

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

July 13, 2011
6:30 p.m.

Bellevue City Hall
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland, Development Services Department

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:36 p.m. by Chair Ferris who presided.

2. ROLL CALL

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

3. PUBLIC COMMENT

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, said he had reviewed with interest the staff report to the Commission and noted that more than a year ago he had expressed concern about a failure to fully innumerate both goals and objectives for updating the Shoreline Master Program. Beyond lacking clear and measurable objectives predicated on well-defined goals, the list reflects where the process began to travel down an errant path. The list of principles describes an intent to focus on only three items: 1) shoreline restoration rather than identification and justification of shoreline management options to achieve relevant, measurable objectives; 2) critical area-type regulations without considering the differences between critical shoreline areas and those that are not critical; and 3) the experience of the critical areas ordinance as a guiding factor in updating the Shoreline Master Program, as well as the inclusion of ideas from the regulated community. Shoreline property owners who have witnessed the permit process since 2006 should be polled to provide information on costs and other aspects of shoreline management. The staff memo describes the Department of Ecology as the ultimate authority on Shoreline Management Act matters; while that is nearly true, the Washington Sensible Shorelines Association has repeatedly pointed out that local discretion exists within the guidelines, and private property rights need to be respected. The staff memo displays two sets of principles for review of the draft Shoreline Master Program, but the balance thus called for is missing, neighborhood character has not been considered, and there are no incentives. Councilmember Chelminiak recently asked what the Shoreline Master Program update is intended to achieve; that question is certainly disconnected from all of the principles. As written, the Shoreline Master Program will change the character of the shoreline, primarily at the expense of shoreline property owners, but it is unclear what the changes will actually accomplish.

Ms. Anita Skoog Neil, 9302 SE Shoreland Drive, addressed her comments to the responses to the public hearing comments. She observed that most of the staff responses were either non-answers or doublespeak. Their responses either repeat their interpretation of the guidelines, or reinform the reader about what is in the draft Shoreline Master Program. The responses repeatedly circumvent the reality that the vegetation conservation area is a de-facto buffer. Though densely vegetated, the staff responses imply that by not technically being a no-touch buffer, the vegetation conservation area is somehow useable and accessible to property owners. Staff mistakenly states that the Shoreline Master Program should include science based on buffers, when in reality the guidelines clearly say the Shoreline Master Program must base vegetation requirements on science. The testimony from the Washington Sensible Shorelines Association was clear that the science on the issue is not conclusive, and that only balanced, peer-reviewed science is valid for drawing conclusions. Such science does not support a buffer for urban lakes. The staff responses imply that HB-1653 was intended to integrate the critical areas ordinance into the Shoreline Master Program, but in reality the bill states that the critical areas ordinance shall stand until cities complete their Shoreline Master Program updates. Staff indicates that they are researching whether or not the 2006 critical areas ordinance was properly processed; a Councilmember was on the citizen committee and could be asked how many times residential issues were discussed and his answer will be that only two or three references were made. The staff response to concerns about overburdening owners in terms of time and money suggests that where the Shoreline Master Program is followed without deviation the process will be quite painless. The summary of comments is disproportionately filled with questions and demands from the Department of Ecology, the tribes and FutureWise, perhaps to intimidate residents and the Commission into thinking that everything those groups want must be catered to. The staff responses offload questions about storm runoff and sewer overflow to the utility department even though it is clear that the rest of the basin produces the water quality problems, not the residents within 200 feet of the shoreline. If the Shoreline Master Program is to address shoreline functions, the city cannot abdicate the responsibility simply because it has more than one department.

Mr. Cole Sherwood, 3270 West Lake Sammamish Parkway, said he was not able to attend the public hearing on the Shoreline Master Program but had read the comments from the planning staff. He questioned whether or not the staff had demonstrated knowledge on how to manage vegetation buffers on Lake Sammamish since 2006. He said recently he had to replace his dock to make it accessible. The regulators sized up the situation and gave their approval, but as approved in the summer months the dock is as much as five feet above the water. The regulators were more focused on protecting the fish than the safety of those who might use the dock. He said as a disabled person, getting into and out of watercraft from the dock is nearly impossible and certainly dangerous. Common sense did not prevail over science. A vegetation buffer zone was required to mitigate the damage caused by replacing the dock; the requirement included specific plants to buy. Despite all of the intelligence in the scientific community, no one envisioned that the dock would be useless in the wintertime and that the shoreline plants would become seasonal; in the winter months, the topsoil washes out and the plants die and are also washed out. It is time for government to start connecting the dots and realize that science and knowledge have not been applied appropriately, and that property rights in terms of enjoyment of property have been crushed. If the staff were forced to live in a wheelchair for a single day they would understand the need to apply common sense when implementing science.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said he still has not had his comments made during the public hearing included in the public record. He also noted that the matrix still incorrectly lists the topics he raised as Shoreline Master Program update related rather than science related. During the public hearing, the representative from FutureWise made

the statement that the Shoreline Master Program should include science-based buffers similar to those established. The staff response was that the 2006 critical areas ordinance buffers are based on recommendations in science literature. However, nothing in the minutes, emails or other documents associated with that process mentions any scientific information. At the time, the Growth Management Act did not even require the use of best available science, so any mention of referring to science was not even necessary. The Commission has asked the staff to bring forward the science supposedly used, but to date it has not been brought forward, likely because it does not exist. The Association of Professional Engineers members who live on the lakes provided the Commission with a presentation during the public hearing and they questioned the appropriateness of the data used. The staff response was that there was a methodical process used that relied on GIS data. The staff also stated that the inventory report was not designed to inventory individual shoreline properties or to determine the extent of shoreline modifications or armoring as they relate to the ordinary high water mark, yet references have been made to a detail of all that. Staff state that the inventory does not set the no net loss baseline, though the Watershed report states that the analysis will serve as a baseline. According to the staff, the methodology employed was supported by guidelines, and they cite a WAC reference, but in fact the methodology does not support the guidelines in that the study used an old ordinary high water mark. The consultant was determined in that they knew what shoreline armoring is, but the staff is saying that is not the case. WAC 173.26.201(2)(A)(3) says where information collected by or provided to local governments conflicts or is inconsistent, the local governments shall base master program provisions on a reasoned objective evaluation of relative merits of conflicting data. That means the Commission is free to connect the dots as it sees fit.

