CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

September 22, 2010 Bellevue City Hall
6:30 p.m. City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Himebaugh, Lai

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development, 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 6:34 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 Himebaugh 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 said the thoughts of the staff and Commission were all with Councilmember Chelminiak as he recovers from being attacked by a bear. He said he had no details with regard to how long his recovery will take.

7. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

A. Shoreline Master Program Update

Environmental Planning Manager Michael Paine said everything is geared toward moving in the direction of a revised draft of the update. He said staff has spent a lot of time replying to direct questions but pointed out that the staff reply to the myriad of questions asked by the public will be in the revised draft. It will be the job of the Planning Commission to work through all of the

issues, weigh the comments and policy considerations, and revise the language where deemed necessary. Staff has come to the conclusion that there are entirely too many policies in the original draft, and agrees that must be corrected.

Mr. Paine said he recently made a site visit to Phantom Lake. He shared with the Commission some photos he took, beginning with the weir structure that has often been referenced. He noted that it has slotted metal brackets into which boards can be inserted to stop the outward flow of the water, which is done to control the summer lake level. From a technical standpoint, increasing the water level during the summer months increases a back pressure that keeps water from the wetlands from coming into the lake, therefore eliminating some of the phosphorous input. He noted that much has been said about sediment accumulation, but he said there is no appreciable difference between sediment on one side and sediment on the other. He said his personal conclusion, which is not necessarily the official position of the city, is that the weir is not the problem. By the second week of September, the water level had not even reached the weir, and water will not flow out though the weir until the water level is high enough.

The Commissioners were shown pictures of the channel into which rocks had fallen and in which blackberry bushes were growing. He noted that the channel sides are overly steep, thus a lot of sediment pours in from the uncontrolled drainages of the adjacent residences. There has been some erosion and sediment has accumulated. The channel is also being used in a variety of ways, including for growing vegetables.

One of the problems is that a major culvert passing under a private road is a third to half full of sediment. Because the road is private, maintenance is not a city responsibility. The sediment is evident all the way through the culvert, not just at its mouth.

The Utilities department staff are aware of the situation and are working toward a solution with the community.

Senior Planner David Pyle said staff scheduled and conducted a number of meetings with various groups to discuss issues in the Shoreline Master Program update. On the topic of critical areas and vegetation conservation, staff met with the Washington Sensible Shorelines Association. Staff also talked with the Newport Shores marina about the general project status, and discussed the marinas issue with the Newport Shores marina, the Newport Yacht Basin, the Meydenbauer Yacht Club, and with city parks staff. The meetings were all intended to be informative, not negotiations.

Mr. Pyle said staff have been focused on how the marinas, critical areas and vegetation conservation topic areas fit together, and how the proposed working draft policies fit under the umbrella of the WAC guidelines. To date staff has presented the Commission with background information relative to the guidelines, the policies developed based on the guidelines, and the regulatory concepts that could be used to implement the policies. The guidelines, the policies and the regulatory language ideally will all work together in concert.

The city's marina areas are the Newport Yacht basin, the Newport Shores Marina, the SE 40th boat launch, and the Meydenbauer Bay marina. The marina uses are the most intense of all the shoreline uses. They are characterized by heavily modified shorelines, including overwater coverage, and higher levels of activity. Under the guidelines, marinas can be identified with an alternative classification. Staff believes, however, that the marina classification, as opposed to a high intensity classification, will allow for addressing the issues associated with an intensified use while still preserving the less intense character of Bellevue's shorelines and marinas.

Mr. Paine said the uses associated with marinas has proven to be a very intense topic, not only for the community but among city staff in various departments. Parks has one vision, planning may have another, and utilities yet another. He said that topic will be discussed at a future meeting. One option going forward would be not to adopt a special designation for all of the various uses associated with marinas. Another option would be to retain the bifurcated structure that separates civic and marina. That issue will need to be resolved before it will be possible to speak with authority about the uses issue.

Chair Ferris said it was his understanding that the Commission will continue to deal with issues such as shoreline stabilization, setbacks, and piers and docks, and that the Commission will not be charged with determining what specific uses should be allowed or disallowed within a marina designation. No language should be included that would allow a use not currently allowed within the existing marina designation. Mr. Paine said that is not quite correct. The environment designations are very similar to zoning overlays. The uses that will be specified for the marina designation will serve like Land Use Code uses. For example, the question of whether or not certain commercial uses will be allowed in a marina zone will have to be addressed.

Mr. Pyle said the working draft policies, in following the high intensity guidelines, recognize certain components of a marina a water dependent. Put simply, marinas require water. The focus of the policies is on retrofitting existing facilities over the development of new facilities, especially since no new areas are identified as appropriate for new marinas. The draft regulations do contemplate how new marinas would be sited and how areas suitable for marina environment designations should be identified. The working draft policies look at compatibility for new and rebuilt marinas in terms of separation from adjacent single family uses or higher intensity uses such as a marina. The policies prefer designs that minimize impacts over trying to mitigate for impacts, and they look at the promotion of public access and use of the shoreline in intensified areas where access may be available.

