

CITY OF BELLEVUE  
BELLEVUE PLANNING COMMISSION  
STUDY SESSION MINUTES

September 26, 2012  
6:30 p.m.

Bellevue City Hall  
City Council Conference Room 1E-113

COMMISSIONERS PRESENT: Chairman Carlson, Commissioners Ferris, Hamlin, Laing, Sheffels, Tebelius, Turner

COMMISSIONERS ABSENT: None

STAFF PRESENT: Paul Inghram, Department of Planning and Community Development; Carol Helland and Michael Paine, Department of Development Services; Kit Paulson, Department of Utilities

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

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

3. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, called attention to edits made to the document submitted in May or July by the Washington Sensible Shorelines Association. He noted that the Commission previously dealt with the restoration plan issues regarding Lake Washington and Phantom Lake, but had not yet addressed Lake Sammamish. He said descriptions of the neighborhoods had been added along with their concerns, particularly in the areas of flooding, storm water and water quality. He said one section of the document discusses how to measure what the restoration plan does and includes a series of objectives.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, called attention to the comments from the Environmental Services Commission regarding Attachment 1. She said research regarding the comment about the ordinary high water mark revealed that everyone was wrong. Three of the edits by the Environmental Services Commission in Attachment 1 do not appear to be warranted. She said additional issues were highlighted in an email to staff late in the day prior to the meeting, four of which should be addressed by the Commission.

Answering a question asked by Chairman Carlson, Ms. Skoog-Neil acknowledged that the restoration plan is non-regulatory.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, responded to the comments submitted by the Environmental Services Commission. Regarding the ~~Weowna~~ Weowna erosion issue, he noted that he previously testified before the Commission that the outlet water was clear going into ~~Weowna~~ Weowna Park during the peak storm of December 12, 2010, that mud stacks formed along the channel within the park, and that muddy water flowed from the park through the

Sammamish residences down below. Whereas the Environmental Services Commission suggests there is a basin issue, it would seem that the problem really is tied to the park itself. He said he previously suggested dredging the pond on the Sammamish Parkway, but the parks department opted to extend the outflow elevation to fill it up further and they have indicated they are satisfied with the performance of the pond. He said it does not appear that Pond A is being utilized to buffer the lake from storm events as it was originally designed to do. Old photos show the pond filling to the overflow opening during peak storm events, but that no longer happens and the waters appear to simply flow right through. A 1996 Entranco study found that Pond A was undersized by 50 percent according to the current 1996 code; the Environmental Services Commission says the pond was the proper size and was in fact larger than it needed to be at the time it was constructed. With regard to Phantom Lake, he said the mere presence of the weir cement housing threshold raises the outlet channel's minimum. The homeowners association had requested utilities to try targeting a maximum of 260.7 in the spring and summer via a weir setting utilizing a single timber. The request was made in May 2012 and has received no response to date. The homeowners association would like to see 260.5 used as the weir gate setting.

Answering a question asked by Commissioner Tebelius regarding the size of Pond A, Mr. Parks said while the pond was constructed to the size required by the code at the time, the Eastgate area has undergone redevelopment and a great deal of new impervious surface has been added. As such, the pond is no longer adequate and is in fact undersized relative to the new standards. The city should consider increasing the volume of the pond at least to what the current code requirement is.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, suggested the issue of nonconforming overwater structures has been overlooked and should be addressed by the Commission directly. She said there are very few boathouses on Bellevue lakes; shoreline owners who have purchased the properties did so with the knowledge that boathouses are rare and that they add value to their properties. For legally established residential structures, the 50 percent rule violates the state exemption by imposing an arbitrary original value limitation on repairs. There are no specific limitations on overwater structures in the WAC. The 50 percent threshold for docks, bulkheads and accessory structures has been removed from the repair and maintenance regulations, and it should also be removed for overwater structures. The update specifies regulations for historical overwater city structures and allows for their maintenance and repairs; a similar regulation is applied to the Belfield Office Park and shoreline residents should be afforded the same.

Ms. Betsy Blackstock, 712 109<sup>th</sup> Avenue NE, said the Surrey Downs neighborhood is very excited to be part of the upcoming land use study relative to the standards and regulations overlay for the East Link project development agreement. The neighborhood has been involved for the past six years with the East Link issue, and the neighborhood has a reputation for being collaborative, friendly, informational and good listeners. The Planning Commission certainly should be involved in the process.

#### 4. APPROVAL OF AGENDA

A motion to approve the agenda as submitted was made by Commissioner Tebelius. The motion was seconded by Commissioner Turner and the motion carried unanimously.