Mr. Brian Parks, 16011 SE 16th Street, spoke as president of the Phantom Lake Homeowners Association. He noted that former president Bill Rahr recently informed the members that when he was on the CAC for the 2006 critical areas ordinance that lakes were never discussed, only streams and rivers. It would be a stretch to simply carry things over to the Shoreline Master Program and apply them to lakes. The minimum height of the weir on Phantom Lake is far too high, even higher than was originally planned. A couple of weeks ago a survey was done and the finding showed the weir to be even higher than everyone thought it was. It is just slightly below the level at which properties become saturated, which in turn converts them to critical areas. The weir has been the subject of complaints for 20 years, and it is unable to allow any winter flow without flooding properties. Cleaning the channel is important and needed, but if water cannot even get out of the lake it will do no good.

Answering a question asked by Commissioner Tebelius about the request of Mr. Evans to have his comments included in the public record, Comprehensive Planning Manager Paul Inghram clarified that all comments and submissions from the public are included in the public record. The oral comments made by Mr. Evans at the public hearing were included in the table, but his powerpoint presentation was not, which is what he wants to have done. That will be done. His comments were intended to serve as science but they were about science; accordingly, they were identified in the matrix as relating to the category of science.

4. APPROVAL OF AGENDA

Motion to approve the agenda was made by Commissioner Himebaugh. Second was by Commissioner Tebelius and the motion carried unanimously.

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

6. COMMITTEE REPORTS

Commissioner Hamlin said representatives from the Eastgate/I-90 CAC attended the City Council meeting on July 5 and provided them with a briefing. The alternatives were briefly outlined and the Council offered some feedback.

7. STAFF REPORTS

Mr. Inghram said the open house meetings on the 130th station area planning work were held on June 28 and June 30. There was a good turnout, good discussions about future plans and the aspects of redevelopment.

Mr. Inghram said the recommendation of the Commission regarding the Ren-Fu Comprehensive Plan amendment was before the Council on July 5. Chair Turner made the presentation on behalf of the Commission. The Council discussed the issues and ultimately determined not to move the amendment forward for final review. The Council recognized past city actions in the general area, including the Kinoshita and Botch amendments and came down on the side of being consistent with those past decisions. The final vote was 4-1.

Chair Turner said while the Commission saw merit and value in the proposed amendment, the fact is that in the threshold review all nine of the criteria must be met. The Council concluded that the changed circumstances criteria had not been met.

The Council took action to initiate an amendment process related to city master plans. Currently, there is a permitting process for master plans for private development, but no similar permit tool for city master plans. Policy support will need to be developed so that city master plans can be recognized appropriate both in the Comprehensive Plan and the Land Use Code.

Commissioner Ferris noted that other cities have major institutional master plans that typically apply to large projects on large properties. He asked how the city would apply the principles of master planning to small projects on non-connected sites, such as parks projects. Mr. Inghram said the Land Use Code deals generally with ranges of uses and activities within a zone. A master plan can deal with things at a much finer level of detail. In some cases, the zoning could say that a particular use is allowed but only subject to a master planning process. The Meydenbauer Bay park process has discussed refueling in association with the master plan. If the Land Use Code were simply to allow refueling, a wide range of such uses could potentially occur; a master plan could narrow it down to a very limited type. The city already has on its books a process for institutional master plans.

Mr. Inghram announced that a new director has been chosen for the Department of Planning and Community Development. Chris Salomone comes from Tempe, Arizona, and will take over the post on July 18.

8. PUBLIC HEARING

A. Prohibition on Helicopter Landing Facilities

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

Land Use Director Carol Helland reminded that the narrowly tailored code amendment was initiated by the Council to bring about adequate regulations to address the impacts of helicopter landing facilities in the city. The Council requested that in lieu of a moratorium the Commission

should process a code amendment that would prohibit all but emergency landing facilities in the short term until a future date when a work program item could be processed that would evaluate whether there are places in the city which under certain circumstances would be appropriate locations on which to permit helicopter landing facilities. The ordinance before the Commission does not preclude emergency landing facilities.

Ms. Helland said she attended the East Bellevue Community Council meeting on July 5 to discuss the proposed amendment. They expressed concern that one helicopter landing facility appears to have been established but is now prohibited from operating, which creates a fairness issue. She said she explained that the Council elected to go the amendment route over a moratorium in that the latter requires very specific time limitations and restrictions; the Council wanted to do a more informed analysis of the work program moving forward and not unnecessarily force the issue to the top of the list.

There were no members of the public present to address the Commission during the public hearing.

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

9. STUDY SESSION

A. Prohibition on Helicopter Landing Facilities

Ms. Helland reminded the Commissioners that in lieu of pursuing a moratorium the Council directed the Commission to move rapidly with regard to the proposed amendment and return a recommendation by August 1.

Commissioner Carlson asked if the amendment would have any impact at all on either of the two existing helipads. Ms. Helland said it would not. She explained that ordinances cannot be retroactively applied. The Kemper Development facility would be grandfathered provided it is established within a reasonable amount of time and they maintain their conditional use status. The facility at Overlake Hospital is an emergency facility and as such is not prohibited under the umbrella of the document. Nothing in the proposed amendment would dictate how the existing helicopter landing facilities are operated.

Commissioner Sheffels said she would vote in favor of the amendment but indicated her agreement with the East Bellevue Community Council regarding the fairness issue. She said she would like the transmittal memo to highlight the fairness issue.