Commissioner Sheffels called attention to Policy SH.58 which requires the use of translucent materials. She pointed out that many boats are fabricated from composite materials which degrade when exposed to ultraviolet rays. She suggested that some specific scientific statistics should be cited in support of the requirement. Mr. Pyle said that issue has been raised repeatedly by different marina operators. He said he had toured a number of marinas around the region, including several on Lake Washington and in the Portage Bay area. Many of the older marinas on Lake Union in Seattle have been undergoing modernization and changes in design, and as a part of that work they have been required to bring certain components up to a more modern standard; the work has included the incorporation of skylights. Many of the skylights used were manufactured to protect from ultraviolet light. Commissioner Sheffels suggested the language of the policy could be worded somewhat differently to make that point clear.

Commissioner Hamlin said he was also somewhat bothered by the language of Policy SH.58. He asked why the call for using translucent materials was included in policy language rather than in the regulations. Mr. Pyle said staff agrees that the policy language might be too specific. As the policies are revised for the next draft, the language may be translated into regulation.

The Commissioners were shown a photo of an older marina facility that was designed under a past standard and with a different objective in mind. Mr. Pyle noted that the current modern design extends out into Lake Union with a much different kind of design. The original design included wide docks and a lot of overwater coverage; the new design includes transparent panels in the roof.

The Commissioners were also shown pictures of the most recently marina construction in

Portage Bay near the University of Washington. Mr. Pyle noted that the facility took several years to obtain all the necessary permits. One of the things incorporated into the design was the removal of an existing bulkhead and the incorporation of integrated shoreline stabilization using anchored wood debris, rocks and vegetation which holds back the parking lot. A ramp is used to provide access to a floating docks; it is constructed with light penetrating materials. One photo showed how the gunwales of 60-foot boats hang over the five-foot-wide walkway; it was noted that even with the encroachment there was sufficient room to use the walkway.

Mr. Pyle shared with the Commission a simple structure for how maintenance of marina facilities might be handled. He said the objective of the draft regulatory language is no net loss and includes both a predictable and prescriptive mitigation requirement and an alternative mitigation plan option where something is not technically feasible or desirable to a marina operator. The approach is based on segments rather than an entire structure; segments could include a finger pier or a roof canopy, or any of the major elements that are structurally independent from the rest of the facility. Maintenance and repair looks at a fifty percent change to a segment, and as a mitigation requires the use of light-penetrating materials. Modification of more than fifty percent for any segment will trigger a requirement to bring that specific segment into compliance.

With regard to new and expanded marinas, Mr. Paine stressed that staff was not aware of any interest on the part of anyone to locate a new marina in Bellevue. However, if such an interest were expressed for a site outside of an existing marina, the proponent would have to go through a modification to the Shoreline Master Program in order to achieve an environment redesignation for the new site. Absent a proposal for a new marina, the policy and regulatory language is only theoretical. However, the language needs to be in place in the event that down the road someone comes forward with a request.

Mr. Pyle said the siting criteria generally look at things like the appropriateness of water depth, the presence of a stream outfall or wetland, adjacency to single family neighborhoods and separation issues, and a number of other issues. The design criteria focus on how a new marina should look and the elements to be included. The criteria are very specific and all focus on no net loss of ecological function. Over the long term, the impact new facilities will have are governed by their maintenance, thus guidelines have been developed that require a maintenance and operations plan for all new and redeveloped marina facilities. The guidelines focus on minimizing environmental impacts and must include an outline of basic best management practices as well as five- and ten-year activities.

Mr. Pyle said staff recognizes that minor expansions might be necessary; marinas may need a slip added or removed, or need some minor reconfiguring. He suggested that a ten percent expansion could be allowed provided they adhere to all siting and design criteria, but should not have to go through the full range of requirements for an expanded marina project. Expansions of more than ten percent would require the submittal of an maintenance and operations plan, and would require compliance with all applicable design and siting criteria.

Replacement and redevelopment relates to tearing down a marina and redeveloping it in the same development envelope with a similar capacity. That would require compliance with the design criteria and the submittal of a maintenance and operations plan, but it would not require compliance with the siting criteria given that it would be on the same footprint.

The new marina criteria would apply in cases where a marina is proposed for a place there has not previously been a marina. An update of the Shoreline Master Program would be required to expand the marina environment; the update would require a needs study, all siting and design

criteria would have to be followed, and a maintenance and operations plan would have to be submitted.

Mr. Pyle said one of the groups staff met with was the Meydenbauer Yacht Club. The requirements with regard to marinas were reviewed with them. The members indicated an interest in retaining the character of the club as it currently exists, and said they have no desire to expand the facilities beyond minor adjustments. The best route for technically incorporating their comments into the draft has yet to be determined, particularly with regard to collapsing or changing the structure of how the marina uses or designations are fit into the broader Shoreline Master Program draft.

Commissioner Hamlin noted that in the draft nothing is said about non-residential boating. Mr. Pyle said non-residential boating is a term that is synonymous with marina under the WAC guidelines.

Chair Ferris commented that the major topics discussed to date have all been in relation to residential designated properties. He said he was expecting to have a discussion of the same topics as they apply to marinas, but nothing in the draft relative to marinas refers to shoreline stabilization, setbacks or vegetation. Mr. Pyle said shoreline stabilization is applicable to marinas, though not to the same degree; the issue is covered in the design criteria. Mr. Paine said the general approach will be to recognize the character of the use and its intensity, which may require an entirely different approach.

Chair Ferris expressed concern and disappointment over the fact that marina uses and other issues related to marinas were not on the schedule to be discussed, and that the marina issue was not yet included on a future agenda prior to the release of the updated draft. Mr. Pyle said none of the marinas that exist in the city currently would be subject to any additional process with regard to use, provided they do not seek a change or intensify in any way. To add a use not currently allowed would require the conditional use permit process. Mr. Paine said the list of allowed uses must still be worked out with parks and other departments before it is brought back to the Commission for discussion; he stressed that the issue will be on a future Commission agenda.

