests; to date, none of the samples have tested positive for toxins.

Ms. Varner noted that the Storm and Surface Water Utility provides stormwater management

services in all 26 basins within the city limits. The services are paid for through storm and surface water rates. If property owners want more services, they must pay for them. One way that is done is through special benefit districts. Another option is through the formation of lake management districts.

Commissioner Ferris asked what percentage of stakeholders must agree to be part of a lake management district, and asked if those who do not agree are exempt from assessments. Ms. Varner said votes are allocated on the basis of one for each dollar of assessment, and the city does not vote. A simple majority is all that is required for passage, based on the total number of votes.

In 1985 the city received $1.6 million in grants and added to that $500,000 to fund the Phantom Lake and Larson Lake studies and projects. The improvements were put in in 1990 and that was followed by two years of post monitoring. Residents came forward after an algal bloom in 1995 and indicated they wanted to see additional management activities carried out on Phantom Lake. All grant dollars had dried out by then, so the City Council passed a resolution that said future city funding of Phantom Lake watershed studies and projects must be contingent on the implementation of a lake management district in which all property owners within the district would participate, including the city as one of the property owners. The Council funded a consultant to work with the Phantom Lake watershed committee to assess the improvements that had been made with the grant dollars and to determine what changes, if any, should be made. The consultant and the committee identified $1.4 million in improvements over a seven-year period, including alum treatment.

The formation of a lake management district was discussed with the watershed as the boundary line, plus another area that was close enough for its residents to walk to the lake and enjoy it. The issue was reviewed by the Environmental Services Commission, the Council identified the rates, and the rates were published in the newspaper. That triggered an outcry from residents who argued against being levied fees for a lake that had been private and inaccessible to them for 30 years. The assessment was subsequently reevaluated, and the Council directed the committee to send around a petition showing sufficient support for the lake management district. At the time the lake quality was looking better. An aerator was in operation, though there were conflicting reports from experts about its efficiency. The committee ultimately concluded operation of the aerator should be discontinued, and voted not to go forward with the formation of a lake management district. The funds that had been set aside by the Council for the petition drive were used to conduct a one-time maintenance on the outlet channel. The decision was made to manage the lake for aesthetics only, which is why the lake water quality goals are based on phosphorous.

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Since the decision not to go forward with a lake management district, the city has continued to monitor, operate and maintain the improvements put in using the grant dollars. The city's official position continues to be that any additional activities relative to lake management will need to be done through the formation of a lake management district.

Ms. Varner said as a result of issues raised during the Shoreline Master Program update process, Utilities staff have agreed to meet with the Phantom Lake homeowners to determine if there is interest in restarting the conversation about forming a lake management district.

With regard to the outlet channel, Ms. Varner said the one-time cleaning done by the city removed sediment from it, and the action made a difference in terms of lowering the lake level to some degree.

Commissioner Ferris suggested that Phantom Lake, while small, is symbolic of the bigger issues being dealt with as part of the Shoreline Master Program update. The charge given to the Commission is to deal with the area 200 feet landward from the shoreline. The quality of the water is impacted to a large degree by the entire basin that feeds the lake, which is a much bigger problem. The Commission could look at applying regulations affecting the property owners along the edge of the lake as a way of improving the ecological functions, but that solution may not in fact yield the desired results given the bigger picture. In the case of Phantom Lake, the only way to get to the heart of the issue will be through the creation of a lake management district. The Commission could include in its transmittal to the Council a statement to the effect that some issues remain unresolved given that they fall outside the jurisdiction of the Commission relative to the Shoreline Master Program update, and that the Council should address them.

Chair Sheffels asked Ms. Varner to keep the Commission updated with regard to the talks between Utilities staff and the Phantom Lake property owners.

Chair Sheffels opened the floor to comments from the public regarding Phantom Lake.