Commissioner Tebelius said it was her understanding that the proposed ordinance would apply only temporarily until a permanent ordinance is adopted. Ms. Helland answered that the ordinance does not have a sunset clause, as indeed most ordinances do not. In the Land Use Code, the ordinance will exist at the governing document relative to helicopter landing facilities until such time as an amendment is made to the code. No new helistops will be permitted to be constructed in the city, with the exception of emergency facilities, until such time as the Council chooses to change the code.

Commissioner Ferris expressed concern with the wording of the fifth "Whereas" paragraph, specifically the phrase "...until such time as the City has the ability to comprehensively consider the impacts of and appropriate regulations for multiple private non-emergency heliport and helistop facilities." He suggested that as written the city could choose never to bring up the issue again,

making the prohibition permanent. He recommended either adding in wording to the effect that the issue will be raised again no later than five years after adoption of the ordinance, or removing the “until such time” references.

Chair Turner asked if there was specific direction from the Council to include the “until such time” reference in the “Whereas” section. Ms. Helland said there was not, though the Council has seen the language. She stressed, however, that the Commission is free to revise the language of the document as it deems fit.

Commissioner Carlson asked if there has been any interest expressed by any party to develop a helipad. Ms. Helland said there has not.

Commissioner Himebaugh said his reading of the draft ordinance was that it in effect is a moratorium, though a permanent one that would not necessarily have to be renewed. He asked what the difference is between a moratorium and the ordinance that has the same net result. Ms. Helland said a moratorium places in place a prohibition during a cooling off period; it stops everything from happening, from the intake of applications to the issuing of permits not already vested. There are strict time limits associated with moratoriums. A moratorium can be adopted in a manner to essentially beat an applicant to the door, but with the action comes the responsibility to evaluate the prohibition and remove it quickly based on a work program item. A public hearing must be held within 60 days, following which the Council must describe a work program item and put in place some timelines for moving through the investigation phase and adopting an ordinance. While the moratorium remains in place, the Council must conduct a public hearing every six months. The approach outlined by the Council has included the processing of a code amendment; all proper noticing has been carried out, and to date the public has not offered any input. In the future should a party come forward wanting to develop a helistop, the Council can just as easily request the Commission to incorporate into its work program an evaluation of helistops leading to a further amendment of the code to allow such facilities under certain circumstances.

Commissioner Himebaugh agreed that time limiting language should be included in the ordinance to avoid having a de-facto permanent ban. Ms. Helland urged the Commission not to include a sunset clause. The two helistop facilities permitted in the city are the only two that have submitted applications in the past 25 years. Should a party seek a permit in the future, the Council will have the authority to bring it up again for review. An absolute deadline triggers a lack of flexibility for the work program. Commissioner Himebaugh suggested that with an absolute prohibition against helistop facilities in place, it is unlikely anyone would step up asking for a permit to construct one. Language should be forwarded to the Council informing them that the Commission recognizes there is a fairness issue and believes the issue should be included on the work program within a reasonable time.

Commissioner Hamlin concurred. He noted that the moratorium issue was put on the table but was specifically not picked by the Council. He said he would not support including a timeframe in the ordinance but would support removing the “until such time” language from the “Whereas” section.

Commissioner Tebelius said she is fundamentally opposed to ordinances that ban actions just because some people may not like those actions. She said she could see no reason to ban the future consideration of helistops. For whatever reasons, the Council has decided to seek a ban. If the Commission is going to agree with the Council and approve an ordinance, a time limit should be included. She also agreed the “until such time” language should be removed. The fact that no one else has come forward wanting to develop a helistop is immaterial; things and circumstances change over time and someone may want a helistop in the very near future. If such facilities are simply not allowed, it is unlikely anyone would step forward with a request to develop one.

Chair Turner agreed that the past is not a good indicator for what will happen in the future. He agreed there should not be a time limit and that the “until such time” language should be removed.

Commissioner Ferris suggested revising the language of the fifth “Whereas” to read “WHEREAS, the development and activation of private non-emergency heliport or helistop facilities should not be permitted;” and to revise the language of the sixth “Whereas” to read “WHEREAS, a City-wide prohibition on all non-emergency heliport or helistop facilities will allow the City within a reasonable time to review and if necessary draft Comprehensive Plan and Bellevue Land Use Code and other City Code amendments that provide a balance between mobility and public health, safety and quality of life for residents.”

Commissioner Himebaugh said the alternative would be to leave the language of the proposed ordinance unchanged and to document the Commission’s discussion in the transmittal memo. However it is addressed, the issue should not be left open-ended.

Commissioner Carlson said the background information prepared by staff appears to indicate the Council wants a ban without saying they want a ban. He asked why and Ms. Helland said over the course of the last three years the city has been dealing with an appeal on a helistop. At the conclusion of the matter the Council was left with the conviction that code does not include adequate performances standards to mitigate the impacts of permitting a helistop landing facility. In the absence of initiating a study right away, the Council elected to establish a ban on all but emergency helistop facilities and to take up the issue again at some future date. By law, staff keeps a Land Use Code amendment docket. As issues are raised for amending the Land Use Code, they are docketed and the Council reviews the list annually; all items remain on the list until such time as they are permanent removed by the Council or until a work program item is identified for the specific items.

Commissioner Tebelius stressed that if a timeline is not included in the ordinance, the ordinance will become permanent. She said she was opposed to a permanent ban.

Commissioner Hamlin said he was specifically opposed to including a timeline and supportive of a permanent ban. He said he could support including the phrase “within a reasonable time” in reference to taking up the matter again in the future.

Motion to revise the language of the fifth “Whereas” to read “WHEREAS, the development and activation of private non-emergency heliport or helistop facilities should not be permitted;” to revise the language of the sixth “Whereas” to read “WHEREAS, a City-wide prohibition on all non-emergency heliport or helistop facilities will allow the City within a reasonable time to review and if necessary draft Comprehensive Plan and Bellevue Land Use Code and other City Code amendments that provide a balance between mobility and public health, safety and quality of life for residents;” to include in the transmittal memo the suggestion for the City Council to establish a time for creating a work program item, such as five years; and to recommend to the City Council approval of the proposed Land Use Code Amendment related to the prohibition on Nonemergency Helicopter Landing Facilities (file no. 11-115160 AD), as amended was made by Commissioner Ferris. Second was by Commissioner Sheffels and the motion carried 6-1, with Commissioner Tebelius voting no.

