

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

May 25, 2011  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

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

COMMISSIONERS ABSENT: None

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

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

The meeting was called to order at 6:56 p.m. by Chair Ferris who presided.

2. ROLL CALL

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

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 – None

7. PUBLIC HEARING

A. Shoreline Master Program Update

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

Land Use Director Carol Helland explained that the Shoreline Master Program is a compilation of policies, regulations and maps. They are used by the city to manage shoreline use and development. The Planning Commission is charged with making a recommendation to the City Council regarding the Shoreline Master Program update, and the Council will ultimately adopt it. The program must be approved by the Department of Ecology. All counties and cities must have Shoreline Master Programs prepared and approved, and together they constitute a statewide plan.

Shoreline Master Programs were first required in 1972 by Washington voters. The objective of the statewide requirement was to address concerns regarding piecemeal and uncoordinated development of Washington shorelines. Every city and county is required by a 2003 state legislative mandate to update their Shoreline Master Programs. All of the documents are required to contain the same basic elements.

Bellevue's current Shoreline Master Program is deficient in many areas. For example, approximately a third of the draft Shoreline Master Program is made up of maps and a restoration plan which are required by state law but not currently included in the Bellevue plan. Bellevue's document is also outdated in that it has not ever been updated, other than some minor revisions made when critical areas provisions were added some five years ago. The city accepted a grant in the amount of \$175,000 from the Department of Ecology in 2007 to help pay for the update effort; with the funding came certain expectations, not the least of which is completion of the update in a timely fashion.

The content of the city's Shoreline Master Program is driven by the community vision contained in the Comprehensive Plan. Staff and the Planning Commission are required to look to the document when policies and regulations are updated. The Environmental Element goal talks about integrating the natural and developed environments to create a sustainable urban habitat with clean water, clean air, habitat for fish and wildlife, and comfortable and secure places for people to live and work. That statement has been a driving force behind the work to update the Shoreline Master Program.

When it comes to achieving the city's environmental vision, the regulations are only one prong of the implementation strategy. The city makes significant investment in property acquisition for parks, open space and habitat; engages in best management practices for things such as road maintenance and utilities; and conducts education and outreach to warn about the harmful effects of pollutant discharges.

Ms. Helland said the desired outcomes of the Shoreline Master Program update process include policies that are Bellevue-appropriate; maintaining a balance between property rights and regulations and environmental protections; maintaining neighborhood character; and creating a permitting structure that is predictable yet flexible. Additionally, the end product will need to be approvable by the Department of Ecology for inclusion in the statewide program. Not all of the issues raised during the update process are appropriate for inclusion in the Shoreline Master Program; those issues have been cataloged and will be highlighted for the Council for future consideration.

Ms. Helland said to date the update process had included a boat tour in 2008, three publicly noticed open houses, more than 30 Planning Commission study sessions, 40 meetings with interested groups and individuals, and publications in neighborhood newsletters and the city's newsletter *It's Your City*.

Numerous issues of interest to shoreline stakeholders have been made known through the process, including nonconforming conditions, setbacks and tree retention, bulkheads, docks, permitting and lake levels. Under the approach outlined in the draft, all existing uses are protected; nothing is nonconforming outside the 25-foot setback that has been in place since 1974. All existing structures are allowed to be maintained and repaired, and existing structures that are completely destroyed can be replaced. Shoreline properties are also protected from the detrimental effects of illegal activities; structures that were constructed illegally and which can impact water quality and exacerbate lake level issues are not grandfathered.

The proposed setbacks accommodate uses while protecting shoreline resources. The no-touch critical area buffer that was adopted originally in 2006 is eliminated in the draft; it is replaced with a setback of the same width to better accommodate shoreline recreation and uses. The required vegetation conservation area is limited in the draft, and the citywide tree retention standards are applied. The draft also provides clear standards, and allows for some development in the setback without mitigation.

Bulkheads can remain in place and can be repaired as necessary. The draft encourages routine maintenance and provides clear repair thresholds and includes design solutions for new bulkheads that protect shoreline properties while imitating natural shorelines to reduce the impacts that contribute to artificial wave action. The dock standards included in the draft are intended to be flexible; they encourage repair and maintenance, provide flexible standards for configuration of moorage while protecting shoreline aquatic habitat, and the moorage allowances are specifically tied to the types of boats that are commonly found in the various lakes.

One principle with respect to regulatory reform is that permitting must be fast and predictable. The draft accomplishes that by providing clear standards, by providing an opportunity to depart from the standards where there are unique circumstances, and by integrating state and local requirements into a single code. The regulations are tailored to specific lake circumstances.

Ms. Helland acknowledged that not all of the issues raised in the context of the public hearing and the record received over the course of the last three years will be resolved through the Shoreline Master Program update process. The issues have been cataloged and will be forwarded to the Council for consideration. Lake water levels is one such issue. The draft includes policies that support regional watershed planning, which can affect lake water levels. The shoreline property owners have been successful in getting from King County a commitment to maintain the weir on Lake Sammamish, and Bellevue staff are actively pursuing options for maintaining the Phantom Lake outfall.

Ms. Helland said that following the public hearing staff would compile the comments along with a deliberation schedule for the Commission's June 22 meeting.

Chair Ferris invited members of the public to speak as part of the public hearing.

Mr. Elliot Severson, 1600 West Lake Sammamish Parkway NE, said he has lived on the lake for the past 23 years during which time he constructed two homes from the ground up, completed substantial remodels on two other properties, and is currently pursuing a third ground-up construction project. He said shoreline property owners care deeply about the lakes they live on. Most would voluntarily comply with ideas and suggestions that would materially benefit the lakes. However, there must be real science and reliable reports documenting the benefits, not just ideas from staff with regard to what will be good for the lake. Over the years numerous new regulations have been imposed without scientific evidence to support them. During construction of a new dock in 2000, steel was required rather than wood on the claim that bass hide behind the wood and eat fingerlings; the fact is fingerlings swim out at the end of the dock, which has since been shown by a reliable study. In another instance, work to repair an existing bulkhead triggered mitigation in the form of partially submerging two large trees with branches in the waterfront area; a few years later a city official said the rule was handed down from the federal government and was seen by most as being unfounded. Shoreline property owners do not mind doing things that make sense but do not want to be jerked around with new rules and regulations that have little or no scientific support or benefit to the lake. The city should be concentrating its efforts on improving and controlling the stormwater discharge from the surrounding basin. The Washington Sensible Shorelines Association plan should be supported. The staff-generated

draft Shoreline Master Program has many problems. With regard to context-sensitive design, there is no support for what benefit the new standard would provide and could be an extreme burden for some. No rules or regulations can be expected to work well on all sites and conditions given the wide diversity of site circumstances on individual parcels. Once rules are in place, they must be followed even if they make no sense in a particular instance. The proposed increase in the setback from 25 feet to 50 feet is not supported by any ecological science; it is both unfair and unnecessary and constitutes a taking of private property rights.

Mr. Marv Peterson, 9840 SE Shoreland Drive, said he is the immediate past president of the Meydenbauer Bay Neighbors Association (MBNA), which represents over 1300 families, eight condominiums, and the Meydenbauer Bay Yacht Club. He provided the Commission with formal written comments on the draft Shoreline Master Program and noted the MBNA primary interest is with the Meydenbauer Bay Park. Following significant effort by the MBNA, the City Council agreed to adopt implementation principles as an integral part of the Meydenbauer Bay Park master plan. Those principles ensure thorough review of the concerns expressed by the MBNA. The MBNA wants to ensure that the draft Shoreline Master Program limits, the uses and development of the Meydenbauer Bay Park, will conform to what was approved in the master park plan, including the implementation principles attached to the written comments. The staff have indicated agreement with that approach in general, and the comments address changes that would make the intention clearer. The MBNA believes that the Meydenbauer Bay Park should be processed as a shoreline conditional use to ensure greater public participation, and to provide the maximum authority to impose conditions that will mitigate community concerns. The draft Shoreline Master Program does not have adequate standards to address all of the issues in a straightforward substantial development permit process. The issues include intensity, noise, blocking of views, and fire and safety access. The implementation principles should be added to the Shoreline Master Program as part of the criteria to be applied during the permit process. The MBNA supports efforts that will help to clean up the lake; to that end it obtained a five-year permit from the state to hire a biologist to help eradicate the noxious milfoil plant. The Shoreline Master Program should include provisions to support such efforts. The premise of the draft Shoreline Master Program, however, appears to be that houses along the shoreline are in the wrong place, that they should be removed, and that all shorelines should be returned to the condition they were in 200 years ago. To do so would result in the flooding of most lakefront homes in that the Montlake cut would need to be filled in. The footprint rule in the draft is a clear indication that the city has determined expanding any current home will harm the lake; that stance is simply not credible. The Washington Sensible Shorelines Association plan should be supported by the Commission.

