

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

November 14, 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: Commissioner Hamlin

STAFF PRESENT: Paul Inghram, Nicholas Matz, Carol Helland, Michael Paine, Heidi Bedwell, Department of Planning and Community Development

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER

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

2. ROLL CALL

Upon the call of the roll, all Commissioners were present with the exception of Commissioner Tebelius, who arrived at 8:23 p.m., and Commissioner Hamlin, who was excused.

3. PUBLIC COMMENT

Mr. Marty Nizlek, 312 West Lake Sammamish Parkway NE, noted that he previously had testified regarding the need for non-regulatory participation by the city along the shorelines. He shared with the Commissioners copies of a study conducted by the Washington Sensible Shorelines Association and explained that the intention was to review the level of shoreline urbanization in contrast to the reported ecological functions, and to identify other factors of significance along the shoreline. He said the four categories chosen for evaluation were development characteristics, including impervious surface, structures, stormwater outfalls and the degree of development; shoreline and off-shore characteristics, including armoring, the presence of sewer lines, the use of the lake shore for access to the lake, fetch and wave action, the degree of known denuded beaches, and the presence of overwater structures; and vegetation characteristics. The study concludes that the shoreline is virtually entirely developed and is impacted by external factors; that a reasonable balance exists relative to urban vegetation; and that non-regulatory programs are needed. The Shoreline Management Act includes no call for a return to pre-development conditions which in any event would be nearly impossible to achieve.

Mr. Charlie Klinge spoke representing the Washington Sensible Shorelines Association. He noted that over the past 18 months the focus has been on answering questions raised about the public hearing draft; the two big sections, 065 and 080, alone generated 264 comments. The process of working through the issues has involved compromise on both sides, but there are 16 issues still on the table in need of resolution. Clarification is needed with regard to: what "new development" means; what can be done in the 25-foot structure setback; whether or not dock grating is required for only small dock repairs; the language regarding repair and replacement of bulkheads; and the 25-foot setback on Phantom Lake and Lake Sammamish given the associated flood plain

requirements. With regard to the flood plain requirements, the Commission should alert the Council to the need to look at the flood hazard problem upon implementing the changes. The flood hazard rules do not allow for the expansion of structures that lie within the flood plain, which many structures are, nor can a tear-down be effected in a flood plain. The city's position is not in line with either Sammamish or Redmond; FEMA allows for building in a flood plain provided there is associated mitigation carried out.

Chairman Carlson said it was his recollection that the Commission had already dealt with the dock grating issue. Mr. Klinge concurred but said there is language that makes that unclear.

Mr. Scott Sheffield, 2220 West Lake Sammamish Parkway SE, said the residential impervious surface and structure setback requirements are issues of definition. In its last meeting with staff, WSSA representatives thought the definition of impervious surface was clear, but language has been added that a shoreline variance may be needed. The original language allowing Land Use Code 20.20.460 to be the final authority should be used. With regard to structure setbacks, the difference between a building and a structure comes into play. The definition of structure should be clearly written to include certain common items, such as decks, walkways and barbeques.

Ms. Anita Skoog-Neil, 9302 SE Shoreland Drive, said the regulations concerning docks and dock-related activities should be streamlined to avoid duplicating regulations already in place by state and federal agencies. While there may be benefit to restating some basic dock dimensional goals to make the Department of Ecology happy, the fact is the various agencies are willing to negotiate on various of their criteria; in fact the Regional General Permit goals are subject to change. The city's Shoreline Master Program should not limit standards to criteria that may potentially be in conflict with or exceed what the agencies allow. The addition of a variance requirement concerning dock length should be deleted from the docks standards chart, and footnote 4 should be reinstated. The addition of a variance requirement relative to dock grating should be deleted from the docks standard chart, and footnote 4 should be reinstated. With regard to dock side yard setback activities, boat lifts and watercraft lifts simply hold the boat or jet ski in the same location an owner might otherwise moor a boat or watercraft in the water. They create no additional intrusion and as such it is not reasonable to limit in that location. On narrow lots, a property owner may in fact have no other choice. With regard to grated decking for repairs, the Commission clearly told the staff in July to delete the twenty-square-foot decking limitations, and directed that an existing dock may be maintained and repaired, which under the state rules includes replacement. The Commission did not direct staff to reinsert a grating requirement under repair and replacement, so the reference to the need for grating and a variance should be eliminated. Open-sided moorage covers are considered part of the dock square footage in the draft, and the draft references the dock standards chart but omits references to footnote 4, the ability to alter standards through state and federal approval; the Commission should direct the inclusion of footnote 4 under the provision.