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

#### 6. STAFF REPORTS

Comprehensive Planning Manager Paul Inghram thanked the Commissioners for attending the

Transit master plan forum on September 18. He said the input offered was excellent and helpful. Transportation staff are compiling the comments and will use them in moving forward with the study.

Mr. Inghram reported that the Council on September 17 had further discussion about the downtown livability work program. He said there is no specific plan yet for how to involve the city's boards and commissions, but there will be a set of Land Use Code changes that will need to come before the Planning Commission.

## 7. STUDY SESSION

### A. Shoreline Master Program Update

Chairman Carlson reminded the Commissioners that following the last Commission meeting staff and members of the Washington Sensible Shorelines Association met on two different occasions to discuss the outstanding issues. A meeting between staff and members of the Meydenbauer Bay Neighborhood Association was also held.

Land Use Director Carol Helland said all three meetings were productive and helped to move things forward. Agreements in principle were reached under which the staff will work on some changes needed to fully address prior direction received from the Planning Commission. The edits include changes needed for purposes of consistency and clarity, but none of the edits take the document in a direction not previously specified by the Commission. The issue of overwater structures as raised by Ms. Lyford during petitions and communications is a case in point; overwater structures are, and have been since the beginning of the state Shoreline Master Program, the only remaining nonconforming element in the Shoreline Master Program. Existing boathouses are allowed to be repaired and maintained.

Answering a question asked by Commissioner Turner, Ms. Helland said when the original state Shoreline Master Program originally went into effect much less was known about the science of shorelines, lakes and water bodies. The stated principle of the state program is, however, still the same as it was in 1972, which essentially is for the citizens of the state to control uncoordinated development on the shoreline. The original language was very specific in regard to overwater structures. In Bellevue, the only overwater structures are boathouses and the whaling house in Meydenbauer Bay.

Commissioner Tebelius asked how the replacement value is determined. Ms. Helland said Marshall Swift is used to calculate the value of a structure. The same approach is used to value structures and what it would cost to replace them in any zone in the city.

Commissioner Laing said the WAC provision exempts normal repair from a shoreline substantial development permit. He asked if the regulation as drafted is intended to be consistent with the WAC provision. Ms. Helland said the WAC section entitled Development Exempt from Substantial Development Permit Requirements is a process provision; it outlines what has to get a permit and what does not have to get a permit. It is not the only provision in the WAC that relates to overwater structures; there are substantive provisions and there are process provisions. The Commission previously discussed the topic of nonconforming structures on several occasions, and nothing in the edits to be made will change the intent of the direction previously provided by the Commission.

Commissioner Laing said 20.25E.040.2 and 20.25E.040.3 appear to say overwater structures can be repaired to their original condition without a cost threshold. The draft separates the concepts of maintenance and improvement in a way that is consistent with the exemption for normal maintenance and repair. Ms. Helland said maintenance and repair are actions intended to keep a

structure in workable condition. Where a structure is allowed to decay to the point of falling down, something akin to replacement is needed to bring it back into service. The standard as drafted is quite flexible and allows for modernization of structures.

Ms. Helland said the meeting with WSSA highlighted a number of problems in the drafting of the section. She said it will be rewritten and brought back to the Commission for review.

Commissioner Tebelius noted that the 50 percent threshold applies to alterations, but alterations are not the same as maintenance and repair. Under state statute there cannot be a 50 percent limitation. Ms. Helland she and her staff needed to review the language before responding; she pointed out that section 20.25E.040 is specifically not applicable to residential development.

Ms. Helland said the matrix of comments places each comment into a specific category, and an indication is made as to whether or not each comment has been addressed in the draft adequately or needs more clarification. Redrafts will be brought back to the Commission at a future date for review. Some changes that fall outside the direction previously given by the Commission will also be brought to the table for discussion. The Comprehensive Plan policies will need to be reviewed when the regulations are finished to make sure the policies support the regulations and that the regulations flow consistently from the policies. The issue of incorporations by reference has been a topic associated with some confusion. Staff will go through an exercise of identifying which category each falls into and will seek agreement from the Commission. The staff continue to have lingering concerns about usability, particularly in those instances where things have been moved out of the code that would be useful to have in the shoreline code to avoid administrative challenges; those items will be pointed out when the redraft is completed.