Commissioner Turner asked what someone would have to do in order to create a new marina where one does not currently exist, especially in light of the no net loss requirement. Mr. Pyle said the regulatory language will identify the means by which someone could mitigate or abate the impacts that would result from developing a new marina. The fact that there would be impacts is obvious. The Shoreline Management Act includes objectives focused on recreational use of the shoreline and water-dependent activities. Clustered intense uses that affect a smaller shoreline area and which are managed under a strict maintenance and operations plan are easier to contain and manage than having the uses diffused and out along residential shorelines. The city has seen pressures from residential property owners to be allowed to put in larger docks to accommodate larger vessels, but it might be better for those vessels to be moored in a marina setting where there are pump-out and maintenance facilities. Mitigation for new marinas will focus on water quality issues and may include on-site or off-site wetland enhancement or restoration.

Mr. Paine said an applicant would first have to appear before the Commission and get the support of staff to modify the Shoreline Master Program by adding a new designation for the selected site.

Answering a question asked by Commissioner Turner, Mr. Pyle said there are and always have been a host of regulations and restrictions that apply to marinas. For the most part, the proposal with regard to maintenance is fairly benign.

Land Use Planner Heidi Bedwell said in general the meetings held with community groups were focused on providing them with a preview of the issues to be reviewed by the Commission. The dialog did not include alternative approaches. While the public has gained a better understanding of the intention behind some of the provisions, it cannot be said that there has been a coming together or agreement on many of the issues. Additional meetings with community groups are scheduled.

Turning to the issue of critical areas, Mr. Paine said the conversations with community groups have included discussions of the topic. He said the city's land use attorney concluded that the document should include a section that lays down the legal underpinnings related to how critical areas must be treated. He said the section does not include anything the Commission has not already seen. Staff has not decided how to incorporate critical areas into the Shoreline Management Program; it could be done by having the regulations made a part of it, or by making reference to the section of code where the regulations reside. There is still an ongoing debate about the role of critical areas, particularly in regard to Phantom Lake.

Chair Ferris noted that there had been a lot of evolution around the critical areas topic from the time the Shoreline Master Program was introduced. He said it was his recollection that the decision had been made that the shorelines were governed by critical areas, which was passed in 2006, and that the work to update the Shoreline Master Program would replace those regulations and the references to critical areas would be eliminated. Mr. Inghram said what has been talked about is no longer calling shorelines critical areas in and of themselves. Critical areas, which can be frequently flooded areas, wetlands or steep slopes, still can occur in the shoreline areas, and in those cases the critical areas regulations still will apply.

Mr. Paine explained that Bellevue's critical areas interact with other state and federal rules and complement each other. Some are more restrictive than others depending on the circumstances.

The Commissioners were shown photos of a shoreline property on Phantom Lake that is impacted by the ordinary high water mark, a wetland boundary, and the FEMA floodplain line. Mr. Paine pointed out that for that property the critical areas jurisdiction overlaps the shoreline jurisdiction. In every instance where critical areas overlap the shoreline jurisdiction, the regulations interact.

Mr. Paine pointed out that HB 1653 resolves the debate about critical areas and the shorelines. However, the critical areas legislation remains in place until the Department of Ecology adopts a new master program. When that adoption takes place, many of the procedural and substantive requirements of the Growth Management Act are eliminated, but the regulatory enforcement of the critical areas will remain. In all cases, at least equal protections must be provided sufficient to ensure no net loss. All buffers and performance standards apply, and wetlands within the shoreline jurisdiction are called associated wetlands. At a minimum, there will need to be a set of wetland regulations in the Shoreline Management Program.

The draft policies call for science-based adaptive management, predictable but flexible regulations, management of aquatic habitats, preservation of natural functions, and giving special consideration to preserving anadromous salmonids.

If the basic critical areas ordinance is used going forward, some basic procedural modifications will need to be made given that the Shoreline Management Program uses different processes and different terms. There are at least two methods by which the critical areas ordinance could be used: by referencing it in the text, and by bringing it all into the Shoreline Management Program. The latter approach would have some benefit for the public in terms of having everything in once place.

Turning to the issue of vegetation conservation, Mr. Paine said ultimately the existing native vegetation on site and the notion of having a landscape standard for new or expanded development will need to work together and will get integrated. Staff has not yet determined how that should happen.

Vegetation conservation focuses on activities that are designed to protect vegetation along or near the shorelines. That likely will mean regulating vegetation within the setback, and possibly elsewhere. The intent is to maintain or restore ecological services provided by vegetation, with restoration activities occurring either voluntarily or through a separate process. The WAC guidelines allow jurisdictions to accomplish the goal by using buffers, setbacks, the clearing and grading process, and through the conditional use process. The WAC stresses the importance of vegetation conservation because of the links between terrestrial and aquatic systems. Development can interfere with the relationship; it is known that shorelines devoid of vegetation cannot support critical habitat components.

The working draft policies address minimizing impacts, balancing conservation goals with private recreational uses, providing flexibility, allowing for ongoing maintenance, and new development triggering a landscape standard.

