

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

September 8, 2010  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: Commissioners Mathews, Lai

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development Michael Paine, Heidi Bedwell, David Pyle, Catherine Drews, Carol Helland, 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 Mathews and Lai, both of whom were excused.

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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 reported that planning and economic development staff have been working with the Newport Hills neighborhood in regard to their neighborhood center. A retail consultant has been engaged to assess demand for retail services in the Newport Hills Neighborhood Center and a briefing for the community is tentatively scheduled for September 28.

With regard to the Eastgate/I-90 study, Mr. Inghram said a forum of property and business owners was conducted to hear their thoughts about the area. The Council has not yet appointed a CAC; that appointment will usher in the next phase of the project.

7. STUDY SESSION FOR SHORELINE MASTER PROGRAM UPDATE

## A. Shoreline Master Program Update

Associate Planner Heidi Bedwell briefly reviewed the update process to date and the topics discussed. She noted that during the month of August staff met with several community and interest groups in order to further the dialog on specific issues. Staff met with members of the board of Washington Sensible Shorelines Association, folks from the Newport Shores community, Sambica, construction industry representatives, marina representatives, and individual property owners. All of the conversations were productive.

Ms. Bedwell said staff intends to come back to the Commission with a revised draft in December. In the meantime the focus will be on working through the individual topics and continuing public outreach. The revised draft will incorporate public comment and will note those outstanding areas not able to be resolved from the perspective of staff. Following the release of the revised draft, an open house will be conducted, followed by a public hearing. Staff has committed to scheduling the public hearing no sooner than 30 days after the release of the revised draft in order to give the Commission and the public sufficient time to review it. The anticipation is that the Commission will have a recommendation for the Council by the early part of 2011.

Chair Ferris asked if the proposed schedule will impact the deadline imposed by the Department of Ecology. Ms. Bedwell said talks are under way with Department of Ecology staff to determine if a demonstration of progress being made will keep the funds from being jeopardized.

Senior Planner David Pyle continued the discussion on shoreline stabilization. He said the WAC guidelines are very specific in giving preference to non-structural stabilization measures over hardened structural measures. The term “soft stabilization measures” is used often in the guidelines and most often refers to an approach that integrates materials combined to provide protections against natural erosive forces. Such structures also can provide for retention of soils and some structural stability.

The guidelines generally discourage new structures by establishing a hierarchy with a preference for avoidance followed by minimization, and then when proven to be necessary mitigating through design impacts to the natural environment. The guidelines steer away from protections for associated landscaping and give preference to protecting primary structures.

Mr. Pyle said the working draft policies reflect the WAC guidelines, though they recognize that existing stabilization measures are necessary. The policies allow for the retention and replacement of existing stabilization measures, but require them to take a different form if replacement or significant modifications are required. The policies discourage hard stabilization and new stabilization. Language is included that incentivized the use of soft shoreline stabilization.

Historically, the lakefronts in Bellevue were characterized by forested conditions and vegetation. Over time, the lakefronts developed into an urban development. There have been modifications to lake levels and to the shorelines through hardened structures. There are certain characteristics found in the historic condition that can minimize erosion, help provide for habitat, and facilitate the continuation of shoreline processes. The objective of the policies is to blend historic conditions with the existing conditions through an soft stabilization or integrated approach that will allow ecologic functions to continue to process while also providing for protection against erosive forces or weathering.

The primary zone where most shoreline functions occur is within the zone where shoreline stabilization is typically placed. Accordingly, shoreline stabilization is the area where the largest step can be taken toward preserving, retaining or enhancing shoreline functions while still providing for protections against erosive forces or weathering.

Mr. Pyle shared with the Commission photos of various shoreline stabilization measures, which he noted was a term synonymous with bulkheads.

Mr. Pyle noted that staff had divided the topic of shoreline stabilization into three essential categories: flood protection measures, retaining walls, and shoreline stabilization measures. With regard to the latter, he said they will be regulated under the shoreline modification rules. He noted that both Lake Sammamish and Phantom Lake have flood plains and their water levels fluctuate during the year. The WAC defines shoreline stabilization measures as stabilizing features located at or close to the ordinary high water mark. For the purpose of predictability, any feature, the toe of which is located at, below or within five feet landward of the ordinary high water mark, is categorized as a shoreline stabilization measure. Other jurisdictions have taken the same approach.

Mr. Pyle stressed the fact that the ordinary high water mark is determined on a site-by-site basis for the purpose of the placement of a shoreline stabilization measure. The city has done an ordinary high water mark study on Lake Sammamish, but that was done for the purpose of determining the extent of the shoreline jurisdiction and to facilitate property owners in identifying how far the buffer or setback may extend from the ordinary high water mark. The services of a qualified professional or surveyor are required to determine the ordinary high water mark for a specific property.

Ms. Bedwell said the definition of ordinary high water mark is in the current city code and is consistent with state requirements.

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The ordinary high water mark is determined by soil and vegetation type and the frequency of inundation that combine to form a line. The Department of Ecology has done extensive study and provided documentation for how to determine the ordinary high water mark for rivers, though their manual relative to lakes is less advanced.