Mr. Merwin Hanniburg, 16114 SE 24th Street, said his property lies on the south shore of Phantom Lake. He said the first 100 feet of his property from the lakeshore landward is almost completely level and only a small amount higher in elevation than the lake itself. Nearly 20 years ago in talks with the city it was noted that the property would flood should the lake level rise. At the time the city indicated the lake was going to be maintained at a level below the level of the property. The property does flood occasionally as a result of large storm events, which is to be expected. However, initially flood waters receded rather quickly, whereas now the property is under water for most of the winter months, as is the dock. It was necessary to raise the area in front of the dock to make it accessible. Many years ago the city installed a weir on the lake which worked well to keep the lake at a higher level during the summer months. That also helped to keep the water quality higher. The weir apparently has caused the lake outflow to slow, resulting in a buildup of sediment in the outlet. That problem should be addressed in that it affects every property around the lake. If the FEMA flood level is increased, properties around the lake will be impacted by having to obtain expensive flood insurance. If the city requires a natural area along the lakeshore, it will be necessary to define what plants are natural and what plants are not, and that could be problematic.

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Commissioner Lai asked Mr. Hanniburg about the degree to which his property is under water during the winter months. The response given was that the water level often increases by as much as eight inches.

Mr. Bill Rahr, 16509 SE 18th Street, said he has lived on his Phantom Lake lakefront property since the mid 50s. He noted that after 1961 the city took over the Fish and Game property and had to comply with the judge's order to control invitees onto the lake. The city met with the lake property owners and in about 1985 developed a plan to manage the invitees onto the lake. Of greater concern is the identified FEMA flood plain and its questionable showing on the maps. King County uses the old standard; the newer maps show the lake level raised by some three and a half feet. What is not known is whether or not FEMA has doctored its plan and restructured it to the shoreline of Phantom Lake with geophysical elevations from very early surveys. The only way to accurately show the flood plain is through the use of GPS technology matched to either the NGVD29 or the NAVD88. Doing that work would result in a lessening of the legal ramifications associated with the FEMA flood plain. Beyond that, however, in the plan to restore the lake, the lake level was set so that it would not flood 156th Avenue SE. That plan has been successful in that the street has not flooded since, but the lake level was allowed to rise

rather than to drain out to Larson Lake, which is four feet eight inches lower than Phantom Lake. The effort to keep the street from flooding has resulted in the raising of the level of Phantom Lake and a change to the associated flood plain. The work being done on the Shoreline Master Program is worrisome. There is some confusion with regard to exactly what the ordinary high water mark is; where that line is drawn is of prime concern to all property owners along the Phantom Lake shoreline because it defines where the 200-foot setback starts.

Ms. Cheryl Everty, 1845 164th Avenue SE, said her property is on the east side of the lake and her home is some 80 feet from the lake. She said she has lived on the property since 1966 when the lake level was much lower. The lake has deteriorated over the years; the crappie and the catfish are gone, as are the tadpoles. In past years, when the lake level rose too high, property owners were permitted to go clean out the outflow to lower the lake level, but actions have been taken since by the city to keep the water in the lake. She said at one point the water got so high at least two feet of her property was under water. During a large storm event, the water came within ten feet of the house. A very large tree growing close to the old shoreline fell over because its roots were waterlogged.

Ms. Alfie Rahr, 16509 SE 18th Street, said in the 60s when she and her husband moved to the lake it had a very viable fishery. She said her property has the inlet to Phantom Lake that drains the 150-acre paved-over business district. The original grass swale was sufficient to handle the small amount of water it carried into the lake. It has all been rechanneled and the flow into the lake reaches as high as 42 cubic feet per minute, all coming from a source that is not clean. Construction of the business park in the 1980s had an immediate impact on Phantom Lake in the form of algae blooms and the like. The study done in 1971 was done by a student who sampled the water over a period of three months. His report failed to mention high phosphorous pollution readings on the south end of the lake, and e-coli resulting from a sewer lift station that every so often failed, allowing sewage to spill into the lake. She said her 200-feet of waterfront has been developed as a habitat for wildlife, and it has been open to the public many times for people to come and learn from. The increased water level, however, is ruining everything. Old and well-established trees of every sort are dying. A solution must be found because things cannot go on as they are. The lake now serves as little more than the detention pond for the I-90 business park.