Commissioner Tebelius wanted the record to reflect her view that the ordinance should have a time limit included, and that she agreed with the suggestion to include in the transmittal memo the request for the Council to determine the time limit.

B. Shoreline Master Program Update

Chair Turner asked staff to walk the Commission through the objectives behind the update. Ms. Helland said the objectives were established by the Council when the project was adopted. The Council's normal practice is to provide objectives and guiding principles when forwarding a work program item to the Commission. The referenced principles included those typically used for reviewing other environmental regulations, including the critical areas ordinance which was adopted shortly before the Shoreline Master Program update work began. The principles have been taken back before the Council on a couple of occasions since the Shoreline Master Program update work began, and the Council has not seen fit to change them in any way. The principles outlined on page 25 of the packet are the principles the Commission worked through and that were added to the Environmental Element preface for the Comprehensive Plan.

Chair Turner said the principles are appropriate but expressed concerns with the objectives. By definition an objective is something that is measurable. In a connect-the-dots mode, the regulations should be tied to the objectives and should be based on solid reasoning, but that is missing from the draft. The actions outlined in the draft simply cannot be associated with any objective. One thing not included in the scope of the update is stormwater runoff, which certainly has an impact on water quality. Polluted water is being allowed to flow into Phantom Lake, and the weir in the lake is poorly designed and is preventing proper outflow; those factors are negatively impacting the lake and everything around it. During the public hearing, the only positive comments came from the Department of Ecology and from FutureWise; the comments from the public were all negative, a fact that should be carefully weighed.

Commissioner Ferris said it is common for the Council to hand down a set of principles to be followed for a given work item. The Commission from the beginning of the Shoreline Master Program update work had questions about the principles and sought clarity. The makeup of the Council changed following the election and the Commission at that time asked if the Council had different principles to guide the update work, and the principles were amplified. If the Commission has issues with the principles, the specific principles the Commission is concerned about should be highlighted, and the Commission should seek from the Council new principles and new direction. The path toward basing every regulation on measurable objectives may run afoul of the third and fifth Council principles in that the result likely would entail more significant changes to the 2006 regulations and end up with regulations the Department of Ecology will not approve. The Commission should not proceed down any path that is inconsistent with the direction provided by the Council.

Chair Turner commented that for any program principles are needed to serve as the guiding light. The principles must, however, be broken down into their component elements in order to gain specific knowledge with respect to what direction to take. He allowed that the amplifications to the principles are helpful, including the notion of being Bellevue appropriate. However, it is

possible to be left open to challenge if specifics are not included showing how the regulations address the principles. The draft contains no direct connections between the principles and the regulations. The Commission should take every step possible to connect the dots.

Commissioner Hamlin said the Council principles are where the update work started. He agreed that if the Commission has issues with certain of the principles, the Council should be alerted. Once the foundation is confirmed, the Commission will be free to move on with the update work. He said he personally had no objections to any of the Council principles.

Commissioner Tebelius objected to the third Council principle. She said if followed, the principle will mean limiting revisions to the critical areas ordinance and applying its regulations to the Shoreline Master Program. That approach will create a lot of problems. The draft document is simply unsustainable in a number of different ways. Given the Council's usual approach of discussing work program item principles and endorsing them rather than voting to approve them, the Commission should not be absolutely bound by the principles. Significant changes to the 2006 regulations are needed as they apply to the Shoreline Master Program. The Commission should clarify for the Council why the critical areas ordinance should not be applied to the Shoreline Master Program. The community has made it clear that the draft Shoreline Master Program is not up to par with what the city should be looking at in trying to regulate its citizens. She said she did not agree that the final authority is the Department of Ecology; that is not what the state statutes says, and at least one jurisdiction has gone on record of not accepting the determination of the Department and is willing to hash out the matter in court if necessary. The draft Shoreline Master Program is too complicated, too long, and too restrictive. The Commission must produce a Shoreline Master Program that is rational, reasonable, and acceptable to the community.

Commissioner Hamlin said there is agreement that the Council principles are correct, the work of the Commission can move forward. If there is disagreement with the principles, the Commission must seek clarifications from the Council before moving forward. The principles serve as the baseline on which the work of the Commission must be predicated.

Chair Turner agreed that the Commission needs a solid foundation on which to build. If that means seeking clarification from the Council with regard to the principles, then that is what should be done. In the end, all regulations should be reasonable and supportable in terms of science and in terms of what the city expects to accomplish. He agreed that the draft Shoreline Master Program is too restrictive and is missing the necessary rationale.

Answering a question asked by Commissioner Tebelius, Ms. Helland explained that the Council principles for the Shoreline Master Program update are the principles that were presented to them in their packet materials when they accepted the grant from the Department of Ecology and decided to initiate the program. The principles were evaluated by the Council in study session. Subsequently questions arose with regard to how the critical areas issue was to be dealt with in the Shoreline Master Program update, so the principles were sent back to the Council along with a statement by the Commission outlining the direction being taken and a request to be reoriented if necessary. At the time Grant Degginger was the mayor and he reaffirmed the principles. The

principles have since been used to guide the work of developing the draft. Staff has shown its work and rationale in the comments innumerable in the materials provided. The principles used in past environmental adoptions were included for reference purposes, primarily because there are policies in the Comprehensive Plan that drive what is done. Were the Commission to take a drastically different course, time would need to be spent evaluating whether or not the environmental policies need to be revisited; as they stand, a finding must be made to the effect that all materials adopted are consistent with the principles and the policies. The principles outlined on page 25 of the packet are those the Commission included in the materials that described the process undertaken to create the draft; they are in the Shoreline Master Program element, which is part of the Comprehensive Plan in the preface materials, and they were added to the draft in March at the direction of the Commission.