Mr. Bill Neil, 9302 SE Shoreland Drive, yielded his five minutes to his wife.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, commented that the state's guidelines do not say the setback is required, only that it is something that can be done. The guidelines do require that the vegetation conservation area must be substantiated by science. She provided the Commission with a package summarizing the proposed regulations by major residential areas of concern. The core issue of concern is the creation of regulatory nonconformity. Residential structures, bulkheads and docks are all targeted. Through the stroke of a pen, shoreline owners can be stripped of their rights. When the issue of nonconformance was discussed with the Commission, the staff memo was thorough in outlining the legal context for regulation of nonconforming uses and structures. Nonconforming structures are those that complied to all applicable codes in effect at the time of their creation but which no longer comply due to changes in code requirements. The origins of nonconforming uses in developments have been regulated under Washington's common law, a body of law that has been developed in the courts rather than from statutes or the constitution. Washington's zoning enabling statutes are silent

with regard to the regulations of nonconforming uses in development. The Shoreline Management Act does not specifically address nonconforming uses, but the Act does authorize the Department of Ecology and the jurisdictions to adopt necessary and appropriate rules to carry out the provisions of the Act. Somehow that has been translated to Ecology adopting the resultant nonconforming rules. The staff memo states that amendments to the city's Shoreline Master Program, such as changes in setbacks, may result in some legally established structures and uses becoming nonconforming, including piers and docks. Changing the setback from 25 to 50 feet will allow the city to harvest more than 500 shoreline structures into the category of nonconforming, not including docks and bulkheads. The memo implies that the new setback will be okay because nonconforming uses are always afforded some protections and are allowed to continue until they gradually fade away, or are phased out by local ordinance. The staff memo states that it is common practice in Bellevue for land use regulations to include a safety valve to assure some minimum amount of development. The memo also states that the legal department allows that it will be difficult to predict how the combination of regulations will impact each parcel. In short, the legal department will protect the city while the taxpayers will have to fend for themselves. The memo states that the continuation of legally nonconforming uses can interfere with the community's ability to achieve new policy, but barriers to property improvement and reinvestment can also impact community character and livability in the early years of policy implementation. The Shoreline Hearings Board in addressing nonconformity bluntly stated that the purpose of the shoreline setback is to phase out residential use within the setback area. That could mean that during the next Shoreline Master Program update the setback will be expanded to include the entire 200-foot shoreline jurisdiction. The WAC guidelines are full of unsubstantiated statements with regard to stream and marine science, and the city has been handed science from the Department of Ecology. It is clear the regulations are designed to achieve a predetermined political land use policy. The Commission has been left with the task of finding and speaking the truth.

Mr. Dave Douglas with Integrity Shoreline Permitting, 818 Mill Avenue, Snohomish, disclosed that he has worked on and off for the Washington Sensible Shorelines Association as a contracted consultant, though noted that his testimony had not been paid for or subsidized in any way by the organization. He said 40 years of silence from the Department of Ecology has resulted in the current predicament. Building codes are updated every couple of years, but most of Ecology's scientific references date back to the 70s and 80s. The proposed sweeping changes are the result of having to catch up. He noted that staff had used the words "predictability" and "permit streamlining" and said those terms have always cost property owners, not the government. He provided the Commissioners with written comments covering 17 issues with the Shoreline Master Program. He said he wrote to the Department of Ecology and every planning department associated with Lake Washington and Lake Sammamish in 2009 asking for information on some 23 issues based on his experience working with property owners. No answer ever came from the Department of Ecology. In the draft document, much of the language relative to shoreline stabilization refers to rivers with side channels and to marine waters, not fresh water lakes. Very few studies have been done on the impacts on fresh water lakes, though the property owners in the Lake Washington and Lake Sammamish watershed are targeted for removal. The foundation of the Shoreline Master Program concept of no net loss is based on existing conditions at the time the shoreline inventory was taken. The shorelines in Bellevue are very highly developed and if nothing new were to be built, no net loss would be met. If all existing structures, both conforming and nonconforming, were to be replaced exactly as they are, no net loss would be met. When structures are repaired or replaced and improvements are made, a net gain is achieved. For piers and docks, no net loss only applies to undeveloped properties where there are no current overwater structures. According to the Department of Ecology standards, a new 480-square-foot pier with a four-foot-wide walkway, two-by-twenty finger pier and six-by-twenty-six platform, along with an acceptable native planting plan, already achieves

no net loss without action on the part of any other property owner in the city. The Corps of Engineers RGP3 from which Ecology adopted its development standards is specifically directed toward new or modification of existing residential overwater structures. The term “modification” as used in Ecology’s regulations applies to a reconfiguration, not to a repair or replacement. The WAC specifically states that normal maintenance and repair of existing structures is categorically exempt from the substantial development permit process. Replacement of a structure or development may be authorized as a repair where such development is the common method of repair for the type of structure or development, and the replacement structure or development is comparable to the original structure or development. While replacement structures must meet the requirements of the Shoreline Master Program, replacement does meet the no net loss criteria.

Ms. Pat Pauley, 244 West Lake Sammamish Parkway SE, and Ms. Judy Layton, 3942 West Lake Sammamish Parkway SE, yielded their time to Dr. Gil Pauley.

Dr. Gil Pauley, 244 West Lake Sammamish Parkway SE, said he has lived on the lake since the mid-80s and has over 40 years of experience as a professional in the fisheries sciences. He said he reviewed three of the major documents the city used in developing the draft Shoreline Master Program. He said he identified concerns with each but was most troubled by the 2005 best available science report which contains a considerable amount of material relative to fisheries and associated recommendations that supposedly are of value to the salmon fisheries in the three lakes that fall under Bellevue’s purview. The report contains errors of both omission and commission. Much of the information presented is based on scientific studies done for streams and saltwater environments, none of which have been shown to be directly applicable to the shorelines of the three Bellevue lakes. One of the major tenets of the best available science report is that it makes recommendations aimed at increasing the salmon populations of the lakes. However, many of the recommendations are based on information that is subjective, speculative, non-existent or actually erroneous with respect to the scientific literature. The report on page 7-43 states that available pertinent literature is limited, nonetheless inferred and hypothetical associations can be made based on available scientific literature. Many of the conclusions and recommendations related to the fisheries aspects in the report are in fact inferred and hypothetical. In many cases there is scientifically valid information that leads to different conclusions than those expressed in the best available science report. Many of the alternative views, however, were not presented which would seem to indicate the report was written with a specific agenda in mind. Examples include the recommended planting of large trees near the shoreline and the introduction of large woody debris along the shoreline, both of which champion the notion of increasing habitat and cover needed for young salmon. The problem is there no mention of the fact that the trees and woody debris will also provide hiding places for both smallmouth and largemouth bass which are predatory with respect to young salmon. There is ample scientific literature that indicates increases in the amount of large woody debris in lakes increases the population of predatory fish. The introduction of large woody debris in lakes and reservoirs is a common management tool used by many states to enhance the populations of smallmouth and largemouth bass. That information was not presented in the best available science report. Shoreline trees are mentioned as a contributing source of terrestrial insects to be utilized by the young salmon, however in large lakes terrestrial insects are not a major food source for young salmon, which predominantly eat aquatic insects and crustaceans on their way out to the ocean. The report vilifies overwater docks and structures as places that harbor fish species that prey on young salmon, but in reality the docks simply act as surrogates for natural cover. The use of flow-through decking on docks is a good idea and should be implemented. The degree to which predation under and around docks may impact the number of out-migrating salmon is unknown. The bass in Lake Sammamish and Lake Washington do not target out-migrating young salmon but merely appear to be opportunistic feeders on young salmon as they

pass through the lakes on their way to the ocean. However, increased smallmouth and largemouth bass populations associated with large woody debris in the two lakes can reasonably be expected to lead to an increase in the total number of young salmon eaten. That view is also not included in the best available science report. The report on page 736 states that in order to avoid habitat alterations and to stop the loss of shoreline area functions, bulkheads needing any type of maintenance, repair and retrofitting should be considered for removal and replacement with vegetative and large woody debris structures as shoreline protection alternatives. The statement is made that the recommendation is based on a conservative interpretation of the best available science. However, on the previous page the same report states that the effectiveness of the alternative shoreline armoring technique called bioengineering is unknown. Thus the report makes a recommendation that is far from conservative based on an unknown efficacy of the technique suggested. Removal and replacement would be very expensive for property owners, a fact that is not mentioned in the report. There are errors in the report that misstate facts. One example is on page 7-45 where it states that no studies were found that address the cumulative effects of in- and overwater structures in Lake Sammamish, Lake Washington and Phantom Lake shorelines. Yet on the very next page the report states that it is known that the effects of docks and piers and associated in- and overwater structures are incremental and cumulative in nature, then goes on to cite Jennings 1999. The Jennings paper in fact has no mention of docks or piers; it is a study of rock riprap and concrete retaining walls. The conclusion reached is simply not valid. The Jennings report states that the use of rock riprap tapered to 45 degrees has much less impact on the environment than a vertical wall does, and it results in considerable species enrichment among the crevices formed by the more complex habitat relative to a concrete wall. However, the positive aspect of rock riprap and its ability to dissipate wave action was not discussed in the best available science report relative to bulkheads. Multiple points of view exist on any given topic, but the more important the issue, the more important it is to have all opposing views presented. The promulgation of policy rules and regulations as they relate to science should pass the transparency test of being based on sound scientific principles; only then will the public view them as fair. The best available science report does not give enough scientific documentation to support many of the views it presents, which makes the recommendations speculative at best. The best available science frequently failed to present opposing science, alternative views and alternative options. It uses a considerable amount of non peer-reviewed science; it misinterprets and misquotes scientific citations; it makes conflicting statements and conclusions; and it makes conclusions and recommendations without supporting science. The Shoreline Master Program will affect many property owners, and the Commission's decisions should be fact based to assure the establishment of an equitable and effective program.