With regard to flood protection measures, Mr. Pyle said such measures are by definition located more than five feet from the ordinary high water mark and up to the base flood elevation for a particular flood plain. Flood protection measures will be regulated under the critical areas rules and flood hazard rules that are identified in the general provisions section of the working draft. The flood plain line meanders through the various setback intervals and adds to the overall complexity. A retaining wall located within the flood plain would be regulated as a flood protection measure, whereas the same structure regulated outside of the flood plain would be regulated as a retaining wall. Lake Washington has no flood plain, so anything beyond five feet landward of the ordinary high water mark up to the edge of the proscribed setback would be considered a retaining wall.

Mr. Pyle said minor repair for shoreline stabilization measures is defined in the draft as modifications or repairs that affect less than 50 percent of the linear length of the measure. Minor repairs can include things such as resetting the footings, replacing rocks, and any work that does not change the configuration or appearance of the stabilization measure.

Commissioner Sheffels commented that the memo talks about allowing minor repairs to shoreline stabilization measure with no associated requirements, but pointed out that clearing and

grading permit requirements may apply. She noted that the permitting process can be onerous and asked under what circumstances a permit would be required. Mr. Pyle said the clearing and grading regulations have their own parameters that determine when a permit is required. In the case of a shoreline stabilization measure repair, if deemed minor it would be considered a shoreline exemption. The granting of a shoreline exemption would not mean the shoreline standards are exempted, only from obtaining a shoreline substantial development permit. A clearing and grading permit might be required if the wall to be repaired is more than 48 inches tall measured from the bottom of the footing. That is a requirement of the clearing and grading code and is not at all related to the Shoreline Master Program; the requirement applies to all properties citywide anytime a wall is constructed. Commissioner Sheffels suggested the final document should be very clear with regard to when a clearing and grading permit will be required.

Answering a question asked by Commissioner Hamlin, Mr. Pyle said any proposal to construct or repair a retaining wall will be covered under regulations located in the shoreline modifications section. Any retaining wall constructed where no flood plain exists, or constructed outside of an established flood plain, will be regulated per the rules developed in conjunction with landscape standards and setback restrictions. If outside of a setback, such walls will be regulated just like any other retaining wall anywhere in the city. Retaining walls inside a setback area will have additional conditions. Mr. Pyle said those conditions will be discussed when during the discussion on landscape standards.

Chair Ferris asked if someone needing to add tiebacks every 20 feet to the entire length of an existing shoreline stabilization measure would be deemed to exceed the minor repair threshold. Environmental Planning Manager Michael Paine suggested that tiebacks would be considered to be a minor repair. Typically, tiebacks are needed to bolster walls that are basically intact but are leaning.

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Chair Ferris commented that in the case of Phantom Lake there is a restrictive outlet that causes the lake level to rise over time. He asked how that function is anticipated. Mr. Pyle said it is anticipated through the adaptive methodology for identifying the ordinary high water mark. Mr. Paine stated that under the way the definition is currently configured, the ordinary high water mark will march up the property as the lake gets deeper. To change that approach would require a change in the WAC.

Commissioner Turner suggested that in the case of Phantom Lake, the city should do its best to maintain the water level at or below the currently established ordinary high water mark.

Turning to the issue of major repair or replacement, Mr. Pyle said such actions are predicated on a determination that a legally established shoreline stabilization measure can be retained. The form of the stabilization, however, may be required to be changed. Major repair or replacement is triggered when a shoreline stabilization measure is deemed to be no longer serving its purpose, or more than 50 percent of it must be modified through repairs or changes. For a 100-foot shoreline stabilization measure, if only 60 feet of it requires repair or replacement, only the 60 feet would be subject to a new standard for an integrated or softened approach. All of the portions subject to replacement standards will be looked at in order of preference: avoidance or a softened approach, an integrated approach, or a hardened structure where in the opinion of a qualified professional such a structure is required. Major repairs or replacement, however, will be prohibited on Phantom Lake given the determination that the condition of the lake is such that hardened stabilization structures are not warranted. Existing bulkheads in the shoreline residential canal areas will be allowed to be replaced in kind because they were designed upon construction and platting of the development.

Chair Ferris suggested it would be helpful to include a template of both major and minor repairs that would assist property owners in getting to a quicker resolution both in time and cost. Mr. Paine allowed that while that approach might be possible, it would be much easier to do it for entirely new bulkheads. Mr. Pyle noted that the critical areas handbook provides templates for restoration plans.

Commissioner Hamlin asked if there are any properties on Phantom Lake with shoreline stabilization measures that need major repairs. Mr. Paine said there are some bulkheads on that shoreline that would probably qualify as a shoreline stabilization measure. Each would need to be reviewed on a case-by-case basis.