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Mr. Allen Aluff, 1426 163rd Place SE, said his property is on the south end of Phantom Lake. He recommended slowing down the process so all of the details can be fully explained and understood. A lake management district is probably not what is needed. What is really needed is better maintenance and removal of the weir so the water level can drop. All of the setbacks are determined by the level of the water in the lake. The I-90 business park clearly has harmed the lake and increased the water level, but the city says it cannot go back and ask them to fix the problem given that they met all applicable standards in place at the time of development. The lake property owners must therefore shoulder the problem. More development is being considered for the commercial area, yet the city does nothing to maintain the outlet so that the water level will not continue to rise. To put an assessment on the property owners to make up for a lack of attention to detail by the city would be inappropriate. The high water level is killing trees all along the shoreline. The water level readings for December 2009 were high because of a beaver dam; the documents do not show anomalies of that sort.

Mr. Brian Parks, 16011 SE 16th Street, said the Shoreline Master Program-relevant aspects of the Utilities presentation was all included in his previous reports to the Commission. He said both Lake Sammamish and Phantom Lake have outlet weirs, and Lake Washington has locks. None of them are naturally occurring; they are lake management efforts. It does not require an engineering degree to know that impeding outlet flow with a restriction will increase

sedimentation buildup and require routine maintenance. Absent that maintenance, a new equilibrium will gradually be established. By cross referencing the different datum methods, it can be seen that the previous high water levels are now the average lake levels. Olympia has established the Shoreline Management Act rules that everyone must play by. Their rules include basing decisions on the best available science, and on enhancement measures and baselines established in 1971. The staff argues that the city cannot help with the Phantom Lake outlet maintenance or beaver dams because the property and lake is privately owned. Utilities staff suggests that a lake management district is needed; that will result in more tax dollars from the property owners and will give more management power to the city, all in the face of many unfulfilled promises over the years. The homes and yards of the lakefront property owners are private, yet anyone can apparently come to Phantom Lake and put in a boat or swim in the water, or fish from the shoreline of any property owner without the government seeing any problem. The Bellevue utility bills received by the property owners say that storm and surface water services include flood control and management of stream and lakes. The city regulates what the property owners can do. The fact is the Phantom Lake property owners face stricter proposed regulations than the property owners on either Lake Washington or Lake Sammamish. Phantom Lake property owners collectively pay the taxes on 64 acres of submerged lands for years; the city gets a portion of that amount and supposedly uses some of it for flood control, but not for Phantom Lake residents. The city owns more than 25 percent of the shoreline lot acreage and more than 20 percent of the linear shoreline; that does not make it sound like Phantom Lake is a private lake. The Shoreline Master Program is supposed to be based on the 1971 conditions, yet in 1984 the city doubled the inlet culvert capacity, and in 1985 a weir was installed at the lake's original western outlet. In about 1990 another cement weir was placed in the main eastern drainage ditch, which is unofficially referred to as Phantom Creek. About half of the outlet ditch to Weowna Park is not even owned by Phantom Lake residents. A little sediment removal every other year and the occasional removal of a beaver dam would be reasonable for the city to carry out. The ordinary high water mark should be based on the lake level with the outlet cleaned and fully operational. Income from the utility billings should pay for the maintenance work. Most of the money spent on improving conditions in the lake went toward keeping 156th Avenue SE from flooding; that work and the installation of the weirs has brought about the increased lake level problems. Those actions should be mitigated by the city. Part of the problem appears to be that the upper half of the eastern main outlet ravine is called a private ditch and classified as drainage and is not mapped as part of the shoreline overlay district, while the lower half called Phantom Creek is classified as a Class F stream and a salmonid creek. The city cannot have it both ways. The Commission should include in the Shoreline Master Program a call for the removal of the weirs, regular outlet maintenance, and establishment of the ordinary high water mark at 257 NGVD29, which is 260.6 NAVD88.

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Chair Sheffels asked if the weirs are adjustable. Mr. Parks said the gate has been removed from the cement weir, leaving a blockage with a notch out of it. The other weir is only an earthen berm.

Ms. Jill Moore, 16604 SE 17th Place, said her home is on Phantom Creek, which is the outflow for Phantom Lake. She said the city made a mistake in putting a berm on the other side of the lake and not letting the water out. The lake has steadily been increasing in depth, resulting in the loss of property. She said she would gladly give her permission for the city to come and take out the cement weir. That will help keep the lake at the right level. The increasing water level is killing trees along the shoreline. There is a large cedar tree that is showing signs of ill health; if it falls, it will block the creek and thus the outflow to Phantom Lake. The city must listen and do something to help the Phantom Lake property owners. The culvert on SE 17th Place is too small to accommodate the outflow of the lake; it needs to be increased in size.