The current rules do not protect vegetation directly. Rather, they establish no-touch buffers. If there is vegetation in a buffer area, it gets protected and cannot be removed except by permit. The proposal is to maintain all existing native vegetation within the setback. Removal of some of the vegetation will be allowed through a process that will provide either for management of the area or mitigation. The proposal also includes retaining up to 30 percent of existing significant trees on each property; trees in critical areas can be counted against the total. Maintenance of all existing legally established landscaping would be permitted.

Answering a question asked by Commissioner Mathews, Mr. Paine suggested that trees could not be removed from a setback area without some mitigation.

Commissioner Sheffels asked if ornamental trees will count as part of the 30 percent that must be preserved. Mr. Paine said the WAC assigns a special importance to native trees, primarily because wildlife species that use them have adapted to them over time. Non-native trees, including ornamental trees, apparently do not serve the same function. The fact is, however, that a high percentage of leaf litter coming from developed sites comes from non-native ornamental trees. Commissioner Sheffels pointed out that some native trees are not in fact desirable. It would be useful to have a vegetation matrix with a combination of native and non-native vegetation that could be used in the setback areas. Mr. Paine said that could be made a part of any future landscape standard.

Chair Ferris pointed out the need to incorporate all existing tree preservation requirements to the extent that they apply in the shoreline area. Mr. Paine concurred but pointed out that most of the existing regulations are triggered by new development. The focus relative to the shorelines is on the preservation of native vegetation within the setback irrespective of new development.

With regard to the setback width, Mr. Paine commented that the Commission had previously directed staff to draft language based on 50 feet. He said the public clearly is opposed to that and indicated staff would like additional direction with regard to how to proceed. Chair Ferris suggested the Commission should hear from the public first.

B. Shoreline Master Program Update – Public Comments

Mr. Scott Hana, 9927 Meydenbauer Way SE, thanked staff for the time they spent in meeting with the Meydenbauer Bay Yacht Club. He noted that the club wants to retain its current use but is fearful that some shoreline projects may hinder the ability of the club to continue. The Meydenbauer Bay Yacht Club should be distinguished in some way from the Newport Yacht Basin, which has fueling facilities and the like. He read into the record a letter from project specialist Jerry Laken in which it was noted that the Meydenbauer Bay Yacht Club has a variety of water-oriented uses and prize access to affiliated boating clubs. The facility includes boat moorage, a pump-out station, restrooms for guests, and the Mercer Island police patrol. The marina has considerable oil spill equipment, first aid equipment, and fire equipment, which all of the members know how to use. The club hosts educational, cultural and charity events. The sailing school is open to the public. The club works with the city, state and federal programs to keep the east end of the bay free of noxious weeds, and runs a litter patrol to pick up and dispose of unwanted materials. The club does not support commercial and industrial mixed use. The club wants to be allowed to continue shoreline modifications, redevelopment of docks and so on, as well as its automobile parking and maintenance. The club is concerned that manual and mechanical removal of noxious weeds is being prioritized over federal, state and county approved chemical treatments; mechanical removal is less effective and known to propagate more weeds for the following year.

Mr. Marv Peterson, 9840 SE Shoreland Drive, spoke as president of the Meydenbauer Bay Neighbors Association (MBNA). He said the MBNA was formed in 2007 because of, and has been active in, the planning for the Meydenbauer park. The Park Board has made its recommendation to the City Council based on the report from the steering committee. The original plan was for a concurrent Park Board/Planning Commission process with a joint public hearing to insure consistency, but that approach was changed and the Parks Board was given final recommendation authority. No decision on the park plan has yet been made by the City Council. The MBNA has always support development of the park and has promoted natural park features and less commercialism. The group supports restoration of the ravine as a natural habitat and replacing the bulkhead with something more natural. The group does not support the notion of including restaurants on the park site. With regard to the Shoreline Master Program, the information provided in the staff report is general in nature and Attachment 2 provides more details. It is evident that the state has in mind that marinas can be the place where lots of commercial and even industrial activity can take place, and that they are the logical place for in-water and dry dock activities. The park plan for Meydenbauer Bay does not include any such activities and seeks to make the area more environmentally friendly. The city marina is planned to be renovated but with no additional uses; it will remain a quiet marina that fits well with its surroundings. The working draft Shoreline Master Program includes a use chart for marina civic that would accommodate most commercial marina activities and other commercial uses such as hotels, restaurants, office buildings, and mixed use residential. The MBNA does not believe the staff are suggesting any of those uses as appropriate for Meydenbauer Bay. It appears that staff is being over-inclusive just in case another marina civic is proposed, though that would require a new Shoreline Master Program amendment process. The final Shoreline Master Program must be consistent with the adopted park plan and the Commission should direct staff to make the necessary changes.

Mr. Charley Klinge, 11100 NE 8th Street, spoke representing the Washington Sensible Shorelines Association (WSSA). He said WSSA agrees with staff that the lakes are not critical areas by their very nature. There are concerns with the hundred year flood area which under the critical area statute is regulated as frequently flooded areas; areas that flood only once every century are not frequently flooded areas. With regard to the vegetation conservation requirements, he said under the old system there was a real 25-foot buffer, but as proposed the buffer area is inappropriately extended to 50 feet and burdened with additional requirements, all without a solid scientific basis. The salmon are not eating insects that drop into the lake from overhanging vegetation, tree shading will have no effect on lake temperature, and large woody debris serves only as a boat hazard and shelter for predator species. The fact is the riparian shoreline of Lake Washington is highly altered from its historic state, and current and likely future land use practices preclude the possibility of the shoreline functioning as a natural shoreline to benefit salmonids. The same is true for Lake Sammamish, and Phantom Lake does not have salmonids. Staff sees a highly degraded shoreline and they want to restore it in residential areas, thus they are seeking ways to require property owners to replant and restore. The fact is a development project on a highly degraded site does not impact any ecological functions, so there is no net loss of ecological function and therefore no basis on which to require mitigation. The new vegetation conservation standard seeks to protect native vegetation, which does not apply to the typical residential shoreline property and which is a completely new approach that will be very difficult to implement.