Dr. Marty Nizlek, 312 West Lake Sammamish Parkway, submitted to the Commission a CD containing two-plus years worth of testimony and input from the Washington Sensible Shorelines Association and asked that it be made part of the official record. He also provided the Commissioners with a list of specific citations from the RCW, the WAC and the Land Use Code in support of the plan developed by the Washington Sensible Shorelines Association. The citizens have taken the high road during the process; they have appeared before the Commission on more than 30 different occasions, and they have diligently reviewed the massive code brought forward by the staff. He said he has lived on the lake for many years and has never before felt that he and his neighbors count for nothing in the eyes of the city. To have turned the staff loose with direction to pull every conceivable and inconceivable regulation into the shoreline program, and then to add that what the residents cannot defend and get out is a sensible plan is ridiculous. He turned the rest of his time over to Mr. Charley Klinge.

Mr. Charley Klinge, 11100 NE 8<sup>th</sup> Street, spoke representing the Washington Sensible Shorelines Association. He said he had been tasked by the Association with reviewing the draft Shoreline

Master Program regulations and preparing line-by-line comments addressing any and all concerns. He presented to the Commission a 97-page document containing 400 individual comments on specific provisions in the draft. He said he has 20 years experience as a land use attorney and 15 years experience in working with Washington shoreline master programs. Based on his experience, he proposed that the draft Shoreline Master Program is fundamentally flawed on numerous levels. It is too big, the regulations are too complicated, and staff has tried to include way too much. The biggest fundamental flaw is that the draft includes incredibly detailed regulations that govern every minute aspect of home construction, all with the purpose of accomplishing the newest planning ideals. The approach might work somewhere else, possibly in a new city without any development, but not in Bellevue where the entire shoreline of the three regulated lakes is already developed as urban neighborhoods. It will simply not be possible to turn the clock back 200 years and retroactively create sensitively designed homes, especially not on small existing lots. State law specifically does not require such a radical approach. The focus should be on practical reality rather than an ideal planning experiment. Staff justified its flawed approach by relying on flawed science. Dr. Pauley pointed out that the city relied on stream science and saltwater science in determining what should be done on the city's freshwater lake shorelines. The result is ecological functions that conflict with each other and which would actually harm salmon if followed. Homes on the shorelines have done little or nothing to harm salmon; however, the non-native bass like to hang out under docks on Lake Sammamish and Lake Washington where they occasionally eat small salmon. The strict dock regulations are actually needed to fix a problem caused by non-native fish. The regulations would not be needed if the non-native fish were not there. The draft calls a landscaped yard a vegetation conservation area, which is better known as a buffer. The regulations presume that the yard will function as a natural shoreline. That in turn justifies shoreline enhancement to compensate for the assumed harm to the vegetation conservation area no matter how trivial a project. That premise, however, is wrong. Building something in a landscaped yard or on a patio is not the same as clearing native vegetation from a natural site. When regulations are disconnected from fixing actual problems, the effect result is a solution in search of a problem. Another name for it would be interference with property rights, or a taking of property without just compensation. United States Supreme Court Justice Anthony Scalia in a majority opinion stated that when land use regulations impose conditions that are unconnected to any legitimate harm, the result is out-and-out extortion. The high court declared as unconstitutional regulations that fail the nexus and rough proportionality test in *Nolan vs. California Coastal Commission* and in *Dolan vs. City of Tigard*. State cases and state law goes further and imposes the burden on government to demonstrate an adequate connection between harm and mitigation. Asked by the Commission when it would look at the issue of interfering with property rights, the staff had no response. The fact is the regulations have no connection to any real harm. He said his letter submitted to the Commission on behalf of the Washington Sensible Shorelines Association contained a cover letter and a table of detailed comments. In the letter there are some important general comments and a listing of categories of concern, including vague or confusing regulations; inconsistencies with shoreline guidelines; failure to respect exempt activities, such as bulkheads protecting single family homes; expensive permitting requirements; unnecessary micromanaging; improper incorporation of outside materials; and interference with property rights. Each of the 400 comments is folded into one or more of those categories of concern. A major overhaul is needed to correct all of the problems. Washington Sensible Shorelines Association created its sensible plan to promote solutions for the major issues, and the organization looks forward to working with the Commission in addressing the issues and creating an Shoreline Master Program that will represent a reasonable and responsible approach to shoreline planning and regulation that respects property rights.

Ms. Sue O'Reilly, 888 West Lake Sammamish Parkway, noted her agreement with the previous speakers and yielded her time to Dr. Sandra Rice.

Dr. Sandra Rice, 312 West Lake Sammamish Parkway, said she has lived on the lake for her entire life. She said like many, she has concerns with the plan and the way the process has evolved. Many property owners are frustrated and upset by the fact that just a few years ago the city declared that all lake shorelines are critical areas and imposed regulations on the shorelines based on that declaration. While it was said that the action involved ample public input, few shoreline property owners knew anything about it until they sought a permit from the city. The current process continues to be disappointing; rather than spending time to define program goals and objectives, the focus has been on producing detailed regulations. And rather than make an effort to provide education and incentives, the focus is on regulating property owners into compliance. The process has created complex and prescriptive requirements that put the onus on the residents to justify any deviation at considerable effort and expense. In addition, the process focuses on shoreline residents in a vacuum without really looking at some of the more egregious issues, such as stormwater runoff or the ineffective management of water levels. It is disheartening that the city is not working harder to address the issues within its own departments as well as with other jurisdictions. The science on which the regulations are based is troublesome. The staff made multiple presentations to illustrate the scientific basis for the guidelines, yet as has been previously acknowledged, most of the science deals with stream science, not urban lakes. The residents have presented credible counterarguments to the science, but they have not received any acknowledgement or recognition. When pressed for a response, the answer given was that not everyone will agree on the science. From that it appears the restrictive regulations will be imposed on homeowners based on unsubstantiated science. Observational data has been relied on, even though it is inferior to outcome data. One simple question would be are adequate numbers of salmon making it from the Issaquah hatchery through Lake Sammamish and through Lake Washington to the locks. The Salmon Bay Estuary Synthesis Report states that the hatchery production goals are 2.1 million Chinook for Issaquah Creek Hatchery. It goes on to say that a conservative estimate of approximately two million hatchery Chinook likely make their way through the locks into Salmon Bay and into Puget Sound on an average annual basis. That would seem to indicate that Bellevue's shorelines are having a minimal impact on the salmon, which in turn raises questions about what the Shoreline Master Program is trying to accomplish. The interpretation and application of ecological function is also concerning. The city's own shoreline restoration plan states that the ecological function the Lake Sammamish shoreline is of low/moderate value, yet the city seems to have interpreted the mandate of no net loss to mean restoration of ecological function to some level that existed years ago. That is inherent in the regulations in the form of numerous mandates. For example, if a homeowner needs to remove a hazardous tree, the homeowner must plant three new trees to replace the one that was removed. There is no ecological justification for imposing a 50-foot setback, especially given that 40 percent of the homeowners on Lake Sammamish have structures that are behind the arbitrary line. The city appears to be using the subjective assessment of the shorelines as the basis for ecological functions, yet will require homeowners to spend considerable amounts of money to provide detailed site-specific assessments of ecological functions for any variation. The requirement to plant 60 percent of individual property shorefronts in native vegetation as a mitigative action will severely limit the ability of property owners to enjoy and utilize their properties for recreation and personal use. It is highly unlikely that such actions will affect salmon prosperity. Staff has argued that the requirement will prove beneficial to other ecological functions, such as wildlife and hydrology, though the same benefits could be obtained through other means, such as maintaining the area of properties behind homes in native vegetation. Of course, a property owner would need to spend thousands of dollars proving the point in a special variance report. Property owners are concerned about safety where wildlife habitat is enhanced through vegetative plantings, and where narrow walkways to docks are required. Property owners are concerned about impacts to property values resulting from limitations on the ability to develop and improve properties. There are concerns about the many

costs that are spelled out in the regulations for permits, hiring consultants, and planting and maintaining vegetation. There are also concerns about the general lack of respect for property rights. The shoreline owners are being asked to restrict the use of their properties for broad and ill-defined wildlife and ecological benefits. Shoreline residents have purchased and developed their properties at considerable expense and have paid hefty taxes to be able to enjoy the activities unique to living on the water. The regulations are intended to severely limit those rights and should not be taken away lightly. The sensible plan should be supported.