Chair Sheffels allowed 40 minutes for a presentation by representatives of Washington Sensible Shorelines Association regarding the Shoreline Master Program update process.

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said the fact that the Commission would be taking off the month of August would leave only a short timeline in the fall of the year to wrap things up. The draft code is very vague, and the Washington Sensible Shorelines Association members recently spent more than 100 hours focused on it and conducting analysis of high water situations. He said the group would provide a formal response to the draft document at the next Commission meeting.

Ms. Jill Wagner, 2236 West Lake Sammamish Parkway SE, said the Shoreline Master Program should result in a program that is clear, concise, effective, consistent and equitable. In addition, it should be compliant with the Shoreline Management Act and the Washington Administrative Code guidelines. It should recognize that shorelines are not critical areas simply because they are shorelines. The Shoreline Master Program should protect existing development and private property rights, be founded on lake-specific peer-reviewed science, and recognize that Bellevue's lake shorelines are essentially fully developed. The Shoreline Master Program should recognize that Bellevue's shoreline acreage is only a small proportion of the watershed and thus contributes but a small proportion of the impacts to the lakes. The document should address non-shoreline upland impacts to the lakes and insist that the impacts not be treated in an isolated or token fashion. The document should not disproportionately penalize a minority of residents; it should offer incentives and education to broaden the reach of the program. The Shoreline Master Program should assure that the city will be held to the same standards and requirements as all residents.

Mr. Mike Lunenschloss, 2242 West Lake Sammamish Parkway SE, addressed the issue of protecting existing properties. He observed that a tremendous investment has been made by the lakeshore property owners. The investments must be protected by allowing homeowners to maintain their properties. The Shoreline Master Program should allow for the normal maintenance and repair exemptions set forth in state regulations. The current city code limits the maintenance and repair exemption for nonconforming development, shoreline stabilization and moorage. The limitations are not justified. State regulations recognize that replacement may be a common method of maintenance and repair; the city needs to strengthen protections to allow property owners to maintain and repair their structures under broad circumstances without imposing obstacles. The principle of protecting existing property should extend to piers, docks, bulkheads and appurtenant structures. The fact that a disabled shoreline resident of Bellevue has had to spend three years and thousands of dollars to get a permit to allow disabled access on his own dock is an absolute disgrace. Protections should also apply on a larger scale to elements unique to the city's character. Nonresidential properties such as Vasa Park, Bellefield Office Park and Meydenbauer Bay are all part of the character and should be maintained and protected. Vasa Park has provided recreational opportunities for 85 years, and they have paid taxes all along. Single family residences are exempt under the Shoreline Management Act, and expansions of such residences are also exempt. No additional permitting requirements should be imposed beyond normal building permits. The city's code currently contains severe limitations on even minor expansions of existing residences within 50 feet of the ordinary high water mark, even though a substantial number of homes have been legally constructed within that area and the homeowners have a reasonable expectation of expansion options. Private property rights are threatened if the Shoreline Master Program contains any language that labels existing structures as nonconforming. Any code provisions creating nonconforming developments must be avoided. The goal must be to make it clear that all existing buildings, properties, features and developments will not be declared nonconforming.