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, referenced the email he sent to the Commission on September 21 and asked that it be considered part of the record. He noted that he had questioned the adequacy of the public input process and the fact that there has been no attempt to negotiate anything with the public in the meetings held with city staff. It is difficult to form an adequate response by Wednesday to materials released on Monday, and in any event it is difficult to get one's points across in only five minutes. What is needed are clear examples of how the regulations will apply. The 50-foot setback is not favored by the public; alternatives to the setback matrix options have been submitted, but there has been no feedback from staff. WAC 173.26.221(2) and (3) points specifically to integration of the full spectrum of planning and regulatory measures, including interlocal watershed plans, and speaks to managing flood waters in a comprehensive fashion.

Mr. Jerry Baruffy, 9263 SE Shoreland Drive, said he was happy to see some of the issues presented by staff were on the list of things the public has raised in the past but have heard nothing more about. The city's consultants have addressed multiple mitigations to supposed and/or imagined problems, but all of the mitigation requirements are set to land squarely on the shoulders of shoreline property owners while thousands of properties above the shoreline are contributing to the problems. The solutions relative to setbacks, bulkhead design and aquatic grasses are all interesting. The Commission should ask for valid proofs that the proposed solutions are scientifically viable. He said he owns a marina in Olympia that has 400 slips, 160 of which are covered. He said he likes the idea of incorporating skylights, but the problem is when boats are in the slip above which there is a skylight no light reaches the water. The cost of including skylights is prohibitive. Grated walkways allow sunlight to pass through but also allows artificial lights at night to pass through to disrupt the salmon.

Mr. Mike Lunenschloss, 2242 West Lake Sammamish Parkway SE, apologized for previously calling the Commission the destruction of hope. He said the Commission is in fact the hope of many. He said the Commissioners have and continue to serve unselfishly and with dedication. He stated that the Commissioners are smart enough to know that storms on Lake Washington will tear out required vegetation plantings. While the Commission is to be esteemed, the staff are not. They keep referring to a phone survey conducted early in the update process, but the

survey was deceitfully crafted to generate the answers desired by the staff; it was nothing but a scurrilous misrepresentation. Staff says an open house was held, but during that event they had to call in three police officers. The staff are doing everything in their power to manipulate the meetings; they are not seeking to gather information from the public. The greatest fish biologist the state has ever had has offered testimony, but only for five minutes. Instead, the staff-coached Tessa Francis was asked to share her opinions, which included throwing both old Christmas trees and leaves into the lake. Councilmember Wallace and Chair Ferris both instructed staff to include the property rights issue in the Shoreline Master Program, but nothing has been said about that topic yet. The most recent attempts by staff to lead the Commission by the nose have been the threat of the Department of Ecology withholding grant money, which has never happened, and the notion that every property must have its own ordinary high water mark. The Commission must stand in the gap and preserve the freedoms enjoyed by the entire community.

Ms. Alfy Rahr, 16509 SE 18th Street, said she continues to be amazed at how little is understood in the United States about the function of shorelines. The lake systems in Europe function in very different ways from what is proposed in the United States. In Europe the focus is on aquatic vegetation, which involves the planting of weeds and cattails that serve to buffer the shoreline and create a living space for aquatic life. Additionally, the plants have roots that go down three meters and pump oxygen into the environment. They need a matrix of a variety of screed that creates the hollow spaces that attract appropriate bacteria that in turn digest pollutants. Since the root systems are deep, they function throughout the year. Rushes and iris plants do serve to remove pollutants but only during the short growing season; they then decay and add an additional nutrient load to the shorelines. Harvesting the leaves in the fall can prevent that. Deciduous trees are not generally planted along the shorelines to avoid adding to the nutrient load of the shorelines. Meadows are planted with wildflowers to support the insect and bird communities. Much can be learned from the European approach. With regard to Phantom Lake, she explained that the weir was installed in the 1990s, primarily to keep the lake level from dropping to the point where the peat shorelines are exposed; when exposed, the peat creates a horrific smell. The original outlet pipes installed by King County now lie under several inches of soil. The city should stress which plants to avoid along the shorelines, but should also give residents a choice of plants from which to choose.