Ms. Anna Marie Clayhold, 11041 SE Lake Road, said her home is situated on the shoreline of Lake Washington. She said she pays substantial property taxes, and as a small business owner also pays B&O taxes. Bellevue is feeling less and less like the land of the free. The city appears to be less and less concerned about the quality of life for its citizens. It is not reasonable to expect homeowners to understand a 350-page document before considering doing anything in their yards that property owners in other parts of the city can do in their yards without restriction; when that occurs, the freedoms of shoreline property owners are effectively taken away. When property owners are told they must ask the city and wait to hear back before repairing something on their properties that is broken, they cannot conclude that city officials are looking out for the safety of the residents. The Washington Sensible Shorelines Association sensible plan is supportable. She said she has children and as such needs a clear view of the area between the house and the waterfront. If required to plant native vegetation in that area, her ability to oversee their safety will be impaired. The motto of the Bellevue police department is to provide a safe environment through community involvement and innovation; the city's elected and appointed officials should adopt the same motto. In addition to trees along the shoreline blocking views, they are inherently unstable and could topple on children at play, especially if existing bulkheads are required to be removed, which would expose the trees to high waters and wave action. The city staff must recognize the danger of waterfront trees since they are requiring landowners to sign a hold harmless agreement in order to obtain a permit to plant the required trees. The proposed planting plan indicates that the typical parcel would have seven or eight tall trees along the waterfront, though they could be placed in one corner of the proposed vegetative buffer; that, however, could result in the rapid growth of the trees which would then starve each other due to lack of space, creating a safety issue. Bellevue as a community appreciates and values trees and should not be forced to plant more along the shorelines; they will not serve to cool the lake waters in the summertime, and the fish will not depend on insects that might fall off of them into the water.

Ms. Callie Clayhold, 11041 SE Lake Road, said she did not understand why the city wants to take away so much of her backyard. The lawn is pretty and her parents are very careful in taking care of it. It is unfair that the city wants to take away what some families can do with their backyards. It would only be fair if the city took away part of everyone's backyard, but that would not make sense either. The scientists at the meetings have not been able to give good explanations or reasons. If wildlife is encouraged, small children may be scared or hurt.

Ms. Cassie Clayhold, 11041 SE Lake Road, said she likes her backyard and feels safe knowing her parents can see her when she is playing in the backyard or by the lake. If trees must be planted by the water, it will not be safe to play on the beach. She said she did not understand why the city wants to make her yard unsafe.

Mr. Norman Ballinger, 16226 SE 24<sup>th</sup> Street, noted his support for the comments made by the Washington Sensible Shorelines Association representatives and for their sensible plan. He said the 350-page draft Shoreline Master Program details requirements above and beyond what the state or other agencies requires, and also duplicates functions controlled by other agencies. The city should not exceed the state requirements to the detriment of shoreline property owners. He

suggested that Phantom Lake should be exempted from the Shoreline Master Program, and the city should commit to working with the Phantom Lake residents in formulating a more relevant document for that shoreline. Development on Phantom Lake has nowhere near the density the shorelines of Lake Washington and Lake Sammamish have. The current zoning minimizes all the existing lots that have been developed; there are only half a dozen lots or so on Phantom Lake that could still be developed. During the update process, the Commission has been given input regarding Phantom Lake by property owners making the point that the lake is significantly different from both Lake Sammamish and Lake Washington. It has no salmon, so the requirements aimed at helping the salmon should not apply. There are no powerboats on Phantom Lake, so there is no need for large docks and their associated pilings. The draft seeks to force the planting of deciduous trees along the lakeshore, but given that the lake is in a peat bog and has a high phosphorous level, planting new trees will only add to the phosphorous loading, making the algae problem worse. Water quality in Phantom Lake is an issue that has been ignored by the city for many years. Most structures along Phantom Lake are already well set back from the shoreline, so the setback requirements are not applicable. Well over half of the shoreline is already in a natural state relative to vegetation. City staff have not demonstrated any gain to be obtained from implementation of the proposed requirements. The city has allowed the ordinary high water mark to rise on Phantom Lake by not constraining inflows and by not maintaining the outflow.

Ms. Susie Winkowski with the Vasa Park Resort, 3560 West Lake Sammamish Parkway SE, yielded her time to Mr. Dallas Evans.

Mr. Dallas Evans, 2254 West Lake Sammamish Parkway SE, said he attended the May 21, 2009, open house on the Shoreline Master Program update process. At that meeting it was learned that a shoreline inventory and analysis had been completed to establish a baseline for future development actions in the shoreline jurisdiction. He said he was bothered by the findings of the report and after some research discovered that the city was focused on reducing costs in terms of how to assimilate the data and give it to the consultant, The Watershed Company. He said he has lived on the lake for 17 years and has constructed three homes on the lake, and said he knew very well that the lake was not 71 percent armored as the report claimed. There is a lot of armoring on Lake Washington, but not on Lake Sammamish. He said he requested from staff the research or whatever was used by The Watershed Company to determine their findings and was told that they had relied heavily on GIS data collected by the Department of Natural Resources and city staff. He showed the Commission the map data downloaded from the state indicating the location of boulders and vertical bulkheads. In the small print it indicated that additional site evaluations may be needed to confirm or verify information shown on the map. He said he conducted a site-by-site inventory of the lakeshore beginning on February 9, 2010, during which time the lake level stood exactly at its ordinary high water mark. He said he found that actual shoreline conditions did not match the mapped conditions and that in fact the amount of armoring claimed to exist does not in fact exist. In his study, only 36.4 percent of the shoreline is armored. The placement of the ordinary high water mark is crucial. In 1999, it was 27 feet NGVD-29, or 30.59 feet NAVD-88. In August 2004 a report from The Watershed Company convinced the city that the ordinary high water mark should be raised to 28.17 NGVD-29, or 31.76 NAVD-88. The data points taken in 1999 should have been lower from what it is currently, so 13.4 feet was given up because of the setback.

Mr. Fred Bryant, 1404 West Lake Sammamish Parkway NE, yielded his time to Mr. Scott Sheffield.

Mr. Scott Sheffield, 2227 West Lake Sammamish Parkway SE, said he has attended most of the study sessions on the Shoreline Master Program. He said the want and the need to protect the

lakes is shared by all waterfront property owners. The property owners have as much if not more vested in seeing the lakes healthy for the enjoyment of everyone. For most, their lake properties represent their most valuable asset and is their source of pride. That is why so many have been actively involved in commenting on the Shoreline Master Program update. The input from the citizens may have been heard, but it is not acknowledged in the draft document. The draft fails to create an effective and workable Shoreline Master Program; the document needs to be overhauled with an eye on being sensible. The draft does not have a well-defined set of objectives and benefits that can be measured. Future Shoreline Master Programs will be different as over time the effects of the regulations are measured. The proposed draft includes no program for monitoring over time. The staff and the Department of Ecology appear to be willing to measure success in terms of bulkhead and dock removal and an increase in shoreline vegetation. It has not been shown that a 50-foot buffer will improve water quality over a 25-foot setback. Non-point source runoff from the city's storm drains should be measured and addressed. All rules and regulations should be monitored and evaluated to determine if they are effective. The mailer the city sent out to residents stated that very few existing structures would become nonconforming, but in reality every pier that has a walkway wider than four feet, platforms within 30 feet of the shoreline or in less than nine feet of water, platforms larger than 350 square feet, walkway pilings larger than eight inches in diameter, pilings within 30 feet of the ordinary high water mark, non-graded decking, and lifts closer than 30 feet from the shoreline will all become nonconforming; that would mean the vast majority of the piers in the city. Bellevue's dock code is duplicative; the city does not need to duplicate the regulations imposed by the Corps of Engineers, nor does it need to establish mitigation standards, which the Corps already does. The regulations with regard to repair and replacement make no sense in the real world. Replacement is a form of repair and citizens should be able to properly repair their properties. Restricting repairs to only part of a structure will lead to necessary repairs in future years. Docks need to be maintained in order to both safe and useful. Walkways should be designed to safely accommodate people; a three-foot walkway is unsafe and impractical for both children and adults. The Washington Sensible Shorelines Association has been involved in the discussions with the city and the Commission. Hopefully everyone will be able to work together in creating a sensible plan for the city that is not based on conflicting science, one that will truly improve the lakes and retain them as assets everyone can be proud of. The sensible plan should be supported.

Mr. Bill Rahr, 16509 SE 18<sup>th</sup> Street, said he has lived on Phantom Lake since the late 1950s. He voiced his support for the comments made by the Washington Sensible Shorelines Association representatives, and noted that there are many good points included in the draft Shoreline Master Program. He particularly agreed with the notion of treating Phantom Lake differently from either Lake Washington or Lake Sammamish. He provided the Commission with a packet of information that included a letter with comments made on behalf of the Phantom Lake Homeowners Association. The packet included photographs and documents pertinent to the issues facing Phantom Lake.

Ms. Katherine Murray, 2239 Killarney Way, said her property was impacted by the work to update the critical area regulations, resulting in the loss of 25 percent of the property which can no longer be used for anything but must be maintained with native vegetation. She said if the proposed Shoreline Master Program regulations go into effect, 60 percent of the last remaining flat area of the property will be lost as well, leaving almost no usable property. The requirement to plant tall trees in a grouping would only serve to block views for the neighboring properties. She yielded the balance of her time to Ms. Lori Lyford.