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Dr. Nizlek suggested that the shoreline designations represent a positive step in the direction of consistent regulations. However, each designation should have its own applicable code to make it readable and understandable. With regard to no net loss of ecological functions, he said mitigation should be for actual harm, not for some conjectural hypothesis; the code should not impose restoration and enhancement. Where the line is drawn for the ordinary high water mark is of prime concern to waterfront property owners. Any arbitrary shifting of the line is not appropriate. The datum for Lake Sammamish was established in the 1970s by the Corps of Engineers. Since then, the level of the lake has been allowed to move arbitrarily, not naturally, to a higher state, and that is not appropriate.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said changes are needed to the current provisions that will exempt the maintenance and repair of existing docks. It is far too cumbersome to go through the required process to make small changes to a dock. The Army Corps of Engineers already has the last word. Embedding language into the Bellevue code that only duplicates other jurisdictions makes no sense and will only create more problems. The city should not seek to take steps that go beyond what the National Marine Fisheries Service requires. Establishing the size and the configuration of piers and docks should be done by the Corps of Engineers based on localized conditions. With regard to bulkheads, he said by definition they are located at or below the ordinary high water mark. The structures serve multiple purposes but primarily serve to protect existing shoreline development. The current code is written to allow the department director to make decisions on a case-by-case basis as to whether or not a bulkhead should be removed. There are no prescriptive guidelines in the code. Upland abutments, including rockeries, that lie above the ordinary high water mark are not bulkheads or armoring; they are often constructed for aesthetic purposes only. If lake levels are allowed to rise over time, however, such structures could become confused with bulkheads; regulations that will keep that from happening will be very important. Vegetation buffers and conservation areas should be eliminated altogether. The state does not mandate them, and none of the scientific information brought before the Commission to date even applies to the local lakes. The setback should be established at 25 feet, which is where it has been for many years without negatively affecting the salmon runs. The salmon run when the lakes are at their lowest level, so any buffer put in will have no impact in any case. During the winter months when the water level is at its highest, the Bellevue shoreline of Lake Sammamish takes the brunt of the storms; anything planted close to the shoreline will only be wiped out before it can grow to maturity. Bellevue's lake shorelines are mostly fully developed, so imposing buffer zones will have little effect. Native growth requirements within 200 feet of the shoreline will also serve no useful purpose.

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Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway, said most citizens and taxpayers strive to assure that all adopted programs have a net benefit and are equitable. The science upon which the current regulations were adopted lacked peer review, was often misquoted, or had conclusions completely reversed. No methodologies have been established to measure the specific objectives of the Shoreline Master Program. Given the relatively small portion of the watershed that Bellevue shorelines represent, it is imperative that equity exist within the program. A systematic equitable approach must consider all impacts, not just shoreline impacts. There is a need for a task force to deal with lake and basin issues. Local residents know the shorelines intimately; the city staff do not. Early and regular involvement of Bellevue residents will avoid protracted and costly outcomes. The city should play a partnership role along with residents to achieve program goals and administer the program. The city cannot exempt itself from the requirements it imposes on its residents. The city should not consider a program comparable to the transfer of development rights, allowing for the barter or exchange of ecological function. Such programs are administratively complex, litigation prone, and fraught with abuse and misuse. Where ecological functions exist, the Shoreline Management Act calls for their protection, not for trading them away to an alternate location.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, noted that the staff memo included a background statement indicating that prior to 2006 the city's Shoreline Master Program included provisions for a 25-foot structure setback on all properties, and required all development to prepare a plan indicating methods for preserving shoreline vegetation and controlling erosion during and following construction. The memo also goes into why setbacks are necessary, stating that while there is little question that systemwide watershed impacts have the greatest impact on aquatic areas, there is still benefit to protecting the interface between the land and the water at the property scale to ensure no net loss of ecological function. Regulatory setbacks provide the best means to provide maintenance of the crucial connection between land and shore, and the habitat and water quality benefits that result. Moreover, setbacks buffer aquatic areas from the impacts associated with increased intensity of development. The Washington Sensible Shorelines Association believes that the health and condition of watersheds from the Cascades to Puget Sound has the greatest impact on function of lower aquatic areas. The city has not presented peer-reviewed science that identifies the need for an increase in private property setbacks separating land and water at the property scale. WSSA's proposed setbacks are sufficient to provide maintenance of the important connection between land and shore. Moreover, increasing intensity of development is not due to residential uses, but rather to the city's desire to expand commercial uses to the shoreline as the residential shorelines of Bellevue are fully developed.