Commissioner Himebaugh asked if any of the Councilmembers have expressed the view that the Commission's principles are inconsistent with the original foundation principles set forth by the Council. Ms. Helland said the staff do not talk to Councilmembers, nor have any communications from any Councilmember been received by staff. It is not the practice of the city to ask the Council to weigh in in the midst of a Commission review.

Commissioner Himebaugh suggested the Council's original guidelines could be interpreted differently by different people. He said the Commission's goals are not necessarily inconsistent with the Council foundational guidelines. Substantial changes could be made to the Shoreline Master Program as proposed and come up with a document that would fall within the Council guidelines. The Commission does not have much flexibility to change the principles as handed down from the Council. If the concern is tracking with the 2006 critical areas ordinance, the Commission can make changes to the Shoreline Master Program based on where the ordinance should or should not apply without changing that ordinance much, save for some housekeeping items necessary for consistency. The Commission has been told a number of times that shorelines are not going to be critical areas, but critical areas within the shoreline jurisdiction are going to be regulated under the critical areas ordinance. That leads to questions about whether or not the critical areas ordinance should apply to Phantom Lake. That does not stray far from what the Council has asked the Commission to do in that it is unlikely the update will involve huge changes to the critical areas ordinance itself. He urged the Commission not to go back to the Council seeking additional direction; it would make it appear that the Commission has hit a roadblock, which is not the case.

Ms. Helland explained that critical areas can occur in the shoreline jurisdiction in the form of a wetland or a floodplain. Where that happens, there would be layers of regulation. As part of the critical areas ordinance adoption, changes were made to the shoreline regulations that included dock and bulkhead changes. She noted that the desk packet materials included archived materials to more thoroughly explain what did get changed relative to shorelines as part of the 2006 exercise.

Commissioner Himebaugh said if he were to read the Council principles as constraints on the Commission's flexibility to make substantial modifications to the way the Shoreline Master Program is currently put together, he could conclude that the Commission might need better

direction from the Council. He said he has been working mainly from the Commission's goals, which were intended to amplify the Council's foundational principles.

Answering a question asked by Commissioner Carlson, Ms. Helland explained that grants received by the city must be approved by the Council. When the packet materials initiated the Shoreline Master Program update went to the Council, the work program was divided into six different parts, one of which contained the principles to be forwarded to the Commission. The principles were drafted by the staff for the Council to review and submit to the Commission to guide the Shoreline Master Program update work.

Commissioner Tebelius said the third Council principle could be taken to mean that the critical areas ordinance must be applied completely to the shorelines. She noted that the staff had also made the statement that the critical areas ordinance would not be changed, that the update would focus on developing a completely new Shoreline Master Program ordinance. If that is the case, there is no reason to go back to the Council for clarifications.

Asked by Commissioner Hamlin to explain her concerns relative to the fifth Council principle, Commissioner Tebelius said the Commission will make a recommendation to the Council, which in turn will review it and either accept it as is or make some revisions to it before passing it on to the Department of Ecology. If the Department of Ecology does not like what the Council sends forward, it can make recommendations, but it will be up to the Council to choose to accept the recommendations of the Department of Ecology or not. The Department of Ecology is not the final determiner of everything that goes on relating to the Shoreline Master Program.

Mr. Inghram suggested it would be appropriate for the city attorney to provide the Commission with clarification relative to the role the Department of Ecology has in approving and directing the Shoreline Master Program requirements of the city. He said it was his position that the Department of Ecology in fact does have the authority through the process to dictate to jurisdictions what must be included in the Shoreline Master Program. The fifth Council principle that says the Department of Ecology has the final say is completely accurate. At the end of the day, the Department of Ecology has the authority to put in place the Shoreline Master Program it sees fit.

Commissioner Himebaugh pointed out that a case pending before the state supreme court will answer the question. He said the issue does not appear to be as clear as stated by Mr. Inghram, and he added that he knew of no instances in which the Department of Ecology has simply dictated a Shoreline Master Program for a jurisdiction. The goal of the Commission has been to develop a plan that will be approved by the Department of Ecology. However, the Commission has been operating under the well-founded idea that rules of the Department of Ecology are in fact guidelines, leaving the Commission and the Council a substantial amount of flexibility and discretion. The Shoreline Master Program is a local program that is developed at and applies at the local level. The Department of Ecology has a role to play, and their final approval should be sought, but if they are in the position of being judge, jury and executioner, there is no reason to develop a document with 350 pages of local regulations over simply adopting the WAC.

Commissioner Ferris said a past conversation he had with Mayor Davidson and Councilmember Wallace lead him to believe neither of them thought the Shoreline Master Program update would be a long, drawn-out process; both of them held the view that some tweaking of the critical areas ordinance would be all that was needed. He agreed that there is a controversy with regard to who has the final say. He suggested that at the very least the Commission should provide the Council with an update regarding the direction being taken. That would allow them to raise a red flag if they think they should, otherwise the efforts of the Commission to continue on course will be blessed.

Chair Turner agreed that the Council should be provided with a status report. The report could include the statement that the Commission is working on regulations that will be applicable to specific objectives.

Commissioner Tebelius commented that the actions of the staff and the Commission over the last three years belie the third Council principle. Taken at face value, the statement would lead to bringing the critical areas ordinance to the table, making a few changes to it, and calling it good.

Commissioner Hamlin said his memory was that the public was not in favor of simply applying the critical areas ordinance to the shorelines with a few minor tweaks. He recalled that the public wanted the Commission to look at things that potentially would have more flexibility.

Commissioner Tebelius suggested that either the Council principles are absolute but not understood by the Commission, in which case there would be a need for the Council to provide some clarification, or they allow for a great deal of flexibility, which in fact has been demonstrated by the course of conduct by the Commission over the last three years.

Chair Turner asked when the next Commission retreat will be held and Mr. Inghram said he was shooting for the September/October timeframe.

Chair Turner agreed that some communication with the Council would be advisable letting them know where the Commission is and the direction it is taking. Beyond that, the Commission should include the topic on the agenda for its retreat. He added that there was nothing precluding the Commission from developing some measurable objectives.