Ms. Laurie Lyford, 9529 Lake Washington Boulevard, highlighted the principle of facilitating stewardship efforts that start with the shoreline property owners by fostering reinvestment that

maintains existing shoreline ecological functions through adoption of user-friendly and predictable regulatory framework that is flexible and requires a minimum of technical expertise. She suggested it would be better if revised to say to make easy the management and care of the shoreline by property owners by encouraging them to spend time and money to keep the shoreline healthy with rules that are understandable and helpful and without needing to hire experts to make it work. The work produced by staff for the update is anything but understandable, helpful or encouraging. The proposed Shoreline Master Program is irrational and inconsistent. Lands that are designated residential make up the largest segment of the Bellevue shoreline, and the residential section of the draft document is 33 pages long and significant knowledge of the Shoreline Master Program is needed in order to understand the concepts. In addition to the difficult cross-references and code layering, there are arbitrary requirements for setbacks, replacement values, and vegetative conservation area. The matrix of mitigation is mindboggling. Staff have admitted that the proposed 50-foot setback was selected arbitrarily and without ecological justification. The rule fails to recognize that the Bellevue shoreline is highly developed; it would retroactively make legally established homes nonconforming. Additionally, 60 percent of the first 25 feet of the proposed 50-foot setback must be set aside and planted with native vegetation. Homeowners would not choose to construct concrete bulkheads, riprap or other hard stabilization if not required to protect their properties. Properties with lawns that slope gently to the shoreline are highly desired. Depending on the fetch, however, bulkheads and other measures are necessary to hold back the sloped shores of the lakes. It has been stated that the Shoreline Master Program is necessary to improve shoreline habitat for salmon, but salmon do not care if structures are repaired to only 50 percent of their value; salmon do not understand value and never will. Homeowners wanting to embark on a project will need anywhere between six and a dozen reports and permits; it will require expensive consultants from a number of different disciplines to navigate the labyrinth. The regulatory solutions proposed in the Shoreline Master Program are subjective, exhausting, and not supported by legitimate peer-reviewed science. Over the course of the update process, the citizens have presented accurate data, case studies, and counterarguments that have all gone unanswered. When the city has been confronted with credible evidence, the line of attack has simply shifted to a new front. Washington Sensible Shorelines Association has maintained a civil approach and a desire to work with the staff to reach reasonable solutions; the opposite behavior has been evidenced by the staff. Staff have admitted they cannot provide an ecological justification for the 50-foot setback or the vegetative conservation area, yet they have persisted in stonewalling the citizen participants, which indicates an unknown agenda. Homeowners are being held hostage by the city through regulations that force them to set aside portions of their properties to mitigate the undetermined impacts of personal use and maintenance of their buildings and land. The stated goals can be accomplished through education, cooperation and the reasonable regulations laid out in the Washington Sensible Shorelines Association's sensible plan. Recently a property owner reconstructed their dock. The decision was made to do the right thing and mitigate a larger dock by removing a portion of the bulkhead and adding a gravel beach area. The process took more than three years and cost double the original estimate of \$125,000. The permits alone cost more than \$17,000, not including the hundreds of hours billed by the construction company for securing the necessary permits. The process of updating the Shoreline Master Program should be used to rectify the development nightmare residents must endure in order to live and prosper where they choose.

Ms. Lisa Schaffer, 1822 West Lake Sammamish Parkway SE, yielded her time to Mr. Tom Schaffer.

Mr. Tom Schaffer, 1822 West Lake Sammamish Parkway SE, said the shoreline citizen input process is a perfect example of a bad policy becoming destructive. The city did not change the rules for citizen participation, but it did change how the city should use and interpret them.

When the new interpretations were not challenged or understood, they became the new norm and the city's expectation for future products. Placing all shorelines into the category of critical areas was accepted, and restoration plans based on illegal rulings followed. The city then enforced the illegal rulings. Staff lied to the citizens for four years by telling them there would be no major impacts to private property. The Council determining that the Planning Commission should serve as the citizen advisory committee eliminated any real process for the citizens to help draft policy. No independent peer review was done to verify the purported facts. All of that was deemed acceptable to the city. The city eliminated citizens from the process, constructed a closed-ended process instead, crafted rules based on illegal practices, and created an unfair advantage, all of which is a textbook definition of fraud. The city is systematically crushing the rights of the people and exterminating the liberties of the people with extensive rulings that are highly questionable, not required, based on illegal practices, and all without the representation of the people it serves. The shoreline process is a broken promise to the people. It is about the city working against its citizens, and it is about trickery, deceit, exclusions and extortion. The proof is in the draft that no one can understand. In the end, the product will take away rights and steal property. Approval of the draft will give the city everything it wants, will throw citizen rights under a moving bus, and will give all the citizens the shaft. The inequities can be corrected by: taking a serious look at the sensible plan alternative, which is clear and readable and addresses the issues in a straightforward manner; by following the existing instructions for real citizen participation in city projects and shoreline updates; and by reading the papers written by the founding fathers who also were fed up with not having representation. The Bill of Rights sets limits on what government can and cannot do in regard to citizen freedoms; it trumps the staff and is the definitive instruction book on government limits. The Commission has the freedom not to accept the draft as presented by the staff; it can stand up and make the necessary revisions.

**\*\*BREAK\*\***

Mr. Tom Fitzgerald, 16350 SE 16<sup>th</sup> Street, yielded his time to Mr. Mike Mariano.

Mr. John Strong, 1604 West Lake Sammamish Parkway NE, said he along with William Barger, PE, Vic Bishop, PE, Terry Lempke, PE, Michael Mariano, PE, Martin Nizlek, PE, Bud Nordquist, PE, and Mark Susland, PE, all of whom live on the shorelines, as professional engineers balance safety and regulatory requirements against cost. He said that discipline is lacking in the draft Shoreline Master Program. He submitted to the Commission a letter authored by the named persons in which it was stated that the group finds in the draft the potential for serious unintended consequences. It fails to systematically identify specific local lakeshore issues and conditions. It disregards the magnitude and relationship of other systems impacts. It fails to resolve identifiable incompatibilities and conflicts. It avoids quantification, thus preventing essential cost-effectiveness evaluation. It places undue burdens on shoreline property owners and fails to accomplish a clearly defined set of objectives. The Commission was asked to consider the issues raised in developing a recommendation to the City Council. With regard to lake water levels, he said in the case of Lake Sammamish the Sammamish River weir and transition zone at Marymoor Park have witnessed a 40 percent reduction in outflow over the past eight years created by reduced maintenance action on the part of King County. The Corps of Engineers has voiced warnings about the consequences of the conditions, but remedial action is not imminent. Public safety and improved real property have been impacted by the high water conditions. Properties on Lake Sammamish and Lake Washington have been inundated and improvements such as docks have been subjected to deterioration and complete loss. The ordinary high water mark has been moved higher, a fact that is reflected in the draft document and which has affected many property owners. Numbers have been sacrificed in the draft. A subjective assessment characterizing the ecological functions of sections of Bellevue shorelines is offered as the basis of a no net loss goal. Large dollar expenditures would be

imposed on property owners based on how someone felt about their shoreline. A similar subjective decision environment would not be accessible in city contract bidding processes or outside of government. The state's shoreline guidelines defines the elements of ecological function: 1) must be assessed in a precise manner; 2) should be related specifically to objectives and costs; and 3) should not be viewed as the sole basis for decision making. Requirements placed on homeowners must be shown to have a meaningful benefit on a quantifiable basis within the no net loss concept. Government expenditures are prioritized based on anticipated effectiveness, and the same must apply to the governed. Property owners having to spend thousands of dollars on remedial measures should be assured that something good will come of the outlay. The plan is not clear with regard to what the city is attempting to achieve. Merely measuring the number of feet of bulkhead removed from the shorelines does not constitute a meaningful and reasonable goal. If definitive science formed the basis of the plan, goals and objectives would be readily definable, quantifiable, and ultimately monitored. Every provision of the plan should be examined against the test of solid science and engineering evidence. A vague assurance of precaution is not an acceptable basis for the expenditure of either citizen funds or municipal tax dollars. The Commission must step back and assure that unintended consequences in the aggregate do not undermine the effectiveness of the entire program.

Mr. Mike Mariano, 16341 SE 16<sup>th</sup> Street, said he is a civil engineer and has been a Phantom Lake shoreline property owner since 1983. He voiced his support for the statements made by the various Washington Sensible Shorelines Association representatives. He said the 1976 annexation of East Bellevue established an increased city stewardship for the urbanization of the community, along with management of opportunities, resources and impacts. The stewardship has been challenged by overly complicated, frequently disjointed, uncoordinated and increasingly restrictive regulations and policies affecting the jurisdictional interests in the public and private water resources. The draft Shoreline Master Program and the surface water management plan policies fail to strike the right balance between public interest and private property rights. As an example of the systematic failure to address lake-specific issues, Lake Washington and Phantom Lake are controlled by manmade devices and conveyances under the jurisdiction of the county and the city. The effectiveness of the outflows has been compromised by the lack of maintenance aimed at assuring the designed functionality. The Sammamish River weir transition zone at Marymoor Park has witnessed a significant reduction in outflow capacity over the last eight years, for which there is good documentation. It should be recognized that Phantom Lake has served as a reservoir and continues to do so; it is well documented that as far back as the 1970s the county and the city purposefully directed into it stormwater and landfill seepage that far exceeded the capacity of the lake. The outflow to Larson Lake has been intentionally and systematically obstructed. The 1990 easements granted to the city for the purpose of maintaining the Phantom Lake outflow weir facilities have not been honored. Public safety and real properties have been affected by the actions and inactions. On both Lake Sammamish and Phantom Lake the ordinary high water mark has been artificially moved higher, the result of which has been the erosion of otherwise stable shores from wind and wave action, and the destruction of upland vegetation and trees. The quality of the waters in Phantom Lake have suffered and cyanobacteria blooms have become a regular and dangerous occurrence. The city's actions to maintain the lake level in Phantom Lake has blatantly ignored the shoreline soil peat conditions; as such it is affecting properties, structurally compromising residential buildings, patios and other improvements. As an example of the failure of the Shoreline Master Program to systematical consider broader impacts, the failure to sufficiently address increased surface water volumes directed into the lakes via the city's stormwater conveyance and discharge system was highlighted. Phantom Lake has morphed from a manmade agricultural lake to one abutting single family residential and passive public parks and open space. As such, the lake site conveys watershed stormwater runoff to downstream discharge points. It has been purposefully and artificially manipulated to serve as a stormwater detention facility. A staff memo dated