Mr. Brian Parks, 16011 SE 16th Street, spoke as president of the Phantom Lake Homeowners Association. He said the size, walkway width, L prohibition and grated decking requirements have been placed where no endangered species exist. In those instances, the city should defer to the state experts. It should be clarified that L's are in fact permissible, and grated decking is not required by the state. Children who play on grated decking come away with fiberglass splinters, and there could be a connection between the use of the grated decks and the death of fresh water clams. Floating docks such as those used on Phantom Lake need stabilization, which an L helps to provide; the L's also provide a place to tie up boats and a place to safely load and unload. There are no endangered species in Phantom Lake, so it makes no sense to require grated decking.

Mr. Jim Mackie, 1408 West Lake Sammamish Parkway SE, said the overall size of the draft is beyond the abilities of the ordinary homeowner to understand. Whenever a homeowner wants to do something on their property, they are going to have to hire experts to figure out what is allowed and what is not. The document should be simplified. He expressed concerns about the ten-foot setback

for boatlifts and the limitations on structures allowed near the shoreline.

Ms. Laurie Lyford, 9529 Lake Washington Boulevard, said she provided testimony on September 26 about the issue of nonconforming boathouses. She noted that there are very few boathouses on Bellevue lakes. Residential shoreline owners purchase the properties with the knowledge that boathouses are rare and add additional value to their properties. For legally established residential structures, the provision violates the state exemption by imposing an arbitrary 50 percent of original value limitation on repair. There is no specific limit on overwater structures in the WAC. The 50 percent threshold for maintenance and repair of overwater structures should be eliminated just as it has been for docks, bulkheads and accessory structures.

Ms. Cheryl Ebertine, 1845 164th Avenue SE, said she purchased her property in 1966 and the utilities department has claimed that the lake level is now at the same height it was at then. She said if that were the truth she would not have lost at least five feet of property to the rising waters. Of three adjacent properties, one is completely under water and two are partly submerged, making them worthless.

4. APPROVAL OF AGENDA

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

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

6. STAFF REPORTS – None

7. PUBLIC HEARING

A. Annual Comprehensive Plan Amendments Public Hearing

A motion to open the public hearing was made by Commissioner Sheffels. The motion was seconded by Commissioner Laing and it carried unanimously.

Senior Planner Nicholas Matz said the privately initiated Lorge-Benis Comprehensive Plan amendment is the only site-specific Comprehensive Plan amendment that survived the threshold review for 2012. Comprehensive Plan amendments are subject to an annual process that involves a cumulative review of all proposed amendments. He said the Commission would be asked to make a recommendation as to whether or not the Comprehensive Plan should be amended as outlined in the proposal.

The amendment seeks to change the Comprehensive Plan map designation from Professional Office (PO) to Community Business (CB) on properties located at 4307, 4317 and 4301 Factoria Boulevard SE. Mr. Matz said the recommendation of the staff was for the Commission to recommend disapproval of the amendment.

Mr. Matz said when the Factoria area was annexed in 1993 the Comprehensive Plan adapted to the pattern of the existing core areas of higher density of office and retail that had been allowed by King County. The Comprehensive Plan has always contemplated a core commercial area surrounded by decreasing densities of commercial and residential uses. The Comprehensive Plan relative to Factoria was updated in 1996 and again in 2005 to further the vision of a well-integrated, transit-supportive, pedestrian-oriented mixed use urban neighborhood in the commercial core area of District 2, which is intended for some of the most intense commercial development anticipated outside of the downtown and the Bel-Red corridor. CB is a designation that typically serves

community markets and provides areas for community serving services and retail outlets. In contrast, PO districts normally provide areas for low-intensity offices in the transition areas at the edge of the more intense districts.