Ms. Lori Lyford, 9529 Lake Washington Boulevard NE, pointed out that according to a city published document, species of local importance are significantly recognized local populations of native species that are at risk of being lost from Bellevue. The city is creating with the design and future development of Meydenbauer park a blatant double standard with regard to wildlife and the bay. The desire to increase commerce at a community center and a large viewing platform will drive wildlife away from the near-perfect habitat. The city is allowed to relocate certain species, like osprey, while private property owners must live with highly restrictive regulations aimed at protecting habitat. The downtown Bellevue area has been exempted from the urban habitat wildlife regulations. Lakes are not critical areas, yet residents are under a continual barrage of regulation from the critical areas ordinance and species of local importance codes to do more for habitat and have fewer human disturbances. Just a few minutes out of the city to the west there is an abundance of birds, from raptors to yellow-crowned kinglets. Coyotes are not uncommon there, apparently attracted by an abundance of rabbits. A black bear was sighted in Somerset in May. The city has lots of wildlife, but it is unknown how many of the species are needed by the city in order to be complete, how many the city has, and whether an inventory will be made. The Watershed Company report on habitat is chocked full of data that is of no use in evaluating residential shorelines in Bellevue and contains erroneous statements of vague applicability to any shoreline. Under the Land Use Code, the list of species of local importance is curious; it includes no standard means of evaluating either the wildlife use or the value of the available habitat. According to the code, areas associated with species of local

importance are by definition critical areas, and they include species that live in the lakes. The more wildlife living on a particular property, the more restrictions will come into play. The Commission should seek to work with the property owners of Bellevue, not against them.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, said her property is 350 feet deep and 50 feet wide and is heavily vegetated. To get from the top of the property to the bottom requires navigating 350 steps. The primary structure is a cottage that was built in the 1930s; there is a detached garage, and a cabana that was rebuilt in the mid-1980s. The proposed vegetation plan says private recreation when bound with vegetation conservation is allowable under the Shoreline Master Program. That is like giving someone limited permission to use the property. The Planning Commission never completely agreed on the need for a 50-foot setback, so when staff says they did they are in error. She said she has a grassy area along her beachfront which was re-landscaped in the mid-1990s to include a paver patio. Under the proposed Shoreline Master Program, it would not be possible to widen the walkway that connects the steps to the dock and install a railing on it for safety. It would also not be possible to convert the current barbeque to a built-in barbeque because that would be considered a structure. The paver patio, if not already in place, would not be permitted either. If the setback were established at 25 feet, and if 40 percent of the vegetated area could be opened up, an area slightly larger than a two-car garage could potentially be used on the waterfront. The cabana is located 35 feet from the water, and just slightly back from the neighbor's single family residence, but under the proposal if it burns down it could not be rebuilt; it could be rebuilt if the setback were 25 feet. There is no other site on the property where the cabana can be located. She agreed with the need to protect the environment and the animals, but stressed that people are animals too.

Mr. Brian Parks, 16011 SE 16th Street, spoke on behalf of the Phantom Lake Homeowners Association. With regard to the SE 17th Place bottleneck culvert, he said it was built 50 years ago, does not belong to Phantom Lake residents, and is almost half filled with sediment. The utilities department says they are not going to do anything about it, thus the problem will be placed on the shoulders of the Phantom Lake property owners who are impacted by the culvert but who have no control over it. The city has not even attempted to contact the property owner on which the sediment-filled culvert is sited. The only proposal the city has made is for a lake management district, something that will not make the bottleneck culvert larger, make it public, and will not lower the level of the lake that is being used for retention purposes. No one has proposed a sustainable solution for the future. With regard to the 25-foot buffer plus the 25-foot setback that is only being proposed for Phantom Lake, he pointed out that Phantom Lake does not have a salmon issue, does not have the problem of coupling the shoreline to the uplands, and retains more vegetation along the shoreline than any other Bellevue lake. It appears, however, that the property owners will be punished by having stricter regulations imposed on them. For a variety of reasons, no one can develop their properties on the lake shore. Over time every resident will eventually have to get a permit for something, and that will trigger the Shoreline Master Program and the requirement to include a solid no-touch buffer in which willow trees will grow and block the views. The views can be retained by establishing a consistent 25-foot buffer.

Mr. Bud Norquist, 372 West Lake Sammamish Parkway NE, said earlier in the day he took his boat out and observed that the current regulations and those being proposed are very restrictive to the conditions that exist on the lakeshore. That fact was apparent to the city of Redmond which concluded that a 25-foot setback and 25-foot buffer would simply make most of the structures nonconforming. The Commission should carefully consider private property laws and avoid overstepping the bounds.

Dr. Gil Pauley, 244 West Lake Sammamish Parkway, clarified that he has not been critical of the

science in the reports the staff have been relying on but rather on the way in which the science has been interpreted. He pointed out that in the written report there is no mention of his position which is supported extensively in the scientific literature. In any scientific paper presented to a journal there is a discussion section at the end where opposing points of view are raised in an effort to support the position of the author. The lack of opposing viewpoints has deprived the Commission of alternate positions. The presence of large woody debris in the lakes promotes bass predation. The report states that large woody debris in an aquatic system serves as the primary structural element that functions as a hydraulic roughness element to moderate flows, serves a pool-forming function which provides critical salmon rearing and refuge habitat, and increases aquatic diversity and stabilization. The statement is completely true but applies to small streams, not to lakes. The statement is false when applied to lakes.

Mr. Dave Radabaugh with the state Department of Ecology noted that the department will very carefully review the vegetation conservation when it comes time to review the submitted Shoreline Master Program. The department will be looking for strong provisions focused on vegetation conservation. The staff are correct in pointing out that access to the shoreline must be provided along with vegetation conservation. During the review the department will consider whether the proposed 30-percent retention of significant trees is assessed relative to the aggregate effect over time.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway, noted that staff earlier had mentioned the term legally established landscaping without defining what that means. He thanked Commissioner Sheffels for asking about the value of native trees versus non-native trees. Too often common sense has escaped the process. With regard to bulkheads, he noted that sometimes replacement is a better option than repair, and that needs to be considered.