April 4, 1984, evaluated the basis for a Phantom Lake outlet control weir to provide a detention function. The stormwater conveyance infrastructure in and out of the lake are based on Comprehensive Plan zoning and allowed land uses only recently updated which are not reflected in either the Shoreline Master Program or the stormwater management plan. There has been a great trend in the area to allow rezoning of single family lots into smaller residential and/or multifamily lots. While there are positive reasons for increasing residential population densities, there are also negative consequences being overlooked. The increase in impervious surface areas for buildings and other hard surfaces is adding to unprecedented flooding and erosion problems throughout the city's watersheds; Phantom Lake and Lake Washington are not excluded. It has been documented that for each inch of lake level rise five to fifteen feet of shoreline property is inundated. The Shoreline Master Program should assert that all rezones and redevelopment of existing residential properties within defined city drainage watershed basins must comply with all retention standards; that alone might have a greater impact on protecting shoreline ecological function than other actions taken by lakeside property owners. The city should take responsibility for where its stewardship has failed. It must assure that new policies will produce desired results, not unintended consequences.

Mr. Bud Nordquist, 372 West Lake Sammamish Parkway NE, said some of the serious unintended consequences will result from conflicts within the plan. For instance, a plan that fits shoreline activity on Lake Washington may not work for Lake Sammamish given that the former is controlled by government locks and the latter is controlled by a weir. Different problems cannot be solved by the same stroke of a pen. If logs are used on Lake Sammamish to stabilize the shoreline and prevent natural erosion, the result will be floating debris and littered shorelines. There are places near Marymoor farm where the outlet is currently only ten feet wide. Docks up and down the lake are under water. If the weir had been maintained as it was designed, the lake level would be stable. In 1999, well after the weir was constructed, the ordinary high water mark was 30 feet; the draft Shoreline Master Program puts the mark at 32 feet. The increased lake level puts far more shoreline property in jeopardy of being nonconforming as a result. He said he lives in a boathouse on the property originally owned by his parents. He said it has been remodeled several times over the years; his children will want to live there as well and remodel the home as they see fit. If the home were to be moved back 50 feet to match the neighbors on each side, the requirement to plant native vegetation and trees would kick in and the views of the lake would be blocked, all aimed at correcting a problem that does not exist.

Mr. Tom Mearing, 9415 NE 27<sup>th</sup> Street, voiced his support for the Washington Sensible Shorelines Association sensible shoreline plan. He yielded the balance of his time to Mr. Jim Sherberg.

Mr. Jim Sherberg, 3229 106<sup>th</sup> Avenue SE, suggested eliminating all maritime activity on Lake Washington to help restore the ecological balance of the lake. He allowed that such an action would be preposterous, just as many of the proposals brought forward by the planning department. He said he had a personal experience with the planning department that began in March 2008 involving an effort to subdivide his property. The experience was not pleasant. While some of the staff were very competent, others overzealously overstepped their bounds while supposedly representing the general public, shoreline property owners, and the best interests of the future of Lake Washington. He said he was informed that he would be required to place a 25-foot setback of the 100-foot-wide property into a conservation tract, though the purpose for the requirement was not explained other than to say it was recently passed code. The requirement was a clear usurpation of property, which is defined as taking possession without legal claim or right. A land use attorney was enlisted to rebut the position of the planning department, but his services were terminated when he acted only a mouthpiece for the department. Capitulating to the department's demands was the only way to move forward, even

though it was not right. The project only grew more and more complicated as it was handed back and forth among planners; as one request was satisfied another would be made. After consulting the county assessor with regard to what would happen to the property, it was learned that it would go away. At the last hour an attorney was found who had the gumption to tell the city they could not do what they were demanding, that the conservation tract was illegal in that it had not yet been approved by the Department of Ecology. After tens of thousands of dollars having been spent unnecessarily, a settlement was reached. During the Shoreline Master Program update process the Commission has heard from staff and supposed experts about things such as best available science and the benefits of woody debris in the water. Pretty pictures of alpine lakes without homes on their shores were shared in an attempt to compare alpine lakes with urban lakes, which was both misguided and impractical. Dead trees in the water will become safety hazards, for which the city will be indemnified. The draft has changed “conservation tract” to “native vegetation preserve,” but it still does not explain that homeowners will essentially be losing their properties. It is not true that a beach discourages geese from coming up onto a lawn if no bulkhead exists in between. The bottom line is that the preponderance of the proposals in the draft Shoreline Master Program are far too utopian to achieve. The Commissioners were asked if they were not impressed by the commonality of the objections to the plans being proposed in the Shoreline Master Program; the shoreline property owners are in agreement. What the real agenda of the planning department is has not been clearly outlined. It appears to think it is the sole conservator of Lake Washington. Shoreline residents are not opposed to regulations that are fair, objective and balanced. The community’s vision for shoreline management should be reflected in the Shoreline Master Program. The process has evidenced an inherent mistrust between citizens and the government. Taxpayer dollars are being spent to oppose the very citizens who pay them, and the citizens are having to pay even more to oppose the city.

Ms. Michelle Parks, 16011 SE 16<sup>th</sup> Street, said she and her family take a lot of walks in the area of Phantom Lake. Recently during a midday walk a very large coyote was spotted; the animal was the size of a full-grown German shepherd and was only about 20 yards away and was not intimidated by humans. A neighbor who often walks his dog has seen coyotes traveling in packs in the area. A recent article in the *Bellevue Reporter* talked about what to do if coyotes, cougars or bears are encountered in the neighborhoods, and talked about how small children are an easy target. Beavers are also a problem as they have the goal of blocking Phantom Lake’s only outlet, which can cause flooding. A recent article in the *Seattle Times* talked about a young bear that was wandering between two Bothell schools, which caused the schools to go into lockdown and cancel all activities. The draft Shoreline Master Program proposes no fences down to the water, which is unreasonable because if problems with wild animals continue or get worse it will not be possible for shoreline property owners to protect their families. The restoration plan policy PL-2 proposes beautifying the manmade inlet drainage ditch that comes from the polluted landfill’s detention pond. There are higher priorities the money should be spent on. Policy PL-3 directs the city to acquire lakefront properties as they become available and to establish on them conservation easements, which is exactly what local property owners do not want to see done. There are many retirement-age residents on Phantom Lake and it is scary to think of the city buying up their properties over time and creating habitat that will only encourage inappropriate wild animals. It would not be wise to lead a pack of coyotes or cougars into downtown Bellevue, nor is it wise to encourage the animals to live in neighborhood backyards where children play. Policy PL-7 is a better idea. Over 90 percent of the shoreline residents, as well as all but one of the outlet residents, are opposed to PL-2 and PL-3 and are in favor of PL-7 which proposes transferring inlet restoration efforts to the outlet where erosion has always been recognized as a problem. Several residents have recently had their dogs attacked and bitten by coyotes in their backyards. Cats have also been disappearing. It would appear the number of wild animals is increasing and they are getting bolder. The only logical and responsible thing to do is to take

actions to discourage the inappropriate predators in the neighborhoods, not to encourage them with conservation easements and wildlife corridors. Hopefully no child will be harmed or killed before preventive action is taken. She voiced her support for the Washington Sensible Shorelines Association sensible plan and presented the Commission with petitions opposing PL-2 and PL-3 and supporting PL-7.

Mr. Merwyn Haneberg, 16114 SE 24<sup>th</sup> Street, said his home is on the south side of Phantom Lake. He said he is currently constructing an addition to his home. He shared with the Commission a site plan of the property that was used to obtain the necessary building permits and demonstrated how the property would be divided up under the proposed regulations. The south side of the lake has a lot of wetlands, the setback from which is 110 feet in addition to a 20-foot building setback. The only way to make improvements to the property would be to obtain a critical areas land use permit, at a cost of at least \$2700, in addition to a building permit; the critical areas permit includes possible land surveys, vegetation management plans, unspecified quantities of trees, shrubs and ground cover plants, additional consultant fees, and the posting of bonds in favor of the city to cover the eventual cost if something should fail on the project, all of which adds thousands of dollars to the overall cost of projects. It is one thing to protect the environment but quite another to force the public to improve the environment at their own cost. A recent enforcement action by the city against a neighbor, whose property has extensive wetlands, resulted in the city forcing the property owner to stop mowing his lawn next to his house. It is high time to lighten up on regulations and to create an atmosphere of cooperation, something which could help to stimulate a very troubled building economy. He commented that if the new regulations go into effect, his dock will become nonconforming both for length and width. The proposed limit of 250 square feet for a dock, where the dock length needs to be 100 feet, will mean the dock itself will only be allowed to be two and a half feet wide, which would not be safe. Phantom Lake should be allowed 480 square feet of dock area, which is what is allowed on the other lakes.