Mr. Matz said the because the vision of the Comprehensive Plan for Factoria looks at the commercial core area, the PO designations are appropriate where they are. The Lorge-Benis site is separated physically from the core area and lacks the ability to redevelop to the capacity CB allows. The proposed amendment is inconsistent with the Comprehensive Plan and other goals for urban growth development in the Factoria subarea. Even if constrained by development conditions, designating the subject site CB would signal an expansion of the commercial core portion of District 2. PO remains a deliberate and appropriate designation to reflect the existing and expected use on the three small and older properties that are the subject of the proposal. The PO designation and associated dimensional requirements are designed to limit the intensity of use of such small sites.

Continuing, Mr. Matz said the proposed amendment does not address the interests and changed needs of the entire city as identified in long-range planning and policy documents. There has been no need for additional CB designations established citywide. Additionally, the applicant proposes future rezone conditions that would prohibit ground-floor retail and encourage housing, but limiting retail would be inconsistent with CB, and it is not clear that the subject property would be suitable for multifamily residential housing.

The proposed amendment does not address significantly changed conditions since the last time the pertinent Comprehensive Plan map or text was amended. Mr. Matz said staff acknowledges that the Commission and the City Council found that the proposal met the criterion sufficiently for threshold review. The Factoria subarea plan update in 2006 reaffirmed the focus on commercial activity in and around Factoria Mall. There is no clear change to the area that was unanticipated by the plan that suggests a need to reconsider changing the designation for the subject properties. The growth and everything that has happened in the subarea since 2006 was expected and is logically an outgrowth of the direction provided in the subarea plan.

The use adjacent to the subject property is essentially a parking lot. However, the property on which the parking lot is situated is residentially zoned. That means the subject property is in transition to the residential property and as such has a more restrictive building height and setback limit. Each of the PO and CB designations could allow more building square footage than is currently capable of being placed on the parcels. The space needed for the required parking and the non-downtown 0.5 FAR limit prevent the site from achieving the maximums. PO remains a reasonable use of the site, and there is a reasonable expectation that the site could be redeveloped under the PO designation limits.

Mr. Matz said the proposed amendment does not demonstrate a public benefit or enhance the public health, safety and welfare of the city. The proposal is disruptive to the subarea goal of concentrating community based intensities in the Factoria commercial core.

Mr. Matz said in the opinion of staff the proposal does not meet the decision criteria. It is inconsistent with the Comprehensive Plan, does not address citywide interests, does not identify significantly changed conditions, the site is suitable for development under PO but not under CB, and does not demonstrate a public benefit.

Dr. Cole Sherwood, 4303 Factoria Boulevard SE, said the commercial development of the adjoining parcels with 45-foot heights would result in his dental office being hidden from adjacent streets. He said a lack of visibility will mean fewer patients, which will mean less revenue, which will trigger a need for the tenants to relocate, which will mean financial distress for him as the landlord. A CB designation simply does not conform with the adjacent land use; it would reduce the setbacks which

in turn will reduce visibility and accessibility. The PO designation is consistent with the existing Comprehensive Plan and goals of the city, which include limiting high-intensity commercial uses to the core area of District 2. PO is a less intense, gentler and kinder land use as a transition between the high school and the adjoining residential properties. The only significantly changed conditions since the last subarea plan update is increased residential intensity across Factoria Boulevard. All of that favors a PO designation over a CB designation. The last thing the Factoria area needs is more commercial property outside the commercial core. The Commission believes there are significantly changed conditions, but the staff has found none relevant to the application. The economics of remodeling, which the Commission cited during the threshold review process, does not meet the city's definition of changed conditions. There is case law which holds that site-specific Comprehensive Plan amendments must be supported by substantial evidence of changed conditions. There is also case law which holds that any site-specific Comprehensive Plan amendment or rezone that provides a benefit to one group but a detriment to another should be overturned, and 45-foot buildings with an eight-foot setback will destroy the economic vitality of Factoria Dental Place. The Lorge property is ill-suited to commercial development but can easily continue to support professional offices. The shared parking requirement first imposed by King County further complicates the problem. In the past the Benis property has successfully supported four dentists, chiropractors and optometrists, all of which are professions needed by local residents and the high school. If approved, the application will open the door to creeping commercialism by creating changed conditions upon which future Comprehensive Plan amendments will be based. Commercial development outside the commercial core of Factoria will not be a public benefit and will not enhance the public safety or welfare. None of the five criteria for final review are met, as outlined by the staff.