In the staff memo, it is stated that setbacks are intended to protect the existing shoreline processes and functions, including shoreline habitat. WSSA holds that scientific evidence has not supported the validity of that presumption. Setbacks also serve to avoid damage from runoff and erosion, but most erosion damage comes from the water side of the high water mark, and most flooding is due to lack of property management of waterways and water levels. Staff says setbacks prevent excess nutrients from flowing into surface water, but studies of the nutrient runoff have not shown that a larger vegetative zone decreases the amount of nutrients flowing into the water; they likely add to the amount of nutrient runoff via plant decay. Staff holds that setbacks reduce inputs of pollutants found in oils, pesticides, herbicides and fertilizers, but the fact is the majority of pollution runoff is from city streets and upland locations. According to staff, setbacks constrain inputs of trace metals and foreign chemicals, but pollution flows into the lakes from city streets and upland locations. Setbacks supposedly ensure that new development will be adequately sited to avoid or minimize the need for shoreline stabilization, but property owners should be able to protect their properties from wind, water and wave-induced erosion, factors that have nothing to do with structure placement. Staff has stated that setbacks will preserve and enhance views of the water, but no property owner has a right to views crossing adjacent property lines. Preventing the permanent preclusion of restoration of shoreline functions and habitat with the overall goal of achieving new state requirements for no net loss is another reason cited by staff in favor of setbacks, but the city definition of restoration is not a reality, and the proposed policies and regulations exceed the goal of no net loss. Finally, staff has said that setbacks are needed to maintain the existing character and scenic quality of Bellevue's shoreline, but that goal can be attained by utilizing a 25-foot setback.

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Ms. Laurie Lyford, address not given, provided the Commissioners with copies of the matrix with a column added titled the citizens' option.

Ms. Skoog-Neil said WSSA was recommending a 25-foot setback, and a prudent vegetation management approach.

Mr. Charlie Klinge, 11100 NE 8th Street, pointed out that staff as repeatedly said the bigger watershed issues cannot be addressed under the scope of the Shoreline Master Program update.

That is not, however, correct. Managing the weirs on Phantom Lake and addressing stormwater runoff into the lakes is totally within the purview of the city. He pointed out that the paper he wrote and provided to the Commission at an earlier meeting contained a number of quotes from the shoreline guidelines. WAC 173.26.186.4 states that the planning policies of master programs, as distinguished from the development regulations of master programs, may be achieved by a number of means, only one of which is the regulation of development. Other means, as authorized by RCW 98.58.240 include, but are not limited to, the acquisition of lands and easements within shorelines of the state by purchase, lease or gift, either alone or in concert with other local governments, and accepting grants, contributions and appropriations from any public agency or private individual. Additionally, other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects, and incentive programs. Clearly, watershed planning is part of the Shoreline Master Program. The policy goals of the Act, implemented by the planning policies and master programs, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations. Master program elements regarding restoration should make real and meaningful use of established or funded non-regulatory policies and programs that contribute to restoration of ecological functions.

The overall purpose of the Shoreline Master Program is to create a program that protects shoreline resources, the salmon, and makes sure the lakes stay clean for the fish and for recreational purposes. If that is the goal, then a holistic viewpoint needs to be adopted. The narrow effort to regulate private property owners is not the right purpose, especially if the regulations have no measurable effect on salmon protection. With regard to the Meydenbauer Bay Park planning effort, the intention appears to be to remove the bulkhead and create a more natural shoreline while improving the stream and access to the public. The same focus should be an important aspect of the master program. The Commission should put everything necessary into the program; if the Council later decides not to do this or that, that will be their prerogative.

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Mr. Klinge said the WAC guidelines are clear in stating that vegetation conservation standards do not apply retroactively to existing uses and standards. That remains a major concern for the WSSA. It is not enough to say if nothing is changed on a property then the rules will not come into play. The fact is people are always making changes. Landscaping wears out and needs to be renovated, and people want to improve or expand their docks, their decks and their houses. It is not right to declare a problem that does not exist and then demand favors from people in exchange for permission to do something. The real biological resources being impacted must be identified; once that is done, then work can progress toward mitigating the problem. Major renovations to large shoreline areas as part of a park project may be far more effective than incremental actions required of property owners in order to expand a dock.

Dr. Nizlek thanked the Commission for the time in which to make the presentation.

Commissioner Lai said he generally agreed with the notion espoused by the WSSA to take a holistic approach rather than a property-by-property basis. He sought and gained clarification from Dr. Nizlek that the Option C position brought forward by WSSA is the organization's position for how to move forward if the focus is to be on the shoreline areas only.

Commissioner Himebaugh voiced concern about the published timeline that includes a public hearing in November. The Commission is still dealing with some large and important questions about overall direction and it may be necessary to reconsider the schedule.

Chair Sheffels answered that the timeline is not set in stone and can be revised as necessary. The

state legislature has extended the deadline. The timeline is necessary, however, for keeping the process on track, though things should not be rushed. The Commission should take all the time it needs to carefully consider every point.