Commissioner Carlson suggested the Commission should move forward to develop a program that will be best for Bellevue. Bellevue is not an auxiliary of the Department of Ecology and as such has the flexibility to draft the policies and standards that will be best for the city. Other communities have taken the same approach; the Department of Ecology has made their disagreements known, and now some jurisdictions are pushing back. The members of the Commission are not doing the work for the money; they each are interested in doing what is best for the city. If Bellevue-appropriate policies and standards are developed, it will be the right plan for Bellevue.

Commissioner Sheffels said for the Commission to revisit the givens handed down by the Council and to second-guess them would strain credulity. The Commission came up with a

separate set of principles, building on the Council principles, including the notion of being Bellevue-specific. The Commission should move ahead in that vein toward developing a Bellevue-specific program and should present it to the Council. It is not for the Commission to second-guess what the courts will decide, whether or not there will be a taking issue raised, or what the economic impacts will be on property owners. The Commission must simply look at what is best for all of Bellevue. The Commission has been working on the Shoreline Master Program update for four years, and has reviewed the principles four separate times since 2007.

Commissioner Himebaugh said the confusion and frustration the Commission is experiencing is exactly what property owners see when they look at the draft program. Absent language that is absolutely clear about what people can and cannot do, and where the document appears to have a number of internal inconsistencies, the result will be confusion and misunderstanding. He agreed that the Commission must act in the best interests of the city as a whole, and pointed out that those who have been following the Shoreline Master Program update work closely for the past several years are representing Bellevue, and they have been saying very clearly what they think of it.

Commissioner Sheffels noted that the public has clearly voiced the opinion that the draft document is too long and complicated, but she stressed that the issues are complicated and if clarity is what is wanted it will take a lot of pages to explain every detail. She said she did not know what should be removed from the draft in order to provide more specificity.

Chair Turner restated his call for regulations based on measurable objectives. The draft clearly indicates that the city cares about water quality, fish, vegetation, the interface between the water and the land and other issues. But how the regulations will improve conditions is simply not known because nothing is measurable.

Answering a question asked by Commissioner Sheffels, Ms. Helland noted that a policy and a section were added on the topic of water quality. In the opinion of the staff, while storm water certainly affects water quality, it is not the primary purpose of the Shoreline Master Program. The people of the state reached the conclusion that uncoordinated development was happening on the shoreline. The way to address that issue was determined to be the prescription of regulations for development in the shoreline, which was deemed to be 200 feet landward of the ordinary high water mark. Clearly there will be local implications, but it is a statewide program. Every local Shoreline Master Program will be elevated to serve as one piece of the overall program for the state aimed at protecting the collective interests of the people of the state. She said staff had no illusions that the draft document hits the mark desired by the Commission. What the staff needs are clear directions from the Commission relative to what to do about it. The ongoing conversation, while interesting, is not directive, thus the staff is left with confusion about what direction to take. The Commission has talked about wanting specific objectives, but has not named any. The Commission has talked about pieces of the regulations that are too big, yet there are only about 32 pages of residential regulations, not 350, and they are separated out from all of the other Department of Ecology-mandated pieces of regulation that relate to transportation uses, utility uses and other issues. If those regulations are not in alignment with

what the Commission wants to see, the staff needs to be given specific instructions for what to change and what to add or delete.

Commissioner Tebelius said if the concern of the state is in regard to undeveloped shorelines, then Bellevue does not need a Shoreline Master Program at all; there is hardly any undeveloped properties on Bellevue's shorelines.

Chair Turner said his preference would be to scrap the draft and start over, though he said he would not recommend taking that approach. The Commission should at least look at the regulations in the draft and determine if they address the principles correctly. Where possible, measurable objectives should be included.

Commissioner Tebelius suggested the Commission does not have the energy to make sure every regulation in the draft lines up with the principles. The Commission should, however, determine if there are rational reasons for the proposed setbacks; where rational reasons cannot be determined, the Commission should vote to change the setback. The Commission's review should start with the 32 pages of residential regulations as it is the area that has generated the most vigorous opposition from the community.

Commissioner Sheffels noted that Commissioner Tebelius and others had previously stated that the Sensible Shoreline Plan offered by the Washington Sensible Shorelines Association should serve as a blueprint for the Shoreline Master Program update. She suggested that the staff be directed to import all the facts, figures and specificity of the Washington Sensible Shorelines Association plan into the residential section of the draft. The balance of the draft is not controversial. That work would yield a finished plan to forward to the Council.

Commissioner Tebelius said she would not vote to take that approach for a variety of reasons. The Commission will need to justify any changes it makes, but that will do no good absent a basis of analysis for why one setback is better than another.

Commissioner Sheffels suggested the setback proposed in the Washington Sensible Shorelines Association document apparently can be justified by that organization. Commissioner Tebelius countered that taking that approach likely would not pass legal muster and would come right back in the fact of the Commission. The Commission must show a rational basis for what it decides to include in the document.

Commissioner Ferris proposed developing a list of issues in need of substantive logic to back them up, then working through the list item by item to develop the necessary justifications. Ms. Helland said the role of staff is to support whatever direction the Commission takes. She said it would be helpful for the Commission to identify the topics that are most important, though the list certainly will include overwater coverage, docks, bulkheads, setbacks, and vegetation conservation. Last year the staff offered the Commission options from which to choose, and the choices were written into the draft. If the Commission wants to take another approach, staff will make the revisions. The cumulative impact analysis will help provide the justification to show

that the program in its entirety holds together as a single program; that is in fact the purpose of the document.

Commissioner Himebaugh suggested that in addition to the overall justification that will come out of the cumulative impacts analysis, the big ticket items in the document should be justified on a step-by-step basis. He said he saw no reason to throw the draft out and start over. The Commission should work very carefully through what has been proposed and then tailor it to what will work best for Bellevue. While the Washington Sensible Shorelines Association plan is well done, it should not be adopted wholesale. Their plan does, however, provide a good outline of what the public is interested in and the Commission would be foolish not to pay attention to it.