Mr. Robert Thorpe, 2734 SE 27th Street, Mercer Island, said the change to a CB designation does not anticipate any commercial development. The proposal is for a mixed use project with office and residential uses, and with height limited to 45 feet, sufficient to permit two stories of office and two stories of residential, with underground parking. The subject property is surrounded by a parking lot, enjoys reciprocal parking privileges, and is only a block and a half from single family. Use of the church site across the street has changed to allow four stories, and only one small site to the north of the subject site would be affected by the change. The Factoria subarea plan has been due to be updated for some time now. The 2005 Factoria area transportation plan has been implemented, which represents a significant changed circumstance, as does the increased height allowed on the church property. Zoning principles call for like zoning across the street from each other. While the high school site is zoned single family, it is in fact a very intensive land use surrounded by parking. The subject property represents an anomaly that cries out for some solution. The buildings are older and cannot be rehabilitated under the current code in any effective way. While the staff hold the view that the proposal does not meet the Comprehensive Plan goals and policies, the fact is that the original submittal demonstrates that there are eight Bellevue policies the proposal is either compatible or highly compatible with, including accommodating growth targets, encouraging new residential, a broad range of housing choices, encouraging mixed residential and commercial development, protecting existing residential areas, and encouraging infill development; there are seven growth management and nine King County goals and policies the proposal is consistent with. The criteria are in fact met, particularly given that the proposal involves a contract rezone.

Mr. Chris Benis spoke on behalf of his mother, who has owned the property since 1969. He said he understands the notion of transitioning from less intense uses to more intense uses, but stressed that in fact the proposal does not anticipate more intense uses. The reality is the anomalous postage-stamp of land that is the subject property is surrounded on three sides by what is always going to be a parking lot; the underlying zoning may be residential, but there is no great incompatibility of land uses that will result from the proposal. The businesses located on the Benis property have always been those that served the school. The proposal represents an opportunity to build on that fact. The site is a great place for pedestrian- and transportation-oriented development. No community will have its backyard ruined by the proposal. The sloping topography will accommodate additional

height without overshadowing adjacent land uses.

Chairman Carlson asked why the properties have not upgraded since the mid-1970s to reflect the times. Mr. Benis said to do that will require tearing down the existing buildings and redeveloping the site from scratch. That simply does not pencil out under the PO zoning. Underbuilding parking is going to be needed, along with additional height and additional floor plates. If the decision is made not to allow the proposed amendment, in five years the sites will look just as they are, and the existing buildings will just be that much older.

Commissioner Sheffels noted that all of the tenant uses mentioned as serving the school are allowed in PO. She asked if any of the current or anticipated tenants that serve the school would need a designation other than PO. Mr. Benis allowed that the tenant mix would mirror what is allowed under PO, but the CB is needed in order to offer more tenant uses.

Dr. Sherwood said one of the tenants that for some time occupied the Benis property implemented, along with his father, the construction of Factoria Dental Place. In the 32 years since that tenant moved out there has been no redevelopment of the Benis site, even though the Factoria Dental Place building offered an excellent example of what could be there.

Mr. Benis pointed out that Factoria Dental Place was constructed on what at the time was a vacant lot. Nothing had to be torn down first. The building existing on the Benis property is old and frail; it would have to be torn down before anything better could be built.

Mr. Thorpe allowed that the burden is on the applicant to make his case, but suggested that the 6-1 vote of the Commission and the 6-1 vote of the Council during the initial phase in favor of moving the application forward to final review is evidence of the fact that the case has in fact been made.

A motion to close the public hearing was made by Commissioner Sheffels. The motion was seconded by Commissioner Turner and it carried unanimously.

8. STUDY SESSION

A. Annual Comprehensive Plan Amendments

Commissioner Laing suggested there is an inherent circularity involved. The staff report indicates that the CB designation is too intense, then continues by saying that putting restrictions on the CB use to make it less intense will make it something other than CB and thus the proposal should be voted down. The applicant has submitted a great deal of information in support of meeting the burden of the decision criteria, but the applicant's specific arguments are not addressed in the staff report. There was a reason both the Commission and the Council voted to move the amendment beyond the threshold review stage. There have numerous substantial changes in the Factoria subarea since the subarea plan was last updated. To leave the Lorge-Benis site an anomalous mid-1970s woody walk-up makes no sense at all. He said he would vote to recommend approval of the application.