Mr. Tim Trohimovich, 814 2<sup>nd</sup> Avenue, Seattle, spoke as co-director for planning and law of Futurewise, a statewide non-profit organization that works to maintain healthy communities and protect working farms, forests and shorelines. He said Futurewise was one of the organizations that worked to prepare the guidelines for Shoreline Master Programs. Like Bellevue, most jurisdictions have not systematically updated their programs since first being adopted in the 1970s. Such plans are desperately needed. Lake Washington has no less than three threatened species: Chinook salmon, steelhead trout and bull trout. It should not be necessary to list even more species before getting serious about protecting resources. In 1971 when the voters of the state adopted the Shoreline Management Act, they did it with a promise to protect statewide resources, including the fish and wildlife and the state-owned shorelines. Unfortunately, in large part because the adverse impacts of development on the shorelines were not understood, the vision of the original Shoreline Management Act has not been kept. He strongly urged the city to adopt a Shoreline Master Program that sustains the vision and that will protect existing resources. Futurewise supports many of the provisions in the draft Shoreline Master Program update. There are, however, some important improvements needed. The draft in fact weakens some protections that exist for shoreline resources. The Shoreline Management Act in RCW 90.58.090(4) requires that Shoreline Master Programs be at least as protective as the critical areas ordinance, but Futurewise believes the draft does not meet that test. Furthermore there are inadequate standards for some of the allowed uses that would adversely affect Lake Washington. In areas that have intact vegetation, the city should adopt science-based buffers that protect the vegetation and the shorelines. When development occurs that adversely impacts the shorelines, the impacts should be mitigated. The way the vegetation protection requirements and buffer requirements interact should be drafted in a way that will result in actual protections for the shorelines. He thanked the Commissioners, the public and the staff for all the work that has gone

into the development of the draft Shoreline Master Program.

Ms. Marie Mackey, 1408 West Lake Sammamish Parkway SE, yielded her time to Mr. Jim Mackey.

Mr. Jim Mackey, 1408 West Lake Sammamish Parkway SE, said he serves as commodore of the Lake Sammamish Yacht Club. He said the sensible shoreline plan is only 20 pages long, whereas the draft Shoreline Master Program is 350 pages long. He suggested that there is no way property owners should be expected to read and understand 350 pages of regulations in order to determine what they can and cannot do with their properties. Demanding that every resident spend a week reading 350 pages of obtuse legalese is prima facie evidence of the unreasonable amount of regulation on homeowner properties. It will take specialists to interpret the code while city planners battle back with controversial elements from somewhere else in the code. The regulations are so complex city staff has resorted to mailing out cartoons that attempt to explain them. The 20-page alternative makes far more sense and has far greater clarity. The Commission should demand that the regulations be reasonable and take up no more than 30 pages. The fact is it will not be the cartoons that will be approved but the 350 pages of gibberish and doubletalk that only planners and hire experts will be able to interpret. If it takes 350 pages to spell out the regulations, there is more being restricted than is shown in the 19 pictures. Even in the staff summary it is evident that the regulations are misconceived, not thought through, unclear, and will be either ignored or battled by the citizens in perpetuity. Picture 2 depicts a boat lift and states that it must be in at least nine feet of water. The fact is that most boat lifts on the lake are not in water that deep. If a lift must raise a boat under the three feet minimum, to be out of waves and water, particularly given the variable water levels over the ordinary high water mark, a 12-foot boatlift is needed on the shoreline and 16 feet on the lake line. Another ten feet is need for a boat to be able to go above it. That would mean a 26-foot high structure from the lake floor. The width of the structure will need to be the width of the cradle, or six to eight feet wide. The structure will be hit with four-foot waves. The regulation simply will not result in a safe structure. In most instances it is not possible to get to water nine feet deep 150 feet from the shore, so all boat lifts will be essentially banned. Such lack of awareness and technical incompetence on the part of the staff will result in unintended consequences and years of lawsuits which all taxpayers should object to. The pictures describe natural bulkheads. The logs in picture look natural and are heavy, but wood floats and cannot serve as a bulkhead for waters that flow over them. When most needed, during record high waters and with four-foot storm waves, the logs will become battering rams smashing the shoreline, smashing docks, and smashing homes at lower elevations. Homeowners who actually comply with the regulation will be told to release the city from liability for any damage the required solution creates. Broken rock is the alternative depicted in Picture 6, but a field of sloped broken rock and boulders is very dangerous to climb over. A boater could not pull a rowboat or catamaran over the rock without destroying the hull. The dock layout limitations simply will not be safe to use for any reason. The 350 pages of regulations are full of bad law which has not been tested or thought through. If enacted, the number of pages will only grow as it gets amended and interpreted. The book of regulations will only ensure a lifetime of full employment for those who are expert at interpreting it. The regulations will result in property rights being taken away without compensation.

Mr. Vic Bishop, 2114 West Lake Sammamish Parkway SE, said he was one of the eight engineers who signed on to the letter previously submitted to the Commission.

Ms. Jill Moore, 16604 SE 17<sup>th</sup> Place, voiced her support for the testimony provided and indicated her appreciation for the Bill of Rights. She yielded her time to Mr. Brian Parks.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, spoke as vice-president of the Phantom Lake Homeowners Association and their official Shoreline Master Program representative. He noted that he also is a Washington Sensible Shorelines Association executive board member. He said he has regularly attended Planning Commission, Environmental Services Commission, Eastgate/I-90 CAC, Parks and Community Services Board meetings, as well as Phantom Lake-specific staff and City Council meetings since September 2009. It was at that time he began a thorough investigation of the history of the lake and flooding matters pertinent to updating the Shoreline Master Program. He indicated his support for the sensible plan produced by Washington Sensible Shorelines Association. Unlimited permitted inflow to Phantom Lake, combined with blocking of the natural outflow towards Larson Lake, and lack of maintenance along the only outlet channel, which is a manmade ditch, has led to both increased average lake levels and a higher ordinary high water mark; the increase has averaged 12 inches since the 1990 restoration plan actions on the weir and the berm. Given the gradual kettle lake shorelands, the increased lake levels causes a shift of up to 75 horizontal feet in the reach on some properties in the Shoreline Master Program regulatory shoreline overlay district, which is 200 feet from the ordinary high water mark. Property has been lost due to the etching action of elevated water and waves, and there has been an advancement of wetland plants and saturated soil conditions. Other damaging consequences include destruction of shoreline vegetation, the killing of mature and younger trees due to root rot, threats to homes and safety, loss of usable property, and nutrient loading of phosphorous-sensitive water quality. The increased lake level could also put some properties entirely within the 110-foot critical areas buffer, rendering them locked in and undevelopable. Given that over 75 percent of the water budget for Phantom Lake comes from the six-foot pipe coming from the detention pond for the old landfill, most of the polluted waters should be redirected away from the lake to proper treatment. Pond A, which was designed and specified for detention use, is being told merely as a water quality pond; it does not absorb the brunt of the storms, and its valves are wide open. Residents have been complaining regularly for decades about the problems, starting with the development of the former Eastgate airfield property in 1980. At that time construction silt muddied the waters of Phantom Lake, and regular and prolonged flooding followed the 1990 restoration actions. Utilities has had unsatisfactory responses and excuses in the past to the concerns of the residents. A 1972 streams report recommended an economical lake and stream stormwater conveyance that included an outlet control structure on Phantom Lake's outlet as a detention site. The 1976 master drainage plan recommended the same. A 1984 city staff memo indicates Phantom Lake was in fact designated as a detention site or reservoir, and the intention of raising the lake level was cited. In 1990 the Phantom/Larson lakes restoration project, installed the adjustable weir, though residents were told it was for the control of algae. The recommended culvert expansion and grading of the outlet channel, however, was never done. Residents have been told that the lake is private and that its outlet is on private property, and that therefore policies prevent public funds from being used for maintenance. The fact is the city owns over 25 percent of the abutting property for use as parks, there is public access to all the lake waters, and the lake is being used for stormwater conveyance and detention as part of the municipal MS-4 system. In collaboration with staff, several policies have been brought forward that the Phantom Lake homeowners support. The policies include setting the ordinary high water mark at a maximum weir height setting of 260.7 NAVD. The city is looking into pursuing a state grant in conjunction with the parks department to clean and restore the outlet channel. Besides regular flooding, other contributors to elevated phosphorous levels in Phantom Lake include increased shoreline vegetation and large woody debris.

Mr. Matt Wimmer, 4114 West Lake Sammamish Parkway SE, spoke representing Sambica camp. He said the camp is concerned that the proposed Shoreline Master Program will have a huge impact on the children served by the camp. Sambica believes in conservation and preservation of the lake. However, under what is being proposed the camp would lose the ability

to adequately serve the children, many of whom are parentless, are from lower-income households, and do not have the comfort and security advantages that so many take for granted. If the camp loses its ability to provide fun and safe activities, including water sports and recreation, many of the children will be lost in the system. Sambica provides unforgettable experiences for children from a variety of backgrounds through an environment of love, empathy and mentorship. A redraft of the Shoreline Master Program should be produced, but one that will not be at the expense of the children.