Answering a question asked by Commissioner Sheffels, Commissioner Himebaugh said he had issues with some of the non-residential elements of the draft. One of those issues is public access. The Commission may also want to revisit the restoration plan, and certainly the policies will need to be revisited after working through all of the regulations.

Commissioner Tebelius agreed. She noted that the city has a tree retention policy and as such there is no need to repeat it in the Shoreline Master Program. That sort of thing should be eliminated from the draft.

Ms. Helland stated that staff did not produce the comment responses for section 050 because the section is so interrelated to other sections that it serves essentially as a summary table of items discussed elsewhere and with more specificity. The responses to section 060 were drafted, though from the public responses it can be concluded that the responses are of questionable utility. The comments are batched so they can be aligned with the section being reviewed. The staff responses necessarily are going to be consistent with a reiteration of what was intended, and if the responses are helpful, it would not be a good use of staff time to produce them or the Commission's time in reading them.

Commissioner Carlson said he found the responses very helpful but indicated it would be better to have them sooner in advance of the meetings.

Commissioner Tebelius said she also found the responses helpful. She said while she may not agree with the individual responses, they at least establish the position of staff with regard to what the public had to say.

There was general consensus that the responses were helpful. There was also consensus not to change the principles or objectives; that there is tension with regard to what has been recommended but that the elements are within the four corners of the box; and that the regulations will need to be justified in the transmittal memo.

Chair Turner stressed that the principles do not rise to the level of being measurable goals or objectives. If property owners are going to lose 25 feet or more of their properties, it should be very clear as to why. If it cannot be said what is being measured, then the regulation should not be included.

Commissioner Ferris commented that the shoreline analysis report outlines how the shoreline is inventoried to classify for its function. The report is grouped into the categories of habitat, vegetation, hydrologic function and hyporheic. Each reach on the shorelines on Lake Washington and Lake Sammamish are rated on a scale of one to five. While the science might be subjective rather than quantitative, it serves as the basis for the shoreline analysis and it could be used to determine how the functions change relative to setback width.

The Commission turned its attention to a review of section 050. Chair Turner asked what criteria was used to develop the setback numbers shown on the dimensional chart. Ms. Helland said the setbacks are explained more fully in the charts included in the residential shoreline regulations and in the procedures. She said the setbacks were based on the conversations with the Commission in 2010 when staff sought direction on setbacks.

Commissioner Ferris pointed out that the dimensional requirements chart is nothing more than a summary of the regulations contained in other sections of the document. He suggested the actual setback discussion should occur when reviewing the pertinent sections.

Commissioner Himebaugh said he had an overall concern about the treatment of Phantom Lake. He suggested the Commission needs to have the larger discussion about whether or not Phantom Lake should be regulated pursuant to 20.25H, the critical areas overlay district. Ms. Helland said the edge of the wetland areas around the lake in many cases are coterminous with the lake water edge. For the shoreline buffer, consideration was given to setting it at 25 feet, with a setback of another 25 feet for a total of 50 feet. In all cases, the critical area buffer would be bigger. Staff talked to the Department of Ecology about simply removing Phantom Lake from shoreline regulations, but that is not possible without legislative action because the lake meets the criteria of the shoreline jurisdiction. Because the critical area regulations are the most restrictive, it seemed to make sense to utilize those regulations and to eliminate the regulations that could be conflicting under the shoreline regulations.

Commissioner Himebaugh pointed out that artificially created wetlands are not critical areas under the Growth Management Act. There has been a lot of discussion about whether the wetland systems associated with Phantom Lake would qualify for exemption from critical areas regulations because they have been artificially created. While staff disagrees with that approach, the issue deserves to be looked at more closely. The most protective regulations were chosen by staff, but there is no basis in the Shoreline Management Act for doing that given that under bill 1653 critical areas within the shoreline jurisdiction simply must meet the no net loss standard. Ms. Helland explained that Comprehensive Plan policies address regulating all critical areas citywide consistently. The Phantom Lake wetlands have been identified in several different inventories at the state and local levels; it is part of a larger wetland area that includes Kelsey Creek and Larson Lake. The size of the wetlands has increased over time, which is natural for wetlands in that they tend to be low spots. It would be a difficult hurdle to remove the wetland status based on the fact that they were artificially created. The artificial wetland provision was largely created to avoid the association of drainage detention ponds from being articulated as wetland features.

Commissioner Himebaugh said it can be assumed that the Phantom Lake property owners will not like the more restrictive provision. Because the Commission is in the deliberation phase, it would be appropriate to house the issue in the parking lot for further discussion.

Commissioner Ferris commented that regardless of how the Phantom Lake wetland came into existence, it does exist and it serves the functions of a wetland. He agreed that Phantom Lake should be dealt with separately, however, and as such the issue should be placed in the parking lot. Development of the business parks in Eastgate that have degraded the water quality of Phantom Lake occurred before the stormwater runoff regulations currently on the books were in existence. When adopted, the regulations were not applicable retroactively.

Commissioner Tebelius agreed that the issue of how to deal with Phantom Lake should be put in the parking lot for additional discussion.

Commissioner Carlson suggested setting aside an entire study session to focus on all of the issues relating to Phantom Lake. Chair Turner said he would be amenable to that approach. The other Commissioners concurred.

Commissioner Himebaugh said it was his understanding that the urban conservancy and urban conservancy/open space environments do not contain residential development. Ms. Helland confirmed that, pointing out that most lands in those environments are city owned. Commissioner Himebaugh pointed out that Chart 20.25E.050.A tags footnote 3 with respect to maximum building height, yet footnote 3 deals with maximum lot coverage. Ms. Helland allowed that footnote 3 applies to urban conservancy and urban conservancy/open space relative to maximum lot coverage; maximum building height should not be footnoted. She said one of the reasons the code is so large is that early on the Commission expressed a desire for the code to be predictable and a one-stop compendium of everything that applies to the shorelines. There is necessarily a lot of repetition of what is located in other parts of the code.