Commissioner Sheffels pointed out that the subarea plan was last updated in 2006 at which time the Commission and the community thoroughly discussed the issues facing the subarea, including the Lorge-Benis site. She said PO was at that time deemed to be the proper designation for the site, and it still is. All of the tenants on the Benis property have been of the nature that are allowed under PO, with the possible exception of the driving school that was once located there. The site is not suitable to residential uses. She said she would vote to disapprove the application and retain the PO designation for the site.

Answering a question asked by Commissioner Ferris, Mr. Matz clarified that under the PO

designation, the Lorge-Benis properties could be redeveloped with approximately 19,200 square feet of building space in two stories up to 30 feet high. However, the FAR limit would mean that no more than 13,500 square feet of the 19,200 square feet could be for office uses. Under either a PO or CB designation, the amount of office space that could be allowed on the site would be 13,500 square feet. Commissioner Ferris suggested that because of the parking requirements that come along with the commercial designation, the most viable use would be the FAR-limited office space and the approximately 18 units of housing above. Accordingly, the true benefit to the CB designation would be the 18 units of housing, but the question is whether or not the location is suitable for housing.

Chairman Carlson asked if aesthetics matter under the parameters of what constitutes a public benefit. Mr. Matz said they do when they have been defined by the Comprehensive Plan. He said the purpose for intensifying the commercial core is to have it not only function better but to look better, and there are specific policies and design guidelines in place for Factoria to yield those results. The purpose of the Comprehensive Plan amendment process is not to say whether or not a particular solution is good or bad but rather to indicate the framework under which various solutions can occur. If redevelopment were to occur, and were it to follow the requirements of the Land Use Code for landscaping, setbacks, access and so forth, and to incorporate design guidelines, there would be benefits to be gained.

Commissioner Turner said the situation is complicated by the fact that the site originally developed under King County rules and the city is stuck with what is there. The opportunity exists to improve the situation. It is unfortunate that the owners of all four parcels have chosen not to cooperate with each other, which handicaps those who do want to redevelop their properties. Going to CB will allow the property owners much more flexibility and will enhance the area.

Commissioner Laing said the CB designation, when coupled with the restrictions proposed by the applicant, yields a perfect amalgamation of the adjacent surrounding development, namely a mixed use scenario. The site is simply not large enough to allow much intensity. The evidence put forward by the application supports the notion that it is not financially viable to redevelop the site under the existing zoning, but would be financial viable to redevelopment under CB even with the restrictions proposed by the applicant. Nothing in the record counters that claim. There certainly would be a public benefit resulting from allowing increased professional services, increased housing and increased tax revenues.

Commissioner Sheffels said the argument made by the applicant that redevelopment under the current designation will not pencil out is a very commonly heard theme. Economics alone does not stand up as an argument for changing from PO to CB.

Chairman Carlson said there are valid arguments on both sides, all of which have depth and substance. He said if the subject property were larger, the arguments of staff would carry the day. Given what is currently developed on the site and what it looks like, compared to what could be there, the greater good would be furthered by approving the proposed change.

Commissioner Ferris pointed out that the mixed use development with residential and office uses makes the cost of building both the office and the residential more expensive than it would not be to do either one by themselves. He further suggested that an 18-unit apartment complex would be viable; the economy of scale is not there, and it would not qualify for any kind of affordable housing money from the city. Increasing the number of housing units and decreasing the amount of professional office space would take away from the real benefit the zoning designation provides. A CB designation is a CB designation, and once it is in place the property owner can do whatever it is legal to do under the rules for that designation regardless of any promises made. PO is the best use for the site. He supported the recommendation of the staff not to recommend approval of the application. There is no argument against tearing down the existing buildings and redeveloping the

site under PO.

A motion to recommend approval of the Comprehensive Plan amendment to amend the map designation for the three-parcel site from PO to CB was made by Commissioner Laing. The motion was seconded by Commissioner Turner and the motion carried 3-2, with Chairman Carlson and Commissioners Laing and Turner voting for, and Commissioners Ferris and Sheffels voting against.