Mr. Rory Crispin, PO Box 40443, pointed out that the shoreline guidelines expressly state that vegetation conservation standards do not apply retroactively to existing uses and structures.

C. Shoreline Master Program Update – Commission Discussion

The Commission addressed the question of whether or not the direction taken for each topic – marinas, critical areas and vegetation conservation – was appropriate based on the project objectives and requirements as presented.

Commissioner Hamlin suggested that there is no intention on the part of staff to override the proposal for the new Meydenbauer Bay park. Mr. Paine said if a single marina district is created, a footnote could be added to say that the uses in the chart are controlled by the ultimate Meydenbauer Bay park plan. If the civic designation is kept, it could have specific uses included that reflect the Meydenbauer Bay park plan. The park plan should not, however, dictate what goes into the Shoreline Master Program. He said his personal opinion was that the park plan as articulated inappropriately includes a tower in the shoreline. Ultimately the Council will make the decision and staff will do their best to link the park plan with the Shoreline Master Program language.

Commissioner Sheffels asked how the valid concerns of the Meydenbauer Bay Yacht Club will be addressed. Mr. Pyle pointed out that the Meydenbauer Bay Yacht Club, the Newport Shores and the Newport Yacht Basin Association marina are all private marinas. Mr. Paine said the

Meydenbauer Bay Yacht Club has argued that it is unique given the facilities they have and has said it would like that uniqueness reflected in the rules.

Mr. Pyle said in the broader non-marina civic environments, there are three marinas and four property ownership interests. The Meydenbauer Bay Yacht Club is owned and operated entirely by that entity; it has a marina overwater use and a clubhouse use. The desire of that group is to narrow the range of uses to those it has historically had, and that can certainly be accommodated in the Shoreline Master Program. The Newport Shores Homeowners Association marina also has a clubhouse; it is not necessarily a part of the marina though it is integrated into the same facility. That group likely will never seek to operate a commercial use with a marina haul-out and retail businesses. The Newport Yacht Basin Association owns the bulk of the overwater facility. Intertwined into that use is the Seattle Boat marine facility that is located primarily in the upland area. That facility is the only one in the city where the widest range of possible uses might be implemented.

Commissioner Turner indicated his support for including flexibility by breaking out minor expansion from major expansion.

Chair Ferris commented that each of the marina locations has different sensitivities. There was a range of uses allowed in the marina civic designation that should be revisited at some time by the Commission. Uses occurring at each marina should at the very least be shown as permitted. To the extent there are other uses that are perceived to be more intense, they should be allowed only through the conditional use process. He concurred with Commissioner Turner with regard to including flexibility, but the issues of setbacks, bulkheads and vegetation conservation as it applies to marinas should be addressed. He pointed out that the language relative to where parking should be allowed, he suggested that the phrase "facility parking should be located as far from the water's edge as possible" was too vague; practical would be a better word to use.

With regard to item 9 on page 34, Chair Ferris said the language "ensuring no vessel grounding without dredging" may be problematic given that some marinas must utilize dredging in order to continue using their facilities. Ms. Bedwell clarified that the language in question would apply to new marinas, not existing marinas.

Commissioner Turner said he saw nothing in the text about how economic impact is going to be addressed. He said he also was having some difficulty in connecting what the science says and what is trying to be regulated. Ecologic functions are clearly important, but nothing is said about how they are measured to determine no net loss. He suggested the Commission should have a discussion about property rights. The Commission has also yet to see the promised matrix showing the decision criteria for all shoreline management areas.

Commissioner Hamlin said he found the information regarding critical areas useful to have. While it does not contain much direction, it is informative.

Commissioner Sheffels pointed out that the Commission will at some point have to address the flood plain issue, which goes along with critical areas. Ms. Bedwell reiterated that the WAC

definition of critical areas includes frequently flooded areas. She allowed that there was some confusion on the part of the public about what constitutes a frequently flooded area, and to inform the Commission she provided them with copies of the reference from the WAC. The reference to the hundred year flood plain is not specific to areas that flood once per century but rather areas with a one percent chance of flooding to the high level in any give year. Frequently flooded areas and areas of special flood hazard have similar definitions tied to a percentage chance in any given year. The designations are determined by FEMA.

Mr. Paine added that staff does not dispute that Phantom Lake residents have an argument about where the flood plain is. However, the mechanism for addressing that issue is not to change the critical areas code but rather to do a flood study and get FEMA to change the line based on better engineering and hydrology. A number of properties in the city have gone through the process and gotten the line changed. Ms. Bedwell pointed out the state requirement for frequently flooded areas.

Chair Ferris said it appeared that much of the language relative to critical areas had been lifted from somewhere else; for instance, there was a section referring to critical salt water habitats. Mr. Paine said that was part of a legal analysis that was provided for the benefit of the Commission.

Chair Ferris said in reading the section he had not been able to discern exactly what language in the referenced WAC citation relative to critical areas is applicable to Bellevue's Shoreline Management Program. He suggested the parts that do apply should be pulled out and actually included in the Shoreline Management Program document rather than simply making references to them.

Turning to the issue of vegetation conservation, Commissioner Hamlin said he was not yet convinced that 50 feet is the right setback. He added that the vegetation conservation requirements seem a bit restrictive. Mr. Paine noted that the previous discussion with the Commission about vegetation conservation included the notion of a 25-foot vegetation conservation area in the context of a 50-foot setback. The concept is to provide for vegetation on or near the shoreline, and staff will draft language in accord with the direction provided by the Commission.