Commissioner Tebelius observed that in some cases it is necessary to go to the other code provisions to figure out what applies, which means the code is not in fact made simpler. Ms. Helland said if directed by the Commission, staff would take out all of the redundancies. She said the procedures section includes a blending of the Department of Ecology procedures with the city's procedures. Those in need of a permit often need more than just a city permit, and those needing multiple permits from other agencies can find the timeline very complicated. That was the reason for blending the timelines into a common set of timelines. The blending can be removed, thus defaulting to the Department of Ecology standards and processes; that would mean a smaller code but not necessarily a simpler process.

Commissioner Tebelius asked if any of the language would make administration of critical areas different in the shorelines than it is in the rest of the code. Ms. Helland said to the extent possible every attempt was made to make sure critical areas are treated equally regardless of their location.

Commissioner Ferris said there are some differences in the standard regulations for residential in terms of setback, height, and the impervious area lot coverage ratio from what the Washington Sensible Shorelines Association plan has; their plan identifies specific lot coverage ratios, specific heights with a different way of calculating it, different side yard setbacks, and different tree retention standards. Their plan actually asks to have the shorelines treated different from how the rest of the city is treated. He said it was his opinion that the shorelines should not be treated different.

Commissioner Ferris noted that paragraph 2 of section B includes the lake elevation reference, and that is an issue that will need to be hammered out. Paragraph 3 prohibits disturbance but does not really define what that is. Disturbance is prohibited within the shoreline structure setback, which is the full 50 feet. Ms. Helland said the paragraph is intended to send the reader to the referenced sections to get the full meaning.

Commissioner Tebelius suggested the disturbance section is very difficult. Digging weeds out of the beach could be deemed a disturbance and a complaint could be logged as a result. The language regarding disturbance and setbacks should be deleted; there is no need for it given that other sections detail what can and cannot be done.

Commissioner Himebaugh said he also was concerned with the section given that disturbance is not clearly defined. He agreed the paragraph should be removed from section B. He pointed out that a setback and a buffer are two different things. The setback refers to an area in which nothing can be built, whereas a buffer is an area in which nothing can be disturbed.

There was consensus to delete paragraph 3 and to deal with the lake elevation issue in another session. The question of whether to delete section 050 in its entirety was placed in the parking lot.

Commissioner Tebelius said she had received reports of a government-looking boat on Lake Sammamish the previous weekend traveling north and south with the occupants taking photographs of every property. The boat was white with a rubber skin, had PVC pontoons, was 13 feet in length and had a center-mounted driver-control area. A woman was driving the boat while a man stood in the bow wearing an orange high-visibility vest and took pictures. Mr. Inghram said he was not aware of any city project that would involve such actions. He said he did send an email to the utilities department when he learned about the activity. He said he would also check with King County, but said he was not in contact with FutureWise.

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

10. OTHER BUSINESS – None

11. APPROVAL OF MINUTES

A. March 23, 2011

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

12. PUBLIC COMMENT

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, agreed that it would not be feasible to simply incorporate the Sensible Plan submitted by the Washington Sensible Shorelines Association. He said a great deal of time was spent developing the plan, and the work was supplemented with a critique of the regulations. It would be helpful for the Commission to keep the critique open and refer to it when reviewing the regulations. The Commission has suggested the approach to the Shoreline Master Program needs to be citywide, yet the staff will argue that the guidelines and the regulations say the shoreline jurisdiction is only 200 feet deep. The city's contribution in the form of the non-regulatory programs are nothing more than promises until the money is specifically earmarked; that means in reality there is no firm partner for the property owners, thus the responsibility with rest only with the property owners. The same issue has arisen relative to the West Lake Sammamish Parkway transportation project. With regard to using the shoreline analysis report in the evaluation, he noted that hyporheic functions are not even applicable to lake shorelines; the evaluation was done by two individuals in a very subjective manner.

Commissioner Tebelius explained that several years ago the property owners along West Lake Sammamish Parkway agreed to a plan to add a ped-bike path along the roadway. Everyone was pleased with the plan as it was adopted. Money has been agreed to by the City Council for a portion of the parkway project. On July 12 community members met with city transportation staff to talk about how the project is going to be developed. Questions were asked about how the city would be dealing with stormwater runoff into the lake. The community came away from the meeting with the understanding that the city will be using the lake as a detention pond in that runoff will be allowed to flow into the lake. That has many shoreline property owners upset because in essence they are being told by the city as part of the Shoreline Master Program update that they are responsible for the problems in the lake.

Ms. Anita Skoog Neil, 9302 Shoreland Drive, said a Meydenbauer Bay resident recently reported to the City Council concerns about yet another sewer spill in the bay. The Councilmembers countered with arguments that the measurements taken indicated the spill was not all that bad for the water quality. In the last three years there have been two other major spill incidents in the bay and a major spill near Medina. In updating the Shoreline Master Program, the city must adhere to the standard of being able to measure results. There should be no regulation without justification, and all regulations must be Bellevue-appropriate. The Bellevue shorelines are almost completely developed already, and property owners who choose to redevelopment should not be penalized and forced to restore the shoreline to some mythical condition it had years ago. In addition to general issues, Meydenbauer Bay has some very specific use issues that will need to be dealt with; there cannot be an Shoreline Master Program that trumps or conflict with the master plan.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said he was present at the Council meeting where the Ren-Fu Comprehensive Plan amendment was discussed. One thing missing from the presentation, which three Councilmembers picked up on, was a topography map. Without the map, it was impossible to determine if the two Multifamily Low properties were distinguished from the adjacent properties, which in fact are separated by a hill. That distinguishing factor may have swayed those Councilmembers to vote differently.

13. NEXT PLANNING COMMISSION MEETING

A. July 27, 2011

14. ADJOURN

Chair Turner adjourned the meeting at 10:14 p.m.

Paul Inghram
Staff to the Planning Commission

Date

Kevin Turner
Chair of the Planning Commission

Date