Mr. Pyle said voluntary relocation or removal of existing bulkheads is both allowed and encouraged, especially landward movements. The benefit to shoreline processes is an additional area under which the processes can occur within the upland and aquatic environments. Mr. Paine noted that the state is promulgating legislation to make voluntary relocation and removal of bulkheads as easy as possible by removing the requirement for any shoreline permit and by removing any action on the part of local governments.

Commissioner Sheffels asked how much of a structure that meanders along the shoreline and which is in some cases at the ordinary high water mark, in some places two feet above it and in some places five or more feet above it must be within the area that would deem it a shoreline stabilization measure. Mr. Pyle said making that determination would depend upon the intent or purpose of the measure. If the purpose is shoreline stabilization, not a retaining wall, then it would be considered a shoreline stabilization measure. Mr. Paine added that where there is a proposed action to move such structures back, at least some section of the shoreline stabilization measure must be tied into the any adjacent fixed bulkheads to avoid potentially damaging those structures by allowing waves to come in behind them.

Mr. Pyle said new or expanded shoreline stabilization measures are discouraged. Avoidance is the preferred measure under the WAC guidelines. If a need can be established, however, then the preference is for soft stabilization measures. Hardened structures are allowed only where a need can be established due to specific conditions, such as a primary structure under threat from an erosive force.

Mr. Paine suggested the reality is that properties that have not constructed a shoreline stabilization measure to date likely do not need them and probably never will. However, the proposal includes the flexibility needed to allow for a new shoreline stabilization measure to be constructed in the future.

Commissioner Himebaugh asked why shoreline stabilization measures should be prohibited on Phantom Lake if that is the case. He suggested that by that same logic one could say that such a structure may be needed in the future on that shoreline. If there is no need, the structures will not get built, but if a need can be demonstrated the ban makes no sense. Mr. Paine said the point is well taken. He pointed out that Phantom Lake is a small body of water that does not have large destructive waves caused by wind or motorboats. As lakes get used more and more for recreation, the potential for properties that have never really had a need for a measure could increase. However, motorboats are not allowed on Phantom Lake so the threat does not exist. Commissioner Himebaugh said he did not understand what the outright prohibition was trying to prevent if there is no likelihood that a measure will ever be necessary. The needless prohibition could get in the way in the future. Mr. Paine said if the Commission feels strongly about that, the prohibition can be removed. He reminded the Commissioners, however, that much of the

Phantom Lake shoreline is regulated wetlands and such structures could not be built under the critical areas code. As such, it is just simpler to have the outright prohibition in place.

Answering a question asked by Commissioner Turner, Mr. Paine said later in the week he would be visiting Phantom Lake with staff from the utilities department to look at the outflow issues. He said it was his understanding that the city would do what it can in the short term to address the issue, but likely will not take on the responsibility as a long-term policy. The community is going to have to figure that out on its own.

Mr. Pyle reiterated that per the WAC new stabilization structures are only allowed when needed to protect an existing residence or a constrained site under specific circumstances. Property owners proposing a new stabilization measure will be required to complete a study to determine if there is a solution that would abate the problem. Shoreline stabilization measures are generally not allowed to protect landscaping and other improvements.

#### B. SMP Update – Public Comments

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, stated at the last Commission meeting that people from the community have been asking for changes, yet nothing seems to change. With regard to docks, there is a question as to whether they can be allowed with prisms or with windows. The fisheries department expert that addressed the Commission had the idea that trees should be planted in the 25-foot buffer so they can provide shade and then fall into the water giving the fish shelter. The Commission has also been told that dock pilings provide places for predator fish to hide, and that fish are sophisticated enough to be able to tell the difference between the shade of a tree, which is good, and the shade of a dock, which is apparently bad. The staff were challenged to show any study by an expert that demonstrates that fish can in fact tell the difference. There appears to be an agenda to make furious irrelevant causes more relevant. No study has ever been done that shows a 25-foot buffer does anything to foster fish populations in large lakes; the studies done have focused on streams, rivers and small lakes. The data presented was irrelevant. No one can even say why 25 feet is the right buffer width. If there were no bulkheads on the lakes, the amount of erosion would be enormous. It would make sense to grandfather in all bulkheads rather than to destroy properties and the lake itself by allowing erosion to occur. Erosion on Whidbey Island is good evidence of the destructiveness of wave action. Soft stabilization does not work on properties where there are hillsides. Rockeries work very well, even better than concrete bulkheads. Meydenbauer Bay is full of silt and milfoil, a condition that ultimately kills salmon fry. The problem will not be addressed by requiring setbacks. The problem is silt flowing into the bay from building site stormwater runoff. The issue of whether or not all the shorelines of Lake Washington are critical areas must be addressed.

Mr. Mark Wagner, 2236 West Lake Sammamish Parkway SE, said he has attended the last three Commission meetings in an attempt to learn more about the Shoreline Master Program and its impact on shoreline residents. He said he has owned property on Lake Sammamish for over 17 years, during which time the lake shoreline has continued to develop, as has the surrounding hillsides whose runoff flows into the lake. There are few lakeside residents who do not consider the health of the lake and its fisheries a priority for future regulations. However, it would be extremely unfair and shortsighted to assess the more stringent and unrealistic regulations on property owners who are only responsible for the last few hundred feet from the shore. Many of the proposed rules are inconsistent with those already established by neighboring communities. There are miles of residential and industrial properties with equal or greater impact to the lakes through established runoff networks. It is unrealistic to think that imposing more stringent regulations on the minority of lakefront residents in Bellevue will make a noticeable difference.