Environmental Planning Manager Michael Paine said the sticking point is that a Commission-recommended program must be submitted to the Department of Ecology in December. If that deadline is missed, the remaining portion of the grant money will be lost.

Commissioner Turner stressed the importance of taking the broader view relative to how to produce the Shoreline Master Program, and that may require taking more time. He asked if it would be possible to submit to the state a draft of the program in December, leaving time to look at the entire watershed in an effort to do things right and actually accomplish the goals. There should be no rush to adopt a plan that looks like some other jurisdiction's plan. Before any planning decision is made, all of the questions and concerns brought forward by the public should be fully addressed.

Commissioner Hamlin said he was comfortable with the published timeline. He agreed that there are goals to be met and suggested that there is adequate time in which to have the discussions. The Commission should avoid getting distracted from what is supposed to be achieved; it will not be possible to solve issues by widening the scope beyond the original Shoreline Master Program boundaries.

Commissioner Lai concurred. He suggested it was too early to be able to say whether or not the timeline is realistic. The Commission is committed to working through the steps to address the stated goals, and more will be known as the study progresses. He allowed that if at some point the Commission concludes the timeline will not work, it should be revised to avoid making hasty decisions without having in hand all of the necessary data.

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Mr. Paine said staff is concerned about the timeline, and pointed out that it may be necessary for the Commission to hold meetings weekly once the draft is revised. That may be the only way to bring the draft into a cohesive document that the Commission can in good conscience send forward to the state. There are still some major issues yet to work through first.

Mr. Paine stressed the importance of having community members participate with Utilities staff regarding Phantom Lake. They are going to review their policies to date, and they will explore the notion that the channel is the offending element. Those who elect not to work together with staff and then later choose to go to the Council with ideas for what should be done will likely find the Council less receptive.

Commissioner Ferris commented that from the presentation made by the public it does appear that Phantom Lake is directed impacted by the overall drainage of the basin it is in. Every lake is impacted in the same way, but the problem in Phantom Lake appears to be exacerbated by the fact that it has a much smaller basin feeding it, it is a small lake, it has a relatively shallow depth, and it has a slower flushing rate. The business park was constructed under much less restrictive water runoff requirements, but until that issue is addressed the lake is going to continue to suffer. Mr. Paine said there is no question about the right of the Commission to make recommendations to the Council about policies to address the situation, but the Commission must also continue to focus on the goals of the Shoreline Master Program specific to the lake, not the wider watershed.

Commissioner Hamlin concurred with the comments made by Commissioner Ferris. He said the entire Phantom Lake basin is disturbing. Cleary the development that has gone on within it has impacted the lake. The city does not have a good handle on that system. The recommendation

of the Commission to the Council should include suggestions for how to address the overall problem. Mr. Paine pointed out that it is not just the business park that is contributing runoff to the lake; none of the residential structures in the basin have detention systems. A great deal of retrofitting will be required before the overall basin sees a reduced level of input into the lake.

Commissioner Himebaugh suggested that if the Commission agrees to consider options that are outside the universe of what has been looked at so far, and if the impact of development in the Phantom Lake basin is to be addressed, the idea of improving the lake's outflow should be on the table for inclusion in the Shoreline Master Program. Chair Sheffels allowed that there will likely be some recommendations come out of the meeting with staff and the property owners. The Commission will certainly want to be kept abreast of them.

Chair Sheffels made it clear that staff is more than willing to meet with the public for any amount of time to discuss the issues. She said if a member of the public has a disagreement with a particular staff member, they should seek out another. Often details can be worked out more easily on a one-on-one basis.

There was consensus to move Public Comment ahead of Other Business on the agenda.