Mr. Inghram said staff would work with the Commission in drafting the transmittal memo, and said the minority opinion will be acknowledged. He said the transmittal will also point out that the applicant proposed a change to CB with some future conditions of zoning to be applied.

****BREAK****

B. Shoreline Master Program Update

Land Use Director Carol Helland said staff had received three submittals from WSSA since the Commission's packet was bound. She said the staff batched their review comments into three general categories: no objection to the changes; issues that fall outside the previous direction given by the Commission; and issues that would require some significant redrafting and as such could jeopardize the desire to finish the Shoreline Master Program by the end of the calendar year.

Ms. Helland noted that the staff's comment 1 relates to WSSA's action item 1. She added that staff had no objection to the suggestion made by WSSA and proposed adoption of Option 2 in 20.25E.065.B.2.

Commissioner Tebelius called attention to the comment of WSSA that Option 2 provides only an explanatory statement, whereas Option 1 is self-explanatory. She asked why Option 1 would not be the better choice. Ms. Helland said Option 1 relates to the definition of "new development," which is a definition that is relevant to the critical areas standard, which is a different standard. The reference in the draft is to development as it relates to all areas citywide. The critical areas reference would not be appropriate because the other critical areas terms are not being carried over.

Commissioner Laing suggested there is a potential ambiguity about what "new development" means in Option 2, whereas the definition of "new development" in LUC 20.50.036.N does not include expansion. Option 2 does include expansion. One of the concerns WSSA has is that the definition of "new development" that is being proposed for the Shoreline Master Program is more expansive and includes more than just demolition of all existing structures or the construction of new structures and could apply to adding an addition to a house. He agreed that the definition used should be consistent citywide.

Commissioner Sheffels said the issue was whether "expansion" would be included in the definition. Ms. Helland said originally the focus was on the need to differentiate expansions from existing development. The conversation centered on the fact that if nothing is changed, nothing in the code regulates existing development. "New development" means anything that is new, including expansion and tear-downs, and that is the case citywide. The definition of development the section relates to was not intended to exclude expansion.

Commissioner Ferris commented that there are many language revisions in the updated draft that indicate the city code provisions of general applicability are not part of the Shoreline Master Program unless specifically adopted by reference. Thus what is done elsewhere in the city cannot be relied on unless specifically called out in the Shoreline Master Program. He said his preference would be to have what applies to the rest of the city to apply in the Shoreline Master Program unless there are specific exemptions spelled out. The Shoreline Master Program update never has been predicated on that premise.

Mr. Inghram said the term “new development” as used in section B.2 will be relevant to how things are reviewed. The language talks about new residential development being located and designed to avoid the need for future shoreline stabilization, about parking and driveways, and about accessory utilities among other things.

Chairman Carlson noted that the critique says it is nonsensical to apply the requirements regarding parking, driveways, garages and accessory utilities to a home expansion to add a family room. Ms. Helland said that is actually not true. She said there may be a need to change the location of an electrical box when a remodel is done, or maybe a garage is to be converted and the driveway must be moved. The requirements are applied in the context of the situation, which is the approach taken citywide to development. One option would be to strike the word “new” from B.2, which is how the section read originally.

Commissioner Laing said the concern underlying the comment in the beginning was that the language could be construed as applying to existing development irrespective of someone undertaking an activity that would trigger the requirements of going through a permit process. The addition of the word “new” was to make a distinction between existing and proposed development. Ms. Helland reiterated that property owners who are not seeking to make any changes to their properties have no reason to make sure they are in compliance; absent engaging in development or an activity for which a permit is required, the provisions do not apply. Commissioner Laing suggested what the paragraph is intending to say is that the general requirements are applicable all proposed development. “Existing” development is not proposed development.

Ms. Helland said the benefit of having code language that is consistent with all other code language is that when it gets interpreted it always gets interpreted in the same way. To branch out and use new and unfamiliar language in one section could lead to staff looking for a different meaning, with less predictable results. The language that would be most consistent with the rest of the code and which would ensure the most predictable application over time would be to strike the word “new” and simply have paragraph B.2 read “Residential development shall comply...” She allowed that the language of the other paragraphs in section B should also be reviewed relative to references to new development.