It is disconcerting that so many lakeshore residents have only recently become aware of the 2006 assignment of the critical areas ordinance to Bellevue lake shorelines and how that has impacted properties. If the responsible city agencies had better communicated the intent and impact of the critical areas ordinance four years ago, application would not have been made and the current resistance to the Shoreline Master Program would have been minimized. An investigation should be launched to determine if the city followed the proper process of notification and held appropriate public reviews before adopting the critical areas ordinance. The goal of having clean and vibrant lakes should be shared by all. Through the process of reviewing and debating the Shoreline Master Program, the City Council should realize and recognize the serious disconnects between the individuals on the Planning Commission and the homeowners who will ultimately be impacted. The counter positions brought to light by the WSSA should not be downplayed. The group has provided accurate fact-based information, not the individual opinions of an empowered few. The Commission should continue to listen to both sides of the Shoreline Master Program proposal and base its recommendation on actual facts and on how shoreline residents will be impacted.

Mr. Michael Lunenschloss, 2242 West Lake Sammamish Parkway SE, suggested that soft stabilization is not the way to go. He shared with the Commissioners photos of Lake Sammamish showing wave action that would destroy a soft stabilization measure. One property on the lake that had a block wall was directed by the city to remove it. It was replaced with soft stabilization which has since been washed away along with a major portion of the property. It is absurd to assume that lakes with fluctuating levels and wave action are appropriate places for soft stabilization. The shoreline properties have been developed under city and county codes with an anticipation of being allowed to use them in a certain manner. For the city to now come along and rewrite the codes with no science to back them up is simply unjust. It is unconscionable to require citizens to spend thousands of dollars to remove approved structures absent any science to justify their removal and to replace a system that works with one that does not.

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Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said there are at least four hard stabilization walls within the ordinary high water mark on Phantom Lake. One of those walls is within 20 feet of the home on the property and was under water in 1991 during a high water incident. In discussions with staff, it has been stated that staff believes the Phantom Lake outlet stabilization issues are not appropriate to the Shoreline Master Program process. Phantom Lake residents disagree, however. Protections must be in place to limit the city from increasing the ordinary high water mark, and to keep the lake from filling in with sedimentation backing up from the weir and the outlet. Most of the sedimentation is coming from four storm drain outfalls. New soft stabilization along the outlet may be needed. Absent a plan to keep the lake level from rising, Phantom Lake residents should not be denied shoreline armoring protections at the water line. Utilities staff claim that the average lake level has not risen, but data from non-city sources demonstrates a rise of one foot in the lake level.

Mr. Allan Alef, 1426 163<sup>rd</sup> Place SE, said the possibility of losing grant dollars should not overshadow the rights of property owners. The regulations being proposed will impact property owners for a very long time, and all the time necessary should be taken to get them right. He said he has lived on the lake for the past 30 years and it is pretty well developed. He said when he purchased the property the lawn ran all the way to the edge of the lake. That could be considered to be the lake's historic condition, and if so future property owners should all plant grass down to the lake. The city has installed sewer lines on a property that has made it undevelopable; it is called a critical area even though there is nothing there that is critical. The lake level continues to rise and as such the ordinary high water mark is moving. For the last development of the Eastgate area the city allowed the removal of acres and acres of trees that

used to retain a lot of water, most of which now flows into Phantom Lake. The city has caused the problems it now wants the property owners to deal with.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, spoke in opposition to the 50 percent threshold for deciding if a bulkhead repair is major or not. He commented that there is no such threshold beyond which someone must change the configuration of their house if more than 50 percent of their roof needs to be repaired. If a bulkhead needs to be fixed, it needs to be fixed. It makes no sense to do half the work, wait for a period of time, then do the other half. Speaking on behalf of the Washington Sensible Shorelines Association, he called attention to the statement in the staff memo that indicated WSSA had agreed to respond within two weeks on a rolling basis to staff materials. The fact is staff made that suggestion, and WSSA stated its desire to do so, WSSA pointed out its constraints as a citizen group in responding to volumes of material prepared by staff. Coming to meetings and finding large volumes of new material works against timely and efficient input from any citizen. The planning staff should send out its materials as early as it can so everyone will have more time to read and review them. Given the Labor Day holiday and school starting again, WSSA has had to push its response efforts and postpone arranging for additional meetings. WSSA anticipates responding to the latest round of documents by the end of September. As yet there has been no response from staff to the original meeting that covered WSSA's overall concerns with the draft Shoreline Master Program policies, and that has constrained the group's submission of materials to the Commission.