Ms. Helland informed the Commission that WSSA and MBNA specifically allowed the opportunity to review the materials before they go again before the Commission. She said staff would look first for a high sign from the Commission relative to the direction being taken before finishing the code amendments, and then would allow time for WSSA and MBNA to conduct its review. There simply is not enough time for all of that to happen by October 10. During the update before the Council on September 17, there was recognition on the part of the Council that the Commission has wrap-up work still to do and that wrap-up work always takes longer than anticipated. The Council was clear about wanting to have the work done by the end of the year.

Commissioner Turner stressed the need to develop a schedule and to follow it very closely in order to accomplish things on time.

Commissioner Tebelius said she had spoken with some of the WSSA representatives who have been working with staff, all of whom had nothing but good things to say. She said the approach taken has been fruitful and should be allowed to continue. Things are moving in the right direction and the process would not be enhanced by imposing artificial deadlines.

Commissioner Ferris said he would support clearing the Commission's calendar to the extent possible to focus on the Shoreline Master Program and getting it done by the end of the year.

Chairman Carlson said it was his recollection that the Commission had concluded its review of the restoration portion of the Shoreline Master Program in December.

Commissioner Tebelius said that was not her recollection. She said it was her understanding that WSSA was not pushing for the restoration changes to be made immediately.

Mr. Nizlek said the Lake Washington projects and comments were responded to in September. The Commission still needs to look at the recommendations for Lake Sammamish. The regulations speak primarily to the shoreline, and the position of WSSA has been that the impacts

to the lake are by and large coming from outside the shoreline jurisdiction. The real issue for the lake waters is stormwater runoff.

Commissioner Tebelius asked if the staff could complete the work that needs to be done without dealing with the restoration plan. Mr. Nizlek said progress has been made and working directly with staff has brought the regulatory portion forward rapidly. Staff most assuredly should go ahead and finish working on the regulations. The suggestion of staff that work on the restoration plan could be deferred for the moment would leave WSSA on the hook for bringing up the issue when it goes before the City Council. What the pros and cons of that approach would be are not known.

Mr. Inghram said the direction of the Commission some months back was that the restoration plan was largely acceptable, with the exception of the questions directed to the Parks and Community Services Board and the Environmental Services Commission regarding Phantom Lake.

Chairman Carlson suggested the restoration plan is little more than a wish list given that it is non-regulatory and will have no appropriation associated with it. Ms. Helland said the restoration plan is for the shorelines. WSSA and others have raised good comments about things that need to happen outside the shoreline jurisdiction, and the appropriate place to voice those issues would be in the transmittal memo to the Council. Chairman Carlson questioned whether or not the restoration plan is the appropriate place to raise the non-shoreline issues. Ms. Helland said many of the issues relate to city programs or responsibilities and would carry with them a requirement for Utilities to act. The Planning Commission certainly has an interest in making sure the city stays committed to carrying out its responsibilities, but not all of those responsibilities would be accomplished by including them either in the regulatory structure of the restoration plan of the Shoreline Master Program. The transmittal is the appropriate parking lot for those items.

Commissioner Laing noted that when the Commission took up the issue of the restoration plan the direction given was to include some unequivocal language to make it clear the plan is non-regulatory. Despite the non-regulatory nature of the plan, some of the issues are phrased in such a way as to sound very regulatory, and that is the source of some of the confusion. Simply removing every instance of the word "shall" and replacing it with "should" would be appropriate.

Commissioner Tebelius pointed out that the revisions to the restoration plan provided by WSSA take only three pages; they are reasonable suggestions. If the staff and WSSA have the time to look at the restoration plan, they should be encouraged to do so.

Commissioner Sheffels suggested the restoration plan should be left as it is and get on with finishing up the regulations.

Chairman Carlson said it is imperative that the restoration plan be reflective of the regulations. He agreed with staff that the transmittal would be the place to document some of the issues.

Ms. Helland said the priority for staff is to complete the regulations, not the restoration plan.

Commissioner Laing said the Environmental Services Commission and the Parks and Community Services Board have taken the time to provide comments on the restoration plan, and it would be disrespectful of their time and effort to do nothing about them.

Ms. Helland noted that the work to go back and scrub the code to develop a range of conformance amendments is very tedious. The Council expects that work to be done but

acknowledges that work cannot be done until it is known what the final package will be. That work will happen early in 2013.

Kit Paulson, staff for the Environmental Services Commission, said the intent in forwarding to the Planning Commission comments on the Shoreline Master Program update was to provide the reasons behind the decisions made. She said the intent behind the 50-foot setback was to maintain the status quo unless there is compelling evidence to reduce it. The lake line was an example of some of the things that may or may not have been considered in looking at the functions and values of the shoreline. The Environmental Services Commission recognizes that it is within the purview of the Planning Commission to determine what the setbacks should be.