Commissioner Turner noted that the 50-foot setback was presented to the Commission as part of a package. The Commission never explicitly came out in favor of a setback of that depth. Staff was given general direction to work up language for the draft, but the Commission did not come to any conclusion about what the setback should be. He said the concept of preserving vegetation on or near the shoreline is sound, but when it comes to determining no net loss there needs to be more clarity with regard to measuring no net loss and what is supposed to be accomplished. Mr. Paine stressed that the draft language was in response to a set of regulations handed down by the Department of Ecology. He said if he had his way he would stay with the existing program with the buffer that is in place; it is much easier to administer. The Commission has not been inclined to pick a buffer but has directed staff to proceed with a

setback. Vegetation conservation will have to be part of the package, but it will be up to the Commission to determine how it should be structured.

Chair Ferris said he would like to have the opportunity to review the options previously presented to the Commission. He said at the time the Commission leaned toward the 50-foot setback because it was thought that would allow for the greatest amount of flexibility, but the Commission may not have understood all of the ramifications.

Commissioner Mathews agreed it would be helpful to have the options presented again before reaching a conclusion.

Chair Ferris commented that the WAC citations relative to vegetation conservation are very broad and often refer to river banks, coastal bluffs and streams. He said it was difficult in reading through the materials to determine the specific applicability to Bellevue. Mr. Paine said the WAC citations had been added for the convenience of the Commission to better understand where the Department of Ecology is coming from. Their references to streams and coastal situations do have some overlap with processes that apply in Bellevue. Chair Ferris said the document will have a long life and to the extent possible the language should be applicable to the shorelines of Bellevue.

Motion to extend the meeting to 10:20 p.m. was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

8. OTHER BUSINESS – None

9. PUBLIC COMMENT

Mr. Marv Peterson, 9840 SE Shoreland Drive, thanked the Commission for its efforts to update the Shoreline Master Program. He said in many ways the Commission has been dealt an impaired hand. What is most needed is clarification and simplification. The public clearly is confused by the draft language.

Dr. Marty Nislek, 312 West Lake Sammamish Parkway, said he was encouraged that the Commission had noted the discrepancies in the WAC citations. The Commission should seek to avoid falling for the idea that it has no leeway. The guidelines are not restrictive; if they were, Redmond would never have gotten its program approved. The policies and regulations must be based on solid reasoning, very little of which has been provided to date.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, said she participated in the meetings both WSSA and the MBNA had with staff. She said she reached the conclusion that meeting with staff was unproductive. One of the specific concerns raised by the public was that the Meydenbauer Park should have a separate designation; staff answered that the Department of Ecology does not allow that. The Meydenbauer Bay Yacht Club is seeking a similar distinction, yet they have not been told that that is not possible. Staff has met with the public so they can say they did, and they can say they have listened to the concerns voiced by the public, but it appears

they are going to move ahead with their regulations regardless. WSSA has been working in good faith but feels most of its concerns have just gone into a dark hole. She said it was ironic that marina civic was presented along with critical areas and vegetation conservation; that just shows the absurdity of trying to make residential properties nature preserves while promoting invasive commercial development on other areas of the shoreline. The Commissioner were urged to continue pressing staff to show the scientific basis for their proposals.

Mr. Charley Klinge, 11100 NE 8th Street, suggested that the direction staff is leading heads toward a complicated potential train wreck. The draft contains 242 policies. WSSA has provided input regarding them, but there has been no time to review and discuss their comments. Staff has added well over a hundred regulations, many of which are not yet fleshed out. The focus should be on simplifying the document. Non-regulatory programs have been completely ignored to date even though they are required.

Mr. Bud Norquist, 372 West Lake Sammamish Parkway NE, said he went to the city in 2008 to get a permit to be able to locate a three-foot by six-foot pad on which to place a barbeque on his property. The application for a permit was denied because of the 2006 critical areas ordinance. Rather than tick off its residents, Redmond created an ordinance that is very reasonable; that ordinance was subsequently approved by the state.

Mr. Brian Parks, 16011 SE 16th Street, said he previously had proposed a 25-foot setback with no buffer. The suggestion of staff to send something forward without a setback has never even been discussed. He said he had not argument against preserving existing native vegetation but would oppose being required to tear out existing landscaping in favor of a forced buffer zone.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway, said he has been involved in a few of the meetings WSSA has had with city staff. The meetings have been informative. Staff continues to claim that certain elements must be included in order to meet the demands of the Department of Ecology. The fact is the Department of Ecology does not have understand everything and has a higher sense of power than they should. The staff have not been advocating on behalf of the taxpayers of Bellevue, and that has been frustrating. The Commission needs to have a discussion of private property rights.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said from the comments of staff it can be understood that the months of scientific presentations to the Commission really account for nothing, that all that matters is that the WAC is interpreted correctly. He praised those on the Commission who have been asking to see the supporting science. Staff is making no attempt to show why their policies and regulations are needed because of good science.

Motion to extend the meeting to 10:30 p.m. was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

10. NEXT PLANNING COMMISSION MEETING

A. October 13, 2010

11. ADJOURN

Chair Ferris adjourned the meeting at 10:21 p.m.

_____ _____
Paul Inghram Date
Staff to the Planning Commission

_____ _____
Hal Ferris Date
Chair of the Planning Commission