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway, questioned the position of staff concerning establishing a line five feet landward of the ordinary high water mark. Nothing has been said about why the line should not be drawn at four feet, or in fact at the ordinary high water mark. The definition of ordinary high water mark references the line that was established in 1971 and includes the statement about the line changing naturally over time. Nothing is said about the line changing unnaturally over time. He provided the Commission with a resource CD including the second half of WSSA's comments on the draft set of policies and regulations. In distinguishing between exempt activities and activities that need to go through permitting, the Commission should lean as far as possible toward exemptions rather than toward the time-consuming, complex and costly permitting processes. Existing stabilization measures away from the ordinary high water mark should not be regulated as a bulkhead; such facilities do not produce any demonstrated loss of ecological functions. Complete replacement should not have to result in exactly the same structure; things like rocks in front of a bulkhead to attenuate wave activity should be encouraged. State law declares exempt construction of the normal protective bulkhead common to single family residences. The city should incentivize wherever possible, and should exempt new stabilization actions where soft stabilization is chosen. State law affords local jurisdictions substantial discretion to adopt master programs that reflect local circumstances. New and expanded bulkheads not exempted will need to follow the path of substantial development process, but the key hurdle is measuring ecological function, a measure that has not yet been established.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said it felt as if the staff were going in circles. A rewrite of the draft Shoreline Master Program was submitted by WSSA, but there has been no response from staff. The Commission meetings are in fact being held out of order; they should be held after the regulations are brought forward. Too many small unimportant issues are triggering delays; it would be easier to determine tradeoffs once it is known what the big issues are. The schedule is frustrating and a waste of time for both the Commission and the public. WSSA wants the regulations so it can review them. It is becoming very clear that the things staff agrees on will make it into the regulations, the rest will be housed in a matrix, the document will go straight to public hearing and the public will have no input. That is not good public process. The Commission should be able to sense the public's frustration. Staff has structured a one-way

street on public input and expects the public to provide input up front but otherwise be constrained until the regulations are released. The staff has carte blanche to exclude key input. The schedule is ludicrous. December 16 is not the time to give people volumes of materials to read; that date should be pushed to January 1. The schedule calls for the marinas issue to be wedged in between two very volatile issues, namely vegetation and critical areas; that is unfair and inappropriate. From the schedule it is clear that staff has no intention of removing the nonconforming aspect. The public needs the big picture will need more than 30 days to respond.

Mr. Jerry Laken, 4847 Lakehurst Lane, spoke on behalf of the Meydenbauer Yacht Club. Referring to the chapter on shoreline modifications, he noted that there is nothing to distinguish between residential and marina applications for shoreline stabilization. Soft stabilization or restoration could work on a residential property but would be disastrous for the Meydenbauer Yacht Club where there is a hard vertical bulkhead that has been in place for 60 years. Similarly, the chapter that describes the marine environment does not have a policy on shoreline stabilization. The recommendation of the Meydenbauer Yacht Club is that the Shoreline Master Program should include policy and regulatory concepts that clarify what would be allowable in a marina environment and what would be allowable in a general residential environment.

Mr. Rory Crispen, PO Box 40443, voiced concern about the concept of penalizing latecomers. Just because someone has chosen not to do something on their property does not mean they may not want to do something in the future. If a bulkhead is at the ordinary high water mark, it should be called a bulkhead, but anything landward of the line should not be called a bulkhead. Establishing an arbitrary line at five feet makes no more sense than establishing it at two feet. Retaining walls in the upland areas should be allowed even if there is no such existing structure on a property; there may be unique flood situations where someone would want a structure to protect their property, and those structures would not necessarily be located in a critical area.

Mr. Ralph Guditz, 3929 179<sup>th</sup> Lane SE, asked if there is a proposed connection with FEMA maps to determine what constitutes critical areas on the lakeshore. He said the FEMA maps are a joke relative to the Lake Sammamish shoreline. He said the FEMA map shows his house to be under water and in a critical area when in fact none of it is.

Mr. David Radabaugh, shoreline planner for the Department of Ecology, explained that the city and his department have been working on a contract amendment that would extend the current contract through December 1, 2010. If approved, the new deadline would be a total of one year beyond the statutory deadline specified in the Shoreline Management Act. There is money involved with meeting the terms of the contract. The larger concern is that steady progress be made toward getting a recommendation to the City Council and getting a Shoreline Master Program approved and in place. The Commission has taken on a very complicated issue which the Department of Ecology appreciates. With regard to exemptions for soft stabilization measures, or what the Department refers to as green shorelines, he said the Department is currently looking at potential legislation that would provide an exemption from the shoreline permit requirement for bulkhead replacements with green shorelines. The details have yet to be worked out. The exemptions from the shoreline substantial development permits that exist are outlined in the WAC in 173.27, and the city has been implementing those exemptions for many years.

Commissioner Sheffels asked if the Department of Ecology believes the Commission is making progress. Mr. Radabaugh said he recognized that progress is in fact being made. The issues are complicated and have generated a lot of controversy. The Commission should do all it can to stick to the schedule as outlined.