Commissioner Laing said he presumed the city has the easements needed for any structures it has in place. Ms. Paulson said the question regarding the lake lines, which are serving the shoreline properties, is in regard to the ability of the city to maintain them their current locations. There has been a desire among state agencies and others to move it either into deeper water or on land. Whether or not that is even feasible is one question the Environmental Services Commission is dealing with in looking forward to replacing the lines. There are other options, such as each homeowner have their own sewer pump. A 25-foot setback may not be adequate to support a pipeline. Furthermore, with only 25 feet to provide the shoreline functions and values, putting a big pipe through the middle may inhibit those functions and harm the health of the shoreline.

Commissioner Sheffels asked what the response of Utilities is to beavers that may cause problems for the outlet channel of Phantom Lake. Ms. Paulson said the standard operating procedure for public facilities facing human health and safety risks or flooding and facility function degradation. There are some limited instances in which Utilities will intervene where beavers are living. Beaver dams that are not causing immediate problems provide a number of water quality benefits. Utilities does not, however, get involved on private lands.

Parks and Community Services senior planner Camron Parker said his department's policy is similar. Beavers that set up camp on park property are left alone unless their actions become an issue for park features. The department has a trapping program to remove beavers when necessary.

Addressing the Pond A groundwater flow issue, Ms. Paulson said Parks and Utilities both receive information about the landfill as monitored by the Department of Ecology. Utilities does not have a hand in regulating the landfill or groundwater contamination. Utilities works with Parks to spot check the information to make sure the city's interests are being met and nothing is being missed. The hydrology reports from the Department of Ecology indicate that the groundwater flow is toward Lake Sammamish, not toward Pond A or the Phantom Creek inlet.

Commissioner Sheffels suggested the transmittal memo should reflect the information received from Utilities.

Commissioner Tebelius said it appeared to her that the tone from staff is that none of the requirements requested by the Phantom Lake homeowners should be granted. That is unfortunate because the Phantom Lake community is a viable and important part of the city. At the very least, the transmittal memo should reflect what the Phantom Lake residents have expressed. She said she was not willing to change her position regarding the 25-foot setback, but said she did agree with need to go with the 18.6 elevation. Most of their other comments are in regard to the restoration plan.

Commissioner Laing noted that the WSSA comment matrix highlights only three issues where the WSSA and the Environmental Services Commission are in disagreement, though some of the issues on the list were not addressed at all by the Environmental Services Commission. The

Commission make the changes where there is agreement, and should focus on the three issues where there is not agreement.

Ms. Paulson said the Environmental Services Commission recognizes that the Phantom Lake community has concerns and does not wish to dismiss them out of hand. The concerns that are substantive will take time to work through and they should be addressed through an official forum. The various interests should be represented at the table. Utilities is not averse to changing operations where they are warranted, so long as there is a clear understanding of what is to be accomplished and what the ramifications might be.

Commissioner Laing called attention to PL-10 and the reference to “the facilitated process.” He asked if there is some effort afoot to establish a mediation or facilitated process. Ms. Paulson said the facilitated process referred to in PL-10 is the one in PL-11. She said she did not know what the status is of getting a facilitated process in place.

Commissioner Tebelius pointed out that the facilitated process is part of the restoration plan, which the Commission has said it was not going to deal with. Ms. Helland reiterated that staff will be focusing on the regulations. The Environmental Services Commission comments were in regard to changes, but if the changes were not made they would not have the same concerns. Adding projects will require another layer of iteration with the city departments, which the staff does not have the time to do.

Chairman Carlson suggested that absent unanimous agreement among the Commissioners to include something that was not there previously, the Commission should not make changes. The Commissioners concurred.

Mr. Parker said the memo from the Commission to the Parks and Community Services Board indicated an interest in adding a project to the restoration plan. The Board discussed the notion, but should the Commission not choose to add the project the issue will be moot.

Commissioner Hamlin commented that the proposed project has merit, but it is something that should be looked at in the future. The Commissioners concurred.

## 8. OTHER BUSINESS

Mr. Inghram reminded the Commission that the retreat has been scheduled for October 24 at the Mercer Slough Environmental Education Center.

## 9. PUBLIC COMMENT

Mr. Jerry Laken, 4847 Lakehurst Lane, spoke representing the Meydenbauer Bay Yacht Club. He said it appears there is some inconsistent application of thresholds to repair and replacement of moorage facilities. The most recent version of the draft it says that more shoreline stabilization measures like bulkheads can be repaired in their entirety; previously only half could be addressed, and the remaining half could not be addressed for another five years. The change is good news. It also appears that the Commission has given direction to staff to take a similar approach for residential docks. However, the draft still has the 50-percent threshold for facility segments such as canopies, docks, decks and substructure piling. The inconsistent application of thresholds for repair and maintenance of facilities should be addressed.