10. PUBLIC COMMENT

Ms. Anita Skoog-Neil, 9203 SE Shoreland Drive, provided the Commission with materials regarding the Meydenbauer Bay park plan. She said she wanted the Commissioners to have the information well ahead of when the topic is to be discussed. The information came from the Meydenbauer Bay Neighborhood Association in an attempt to highlight issues and positions in order to reach a favorable solution to proposed Shoreline Master Program environmental concerns for Meydenbauer Bay park. The information was specific to areas that need to be addressed in the draft Shoreline Master Program. There are policy and regulations in the draft document that are not acceptable. It is evident that the issues cannot be resolved in the tentative timeframe that has been allotted; the proposed schedule is unrealistic and needs revision. There appears to be an assumption by staff that there is a general consensus on the draft policies and regulations, but that assumption is not valid. The public and the Commission are far apart on some issues and need clarification on others. A draft rewrite of the shoreline residential designation is close to completion and will be delivered to the Commission and staff soon. The designations need to be clarified and in some cases renamed. Water dependent uses should be the focus of the park. There are still concerns related to property rights, critical areas, shoreline setbacks, vegetative conservation and restoration, shoreline stabilization, shoreline modification, marina uses, transportation issues, public access, utilities and dredging, public land financing, and special programs such as the transfer of development rights. The Shoreline Master Program speaks of the city acquiring areas sensitive to urbanization, which is exactly what has been done with the acquisition of the Meydenbauer Bay park land over the years. The city is currently in a unique position of being a leader on the issue of environmental stewardship relative to its anticipated development of Meydenbauer Bay park. The bay itself is exceptional in that it has wildlife reminiscent of rural locations but is blocks away from a vibrant city. There is a lot of work to be done.

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Mr. Brian Parks, 16011 SE 16th Street, stated that the last Phantom Lake-specific meeting notes have never been made available. He said his comments and papers have all been Shoreline Master Program-relative. Phantom Lake residents have never asked for a lake management district, nor is there a real need to form one. All of the real needs appear to be Shoreline Master Program-related. The shoreline overlay district includes the land between Phantom Lake and Larson Lake, even though Phantom Lake does not drain out that way, so it seems odd that the

shoreline overlay district will not include the main outlet to Phantom Lake. Including it could help solve some of the issues related to sedimentation buildup. There have been no changes in home development around Phantom Lake since the early 1970s. Forty-five percent of the residents are retirement age or older. The main changes that have affected the lake are the outlet weir, development of the I-90 business park, and development of the berm. Accordingly, there is nothing the homeowners need to mitigate.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, made available to the Commissioners copies of the March 24 meeting. He added that any additional supporting information that might be needed will gladly be provided.

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, said Phantom Lake has major issues that must be addressed. He shared some photos of damage on the shores of Lake Sammamish caused by high winds and waves. In the areas where the slope into the lake is small, a one-foot rise in the lake can result in a five- to ten-foot encroachment landward; the encroachment is even more dramatic on Phantom Lake. On one property where the city required the removal of a bulkhead, the upland property was lost as a consequence. The weir in the Sammamish River Slough is overgrown with vegetation and sediment has made is shallower; work is under way to get that problem corrected. Over the past decade, the outflow capacity has diminished by some 40 percent.

8. OTHER BUSINESS

A. Election of Officers

Motion to nominate Commissioner Ferris to serve as Chair was made by Commissioner Lai and was seconded by Commissioner Mathews.

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There were no other nominations.

The motion carried unanimously.

Motion to nominate Commissioner Lai to serve as Vice-Chair was made by Commissioner Hamlin and was seconded by Commissioner Turner.

There were no other nominations.

The motion carried unanimously.

9. APPROVAL OF MINUTES

A. May 12, 2010

Commissioner Himebaugh referred to the first paragraph on page 8 and noted that "…public hearing has only one outlet… should read "…Phantom Lake has only one outlet…."

Commissioner Himebaugh called attention to the third paragraph on page 11 and noted that the phrase "…the March 26 by the public brought forward…" should read "..the March 24 presentation by the public brought forward…."

Motion to approve the minutes as amended was made by Commissioner Ferris. Second was by Commissioner Hamlin and the motion carried without dissent; Commissioner Mathews abstained

from voting.

B. May 26, 2010

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

11. NEXT PLANNING COMMISSION MEETING

A. July 20, 2010 – Annual Retreat

Chair Sheffels reminded the Commissioners that the retreat would be held on a Tuesday rather than a Wednesday. She said it would begin with a display of electric cars at 5:00 p.m. The retreat will be held at the Microsoft building across the street from City Hall.

B. July 28, 2010

12. ADJOURNMENT

Chair Sheffels adjourned the meeting at 9:51 p.m.

_____ _____
Paul Inghram Date
Staff to the Planning Commission

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_____ _____
Hal Ferris Date
Chair of the Planning Commission