### C. SMP Update – Commission Discussion

Chair Ferris noted that the staff memo included a request for the Commission to comment on three things: the proposed schedule change to accommodate public comment prior to release of the revised draft; the method by which staff has proposed to deal with the public comments; and the degree to which the regulatory approach to new shoreline stabilization is sufficiently developed to begin tackling code language.

With regard to the schedule, he noted that the Commission previously asked the staff to focus on the areas deemed to be most impactful to the residential shoreline. The list of topics was developed at the request of the Commission, and the Commission has been working its way through them in order seeking to be more fully informed and ready to address the regulatory language when it comes out. The goal is to work through the list of major topics by November 3, allowing staff time to bundle the remaining issues and any items the Commission feels has not been fully addressed prior to the release of the draft regulations. The schedule allows the public time to bring forth any concerns or issues not fully addressed.

Commissioner Hamlin said he was comfortable with the schedule as presented, noting that it allows for some degree of flexibility. He suggested, however, that the 30-day response clock should not start on January 1 rather than December 16.

Commissioner Himebaugh agreed with the schedule as well. He said his biggest concern is not with the December 16 date but with the time period between receiving the actual code language and the open house and public hearing. He agreed with Commissioner Hamlin that the 30-day clock should start on January 1, but said he would prefer to see a 60-day period instituted. The Commission itself will likely need more than 30 days to review and comment on the code language.

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Mr. Paine said the open house will be the opportunity to educate everyone about the key components of the draft code language. There will be a period of time between the open house and the public hearing, and the Commission will have as much time as it needs to take the public hearing input and incorporate it or not in clarifying and otherwise redrafting the code language before making its formal recommendation to the City Council. He suggested that if more time is needed, it should be worked into the schedule following the public hearing. In any case, the issue must be presented to the Council by June.

Commissioner Sheffels added her voice in support of starting the 30-day clock on January 1. She said she otherwise agreed with the schedule as presented.

Chair Ferris pointed out that if the draft were released on December 16 as scheduled, and if the public hearing were scheduled for mid-February, there would be about 45 days from January 1 to the public hearing. The Commissioners agreed that would be sufficient.

With regard to whether or not the method proposed by staff to deal with the public comment was satisfactory, Commissioner Turner said provided there is good interplay between the public and staff the approach would be acceptable. He said he personally would like to see more positive communication between the public and staff. Ms. Bedwell said it is the intention of staff to continue to be available to have conversations, particularly with the WSSA board, aimed at working through the major topics.

Commissioner Hamlin said he was satisfied with the method proposed by staff.

Mr. Paine said staff has been given a lot of materials by the public and is in the process of responding to them directly. Many of the specific questions, however, will be answered in the next draft. Where there are clear differences of opinion they will be recognized in the comment matrix so that the Commission can resolve them in the way it deems will be best.

Mr. Pyle said the comment matrix will be available in conjunction with the release of the next draft. It will include the substantial comments that were received in writing and will reference the section where each particular issue has been incorporated or addressed. For those issues not addressed in the draft, there will be a staff response explaining why.

The Commission turned next to the issue of whether or not the regulatory approach to new shoreline stabilization was sufficiently developed to begin drafting code language.

Commissioner Turner noted that when the process started the Commission talked about incorporating as many incentives as possible, but added that he had not seen any incentives regarding shoreline stabilization. Mr. Pyle said incentives come into play in analyzing the combination of development regulations or regulations that might apply to a specific scenario. Allowing for a reduction of standard can incentivize some other action. In the case of setbacks, it might be possible to incentivize the use of a soft stabilization measure or an alternative approach by allowing for a setback reduction. Before developing a package of incentives, however, it will be necessary to have a full array of development regulations that might apply to a particular scenario. Mr. Paine said the state really is trying to come up with alternatives that would remove any permitting hassles for anyone wanting to take a hardened shoreline and make it less hardened. That certainly will be an incentive.

Commissioner Turner asked if there is a clear definition of ecological function and how the various processes come into play. Mr. Paine said the legislation as currently drafted includes clear indications of what constitutes an improvement to ecological functions. The language has not, however, been fully drafted, and it is unknown whether or not it will make it through the legislative session in the coming year.

Commissioner Sheffels suggested the shoreline stabilization issue is ready to have code language drafted, though she proposed that a line should be drawn between residential and commercial uses. Mr. Paine agreed and said the issues pertaining to marinas will be presented to the Commission at an upcoming meeting.

Commissioner Himebaugh said he was unclear what it would mean to incorporate soft stabilization to the maximum extent practicable. Mr. Paine reminded the Commission that Dr. Pauley talked about replacing vertical bulkheads with rockery bulkheads having a slope. It would be very easy to plant vegetation in the bulkheads, so that is one way to incorporate soft stabilization. There are other ways to incorporate mostly hardened stabilization while allowing for some areas with a softer approach. Mr. Pyle said even where the need for a hardened stabilization measure can be demonstrated, a cast-in-place concrete wall is not necessarily the answer. The concept is that where hardened structures are used, they should incorporate as many soft stabilization features as possible.