Mr. Brian Parks, 16011 SE 16<sup>th</sup> Street, said he has solicited the support of his neighbors in favor of the suggestion of Councilmember Robertson for the Phantom Lake Homeowners Association and the city to enter into a mediated process to reach agreement on some longstanding issues. The Association board is in fact ready to collaborate in such a process. The state bar mediation

pilot process is practically free of charge and is a unique and timely opportunity that may not last very long, and it could save the city thousands of dollars. He said he has heard that Utilities wants to wait. In the meantime the damage is continuing, both environmentally and in the form of lost property. The city annually cuts the grass in nearby swales along SE 16<sup>th</sup> Street, but leaves the grass there to wash downstream into the shallow bays of Phantom Lake. Recently a restoration process tore out blackberry brush surrounding the roadside swales, leaving exposed dirt to flush directly into the same bays; the city was notified and asked to address the concern. Some bad data has been used by the Environmental Services Commission and Utilities as a basis for lake level charts. Lake levels have been observed and documented per the staff gauge at Robinsglen Park that vary from the telemetry reports by as much as eight inches under and over. Water has never been observed spilling over the first cement notched tier of the weir at 262.2 NAVD, yet the city's graph shows that virtually every year since 2006 the lake level has exceeded that height. He said he has made every effort during the study to be accurate and truthful, and no bulletproof data has been submitted. However, there have been vast discrepancies between what has been observed and what is included in the staff report.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, commented positively on the progress made by the Commission. She suggested that if the Commission chooses to revisit the issue of boathouses, it should include a provision allowing structures destroyed by accident to be rebuilt. With regard to the restoration plan, she suggested that there is little chance any of the projects it includes will be done before the Shoreline Master Program has to be updated again in eight years.

Ms. Lori Lyford, 9529 Lake Washington Boulevard, said she was not asking for change from the nonconforming status, but did want to see eliminated the arbitrary 50 percent threshold for repair and maintenance.

Commissioner Laing said WAC 173.27.080 states that when nonconforming use and development standards do not exist in the applicable master program, the definition outlined in the WAC shall apply. There is nothing in the Shoreline Master Program or in the WAC guidelines, substantive or procedural, and nothing in the Shoreline Management Act, that dictates what local jurisdictions must do. The only substantive thing is what happens if nothing is put in.

Commissioner Ferris said the 50 percent threshold is commonly used in the real estate industry; it is not something made up by the city. Renovations on a building that are valued at greater than 50 percent of the value of the building trigger the need to bring the structure up to current code. The reason for the approach is to keep the life safety and other critical elements up to code so buildings do not become deteriorated while occupied. That also gets applied where a new development is going to take out or touch existing impervious surface areas.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, thanked the Commission and staff for the good work done to move the subject forward. Progress is being made, and that should satisfy the City Council.

## 10. APPROVAL OF MINUTES

### A. July 25, 2012

Commissioner Sheffels pointed out a typographical error in the minutes, which was corrected.

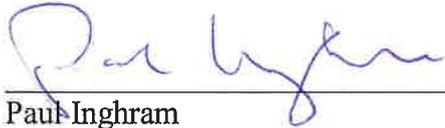
A motion to approve the minutes as amended was made by Commissioner Tebelius. The motion was seconded by Commissioner Hamlin and the motion carried without dissent; Commissioners Ferris and Turner and abstained from voting.

11. NEXT PLANNING COMMISSION MEETING

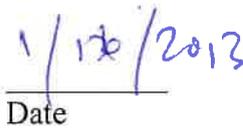
A. October 10, 2012

12. ADJOURN

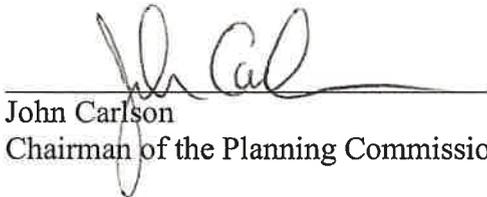
Chairman Carlson adjourned the meeting at 8:42 p.m.



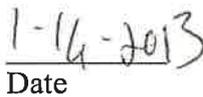
Paul Inghram  
Staff to the Planning Commission



Date



John Carlson  
Chairman of the Planning Commission



Date

\* Approved and corrected November 28, 2012