Mr. David Radabaugh with the Department of Ecology, 3190 160<sup>th</sup> Avenue SE, provided the Commission with written comments on the draft Shoreline Master Program. He acknowledged the work done by the staff and Commission as well as the work done by the citizens. Much that is in the draft Shoreline Master Program works well and covers the issues that must be addressed. With regard to vegetation conservation, he acknowledged the framework of replacing the existing critical areas ordinance buffer with a setback and vegetation conservation area. The Department of Ecology can support the concept; it has been used in other jurisdictions and involves the use of the shoreline as well as the conservation of vegetation and ecological functions. Within the vegetation conservation area for Lake Washington and Lake Sammamish, the 25-foot area, there is a provision for the shoreline residential areas that 40 percent of the area does not need to be part of the revegetation effort. It is perfectly understandable that areas are needed for access to the shoreline and to piers and docks for recreation along the shoreline, but allowing up to 40 percent of the shoreline to not be vegetated may not be adequate. Within the Shoreline Master Program there is a provision for reducing the 50-foot setback, but the reduction revisions are substantially larger than those included in the Kirkland Shoreline Master Program; those provisions will need to be carefully reviewed. The pier and dock standards also need to be carefully reviewed.

Mr. Jerry Baruffi, 9236 SE Shoreland Drive, pointed out that the previous speaker had called for reducing the 40 percent allowed to be non-vegetated but had not submitted any scientific evidence supporting the statement. He said he has been a lakeshore resident since 1961 and currently lives on the shores of Meydenbauer Bay. The stormwater discharge into Meydenbauer Bay is silting up the bay. Chemicals have been put into the bay to reduce the milfoil problem, but that will need to be done again next year. The real problem is silt is coming down the stream from upland buildup and is filling up the bay; no one is addressing that issue. The boat tour given early in the update process did not loop into the south end of Meydenbauer Bay; if it had, it would have run aground because of the silt buildup. The properties surrounding the bay are residential and the ideas put forth by the staff have been to change the nature of the bay. The notion of including 14 transient moorage slips will create a large turnover of boats at all hours of the day and night. In Portage Bay near the University of Washington there is a boat storage facility that can hold up to 580 boats; many of those boats will be going into Meydenbauer Bay so their owners can visit the restaurants, and that will totally change the nature of Meydenbauer Bay from a quiet residential bay to a commercial character. The shoreline owners would like to know why the consultants hired by the city were chosen and why they came up with the most restrictive rules. It is time for the people who live on the bay to open their wallets to hire different consultants to voice a difference of opinion.

Ms. Cheryl Ebertine, 1845 164<sup>th</sup> Avenue SE, said she has lived in her home on one lot on the east side of Phantom Lake since 1967, and subsequently purchased three additional lots, one of which is a lakefront property. She said the lakefront property was first used to grow a garden, and at the time the water in the lake was clear and was good for swimming. That is no longer the case: the water is polluted with a variety of chemicals and pollutants. Over the years the property owners have watched with dismay as city decisions have resulted in the lands around the lake being flooded and property values diminished. In 1977 a new structure was constructed

on the site of the new home; it is still there, however it now is sometimes within five feet of the edge of the lake. Four feet of the property has disappeared into the lake. The city says the weeds must be mowed and picked up with a certain size hand tool; certain weeds must be pulled out. Now the proposal is to increase the setback and buffer and to plant more vegetation. Conditions on the property would not even permit 500 square feet to be added to the house. The lakefront lot is completely swamped, and the other two vacant lots will be impacted by the new setback from the increased water level to the point of making any construction on the lots impossible. The city allows runoff from the street to flow onto one of the lots from where it flows to lakefront lot and then into the lake. There is a real possibility that the entire value of the properties will be lost. She indicated her wholehearted support for the Washington Sensible Shorelines Association sensible plan.

Ms. Shurlynn Huston, 450 154<sup>th</sup> Avenue SE, said she is Ms. Ebertine's oldest daughter and has lived in Bellevue for 44 years. She said she can remember spending many hours swimming and floating in the lake with siblings and friends, and sleeping in the front yard or around a campfire. Since that time, the city seems to have determined that Phantom Lake should serve as a holding pond for surrounding area office parks, old landfills and new developments. On top of adding an enormous water inflow on a regular basis, the city has also built devices to restrict the drainage of the lake. The average level of the lake is at least two feet higher than its historic levels. The fire pit on the waterfront property is totally under water. No one is able to sleep under the decades old pine tree because the tree recently fell over due to the high water levels; the tree used to be well away from the edge of the water. The concern is that the weeping willow tree will be the next to go, followed by the old pear tree and then the fir tree. When the pine tree fell the ground was so saturated that the hole it left in the ground was filled with water for many months. All that remains is far less shoreline for the remaining trees and other foliage. The city should allow for the construction of a reasonable bulkhead to protect what is left of the fast-eroding shoreline from the unnaturally high lake water level. It is unknown why the city should dictate what foliage must be provided by homeowners when it is the city's actions that have resulted in the loss of the more important and slower growing large trees around the lake. The regulations and actions imposed by the city in the past have caused and continue to cause serious damage to the lake and the lakeshore properties. It is difficult to believe that the planned setbacks and removal of bulkheads will address the real threats to the lake, such as the unnaturally high water level and contaminated runoff flowing into the lake. It would be good to know if the recommendations for the shorelines have been implemented in other areas with positive effects. Experts have given bad advice in the past; the current algae problem did not exist before an expert convinced the city that the lake needed an aerator. She voiced support for the Washington Sensible Shorelines Association sensible plan. Recently a dog playing in the yard of her mother's home was attacked by a coyote, and that has increased concerns for the grandchildren and great grandchildren who visit the property, especially if additional vegetation must be planted.

Mr. Mike Anson, 636 West Lake Sammamish Parkway NE, said he became a citizen of the United States in November 2010. He said he made the choice voluntarily in part due to his belief in the government of the country. The Commission is part of that government and as such as a responsibility to the people. From what has been said it can be concluded that the Commission is either party to or is acting as a bulldozer not listening to fact, reason, or the will of the people. A democracy cannot be run if elected officials do not listen to those who elected them. The Commission has the responsibility to do the right thing.

Lt. Col. Jeff Hancock, 3110 West Lake Sammamish Parkway SE, thanked the Commission for its service to the community, and the staff for the work done in creating the draft Shoreline Master Program. He said he hoped everyone would be open to the notion of making changes to

the draft in light of what the public has said. He pointed out that by adopting a new ordinary high water mark, many structures that were measured against the previous ordinary high water mark may become nonconforming. Many of those structures are already facing erosion issues. If a new and higher ordinary high water mark is to be adopted, the citizens who have bulkheads protecting their properties should be allowed to keep and maintain them, and even increase their height, without onerous restrictions.

With no other members of the public wanting to address the Commission, motion to close the public hearing was made by Commissioner Sheffels. Second was by Commissioner Hamlin and the motion carried unanimously.

## 8. STUDY SESSION

### A. Shoreline Master Program Update

Chair Ferris took a moment to recognize the two Commissioners who were meeting with the Commission for the last time. He noted that Commissioner Mathews served on the Commission for the past eight years, and that Commissioner Lai for four. He voiced the appreciation of all the Commissioners for the contributions made by Commissioners Mathews and Lai.

Chair Ferris asked staff about the process for reviewing the public comments. Comprehensive Planning Manager Paul Inghram said staff would at the June 22 Commission meeting be looking to the Commissioners for input on how many meetings should be set aside to go through the public comments and address the issues that were raised.

Commissioner Lai commented that throughout the process there has been feedback from shoreline property owners and others. He expressed his conviction that the Commissioners have indeed listened to their concerns and have taken them to heart. The work going forward will to a great degree involve reconciling the feedback with the proposal on the table. He voiced the opinion that the issues facing Phantom Lake are indeed different from those facing Lake Washington and Lake Sammamish and as such should be addressed and regulated differently.

Commissioner Lai allowed that there has been a great deal of passion evidenced by the citizens. Unfortunately, that passion has pitted the citizens against the city. The complexity of the draft certainly has led to fear, uncertainty and doubt. To the extent it could be simplified, it should be. He allowed that the code itself will be much different from what the homeowners will need to know when applying for a permit, but simplifying the document would eliminate a lot of concerns.

Commissioner Mathews said he planned to attend future meetings to see the process through. He said his views on many of the issue had been changed by the testimony and that he would offer comments along with other regular citizens at future Commission meetings.

## 9. OTHER BUSINESS – None

## 10. PUBLIC COMMENT – None

## 11. NEXT PLANNING COMMISSION MEETING

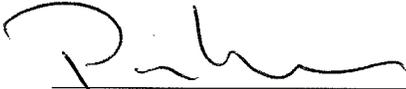
### A. June 8, 2011

Mr. Inghram reviewed with the Commissioners the topics slated for upcoming Commission

meetings.

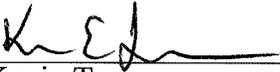
12. ADJOURN

Chair Ferris adjourned the meeting at 10:41 p.m.



Paul Inghram  
Staff to the Planning Commission

7/13/2011  
Date



Kevin Turner  
Chair of the Planning Commission

7/13/2011  
Date