Commissioner Himebaugh said he was also concerned about who would determine the maximum extent practicable, a property owner in consultation with an engineer, or by the city. Mr. Paine said in the current critical areas ordinance there is a section that addresses allowed uses. Stabilization is one allowed use, as is utility location in critical areas and road building, subject to certain standards. The first standard is whether or not there is a technically feasible alternative. Each standard has associated criteria that must be measured in order to meet the test.

Ultimately the decision is up to the discretion of the reviewing staff, but they must base their decisions on the criteria. The same approach would work for shoreline stabilization.

With regard to new bulkhead construction, Commissioner Himebaugh voiced concern over issues of mitigation versus development conditions. He said if the code were to impose a pre-determined development condition, the condition may not in fact address the specific site circumstances. Requiring the incorporation of soft stabilization measures before it can be known if such measures would be a good idea or not for a specific site would be problematic. Mr. Paine said the issue is one of gradation. Certainly in some situations shoreline stabilization measures will not make sense. Writing code to address all of the nuances would be very difficult.

Commissioner Hamlin said he was ready to move ahead to developing code language for shoreline stabilization. He said he liked the fact that flexibility would be included. The Phantom Lake prohibition, however, should be reconsidered. Mr. Paine said a variance process could be incorporated instead.

Chair Ferris agreed that moving ahead to drafting code language would be a good way of finding out how the discussion has been captured. He suggested that language regarding shoreline stabilization should include a recognition of the fact that the ordinary high water mark fluctuates on Lake Sammamish and Phantom Lake. That is a reality that needs to be addressed in some way. The permit process should be used as an incentive in some way; having a template of sample solutions that are acceptable, both soft and hardened, would be very helpful. He agreed with the notion of not prohibiting outright shoreline stabilization on Phantom Lake. He further agreed that the 50 percent repair threshold should be re-addressed and suggested an incentive should be created under which someone could submit a solution for the entire project and accomplish the goals of the repair without skirting the code. It would be better all around to get the repairs done all at once rather than in pieces.

## Draft

Commissioner Himebaugh asked where the distinction between minor and major repair came from. Mr. Paine said previously the code included both minor and major repairs, and minor repairs were in fact very small. The industry finds it more cost effective to come in and build a whole new facility than to actually try and repair a portion of it. That is because they take everyone out, redo the footing and then put everything back. He allowed that the subject is a complicated one, and wherever the threshold is set there will be a problem. Some existing facilities are injurious to the functions and values that are supposed to be protected along the shoreline, so some changes are needed.

Mr. Pyle said the 50 percent breakpoint came from the working draft policies and the WAC citation that refers to replacement of structures that can no longer adequately serve their purpose. If more than half a structure needs to be repaired, it could be construed that the structure is no longer serving its purpose.

Commissioner Himebaugh asked how the integration of soft stabilization measures relate to the no net loss standard when it comes to replacement. Where there is an existing structure, even if it is a broken down vertical cement wall, the ecological function has already been degraded. It may be requiring too much of property owners to push them toward soft stabilization measures when a decaying structure needs to be replaced given that the ecological functions have already been compromised. It should be allowed just to replace such structures. Mr. Pyle agreed that existing hard stabilization measures have degraded resources, and that ecological function loss can be captured in a snapshot. That snapshot, however, would not capture the tendency of the resource toward succession and regeneration which the continued presence of the degrading bulkhead is precluding. The long-term degradation trajectory is not a sustained level line; it is a

downward slant because succession and regeneration has been blocked by the hard structure.

Commissioner Himebaugh asked why that should be the property owners' problem, even assuming that is true. Mr. Pyle said the wall placed there by the property owner in the first place is the very element that is preventing the natural processes from occurring. The course of succession for a site can be reset by constructing measures that will allow the ecological functions to occur.

Mr. Inghram pointed out that throughout the city redevelopment triggers requirements to adhere to all current regulations.

Commissioner Turner said his concept of no net loss was that it referred to keeping systems from degrading from their current point, not that systems would be pushed back to their historic roots. He said it did not appear from the shoreline stabilization measure discussion that that definition was being used. Mr. Paine said the focus was not on going back in time other than to determine what the functions were then that could be restored in part with new stabilization measures. Property owners will still have a right to shoreline stabilization. Commissioner Turner said he suspected the public and several of the Commissioners were confused about whether or not the no net loss definition was being interpreted in the same way. Requiring property owners to replace hard stabilization with soft stabilization is not in line with the notion of keeping things from degrading from their current point. Mr. Paine stressed that there will be no requirement to replace hard structures with soft structures. The proposal is for an integrated approach that allows for basically hard structures that include a few soft elements.

Mr. Inghram said his history in working with the Department of Ecology is consistent with the explanation of no net loss given by Mr. Pyle. The Department of Ecology recognizes that existing structures prevent succession and regeneration. What the city must do is draft regulations that will satisfy the Department of Ecology on that point.

Chair Ferris said there has been a great deal of testimony from the public regarding Phantom Lake and Lake Sammamish about development that occurred before 1970 that has resulted in increased sedimentation of both lakes. That situation will not be improved by simply having regulations on new development going forward. There are regulations that apply to new upland developments, and to existing developments where some redevelopment occurs. The shoreline area ecological functions will not improve over time if there are no improvements made to capture runoff from the upland developments. The full responsibility for improving lake conditions will not be borne by shoreline residents alone.

Commissioner Sheffels commented that in the Bel-Red corridor the city will be requiring streams to be daylighted as a condition of redeveloping the area. That will improve ecological functions in that area.

8. OTHER BUSINESS – None

9. PUBLIC COMMENT

Mr. Marti Nizlek, 312 West Lake Sammamish Parkway, said the five-minute limitation imposed on public comments forces the public to submit its testimony in writing. That is very burdensome. He said as improvements are made to upland and other areas, their benefits must somehow be accounted for. The presentations from utilities staff essentially said that they will be unable to do much that will affect things positively on the lakes. The proposal to remove the prohibition on Phantom Lake and replace it with a variance process will only trigger another

onerous process. The argument that the Department of Ecology will only approve certain approaches is not borne out by the facts given what other jurisdictions have gotten passed.

Mr. Allan Alef, 1426 163<sup>rd</sup> Place SE, reminded the Commission that Phantom Lake is a warm water lake that has never had salmon in it. Many of the issues that apply to rivers and other lakes do not apply to Phantom Lake.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said she had not heard the Commission agree on whether there should be a 60-day clock or a 45-day clock between the release of the draft regulations and the public hearing. She said she also did not see on the printed schedule time for Planning Commission deliberations after the public hearing. It is unclear if the Commission will even consider the comments made by the public at the hearing and will have the opportunity to amend the document. The issue of what is considered to be a bulkhead based on where they are located relative to the ordinary high water mark is very important. The WAC refers to at or near the high water mark, and five feet is not near. There is no clear basis for choosing the five-foot distance. The Commission asked the scientists to present information, and the WSSA scientist then debunked most of what was presented. Yet staff keeps bringing up the same criteria as if the science supports it. The WAC requires regulations that are based on science.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said his concern with soft stabilization measures is that the wood used in them will rot over time. The rotting wood will then become hazards to docks and nearshore buildings. Structures that rot out will no longer be performing their purpose and will allow for increased sedimentation.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, said Stephen Hawking wrote a book called *The World in a Nutshell* in which he espoused the concept of entropy and regeneration. He said those who do not believe in entropy do not own a mouse. It would appear that the concept of renewal as used by the staff refers only to waiting until something falls apart. If the deadline for getting the Shoreline Master Program work completed was set by the Department of Ecology and applies only to the city getting money from the state, the city should not have to adhere to it. Millions of dollars of property will be affected, but the funding in question comes to only \$15,000.

Mr. Rory Crispin, PO Box 40443, said the public received the draft policies and goals in the month of May 2010 even though staff had promised in May or June 2009 that they would be forthcoming. It took nearly a year to get the draft regulations. It would appear that the deadline is being pushed solely by the staff. State law clearly specifies the Department of Ecology can only approve what adheres to state law. They must make their determinations objectively rather than subjectively. If the city has received money from the state to help the Shoreline Master Program process along, someone should ask how it has been spent and when it was spent.

Land Use Director Carol Helland explained that the state legislature determined the timing for the adoption of Shoreline Master Program updates when it directed those jurisdictions with shorelines to adopt their plans on a certain time schedule; Bellevue's deadline was December 2009. The Department of Ecology, not the legislature, extended the city's deadline by one year to December 2010 dependent on making continued forward progress. The city received grant funding from the Department of Ecology that included stipulations relative to a time table for spending the funds; that time table was also extended to December 2010. The \$15,000 was used for public outreach and to hire consultants. The City Council also set aside funds for the work, and the full scope is available to anyone who wants to see it.

With regard to the Planning Commission deliberations, Ms. Helland said the timeline has been

extended to allow for conversations with WSSA and other stakeholder groups and to try and narrow the focus of the discrepancies in order to facilitate the development of a revised draft. The intention is to have that revised draft ready for release by the middle of December or in early January. A public open house event will be slated to go along with the release of the document. The actual public hearing will occur in the first half of February. A public hearing is a formal mechanism by which the city receives either written or oral testimony. The Commission will consider all of the testimony and review those issues around which there are discrepancies, and will then begin formulating a recommendation. The revised draft will undoubtedly get changed during that process. Depending on how much the recommendation changes, it may be prudent to conduct a second public hearing. The Commission's final recommendation will then be sent to the City Council.

10. NEXT PLANNING COMMISSION MEETING

A. September 15, 2010

11. ADJOURN

Chair Ferris adjourned the meeting at 9:36 p.m.

\_\_\_\_\_  
Paul Inghram  
Staff to the Planning Commission

\_\_\_\_\_  
Date

**Draft**

\_\_\_\_\_  
Hal Ferris  
Chair of the Planning Commission

\_\_\_\_\_  
Date