Commissioners Ferris and Sheffels agreed to make the change. Commissioner Tebelius said she did not agree because she did not understand how it would look. Commissioner Laing suggested the change as proposed would create an ambiguity and would not support the change; he said his preference was for Option 2. Commissioner Turner voiced his opposition to Option 2 and his preference for Option 1.

Answering a question asked by Commissioner Turner, Ms. Helland said in the meeting between WSSA representatives and staff there was agreement to make the changes characterized in Option 2. Staff did not have the Option 1 language presented to them until November 13.

With the exception of Commissioners Sheffels and Tebelius, the Commissioners indicated their support for Option 2.

Ms. Helland noted that relative to the flood hazard regulations, critical areas and setbacks issues, WSSA only asked that language be included in the transmittal memo to the Council.

With regard to the shoreline dimensional requirements under 20.25E.065.C, Ms. Helland said staff had no objections to the change proposed by WSSA regarding uses. She noted WSSA also raised a question about use of the term “now or hereafter amended” and suggested it be eliminated given the fact that the cross references issues have been resolved.

Ms. Helland noted that WSSA Action Item 3 relates to the staff's Comment 4 and relates to a request to add clarifying language about the flood hazard critical areas. She said the concern of staff relative to the request is that the proposed language would be added to the structure setback column of the dimensional chart and there is no structure setback for floodplains, which are critical areas and which have no setback.

Commissioner Tebelius proposed including the clarification as a footnote. Ms. Helland agreed to add something to the effect that the floodplain may extend beyond the 25-foot setback.

Ms. Helland said WSSA Action Item 4 relates to the staff's Comment 5 and has to do with the impervious surface regulations. She explained that the origin of the comment is the fact that the draft as revised references out to the impervious surface requirements in the Land Use Code 20.20.460; it is one of the few places where regulations are specifically incorporated by reference. The problem is that the cross reference has not been tailored to the characteristics of the shoreline. The code section referenced actually requires a critical areas report when deviating from the directed approach, and the critical areas report carries with it mitigation requirements and some other things that are no longer consistent with the conforming regulation that will be made to the critical areas code later where shorelines are no longer considered to be critical areas. Accordingly, the proposal of staff is to include a shoreline variance rather than a critical areas report.

Commissioner Laing said he strongly opposed imposing a shoreline variance process. The process is far more onerous than a critical areas report. It is very difficult to get a shoreline variance approved and the proposed approach would impose a restriction on properties that is far greater than the restrictions imposed on every other property in the city that has a critical area on it. Ms. Helland reminded the Commission of the comments received from the Department of Ecology regarding the special shoreline report provided to them previously. At the time the draft included a 50-foot setback and flexible approach that allowed reducing the setback down to 25 feet. The draft has since been revised and the setback is reduced to 25 feet. The Department of Ecology expressed some consternation about allowing any variation from absolute standards through any means other than a variance process.

Commissioner Tebelius said it was her understanding that it would be nearly impossible to ever get a shoreline variance approved. If the proposed language is included, it will be the same thing as saying it will never happen. Ms. Helland said one option would be to require a shoreline special report, which at least is tailored to shoreline conditions. The problem with that is that in effect shorelines would be removed from shorelines critical areas and applying instead a critical areas report standard, which could create confusion for applicants.

Commissioner Laing said he could support that approach. Mitigation can be proposed through the shoreline report just like it can be in a critical areas report, and in this particular instance it makes sense to analogize it that way, especially if the Department of Ecology is pushing back saying the issue is mitigation.

Ms. Helland said her recommendation was to say that in lieu of the critical areas report the special shorelines report process would need to be followed. Commissioner Ferris was the only Commissioner to voice opposition to taking that approach.

Ms. Helland noted that the WSSA issue having to do with the definition of "structure" related to the staff's Comment 6. She said the recommendation of the staff was to retain the definition of "structure" as presented in the code. The rule is that anything that is under 30 inches tall and is of a minor nature is not considered to be a structure. Decks, patios and walkways are included under the scope of the definition.

Commissioner Ferris said his concern is that within the 25-foot setback there is no longer a

vegetation area. Without that requirement and absent some context relative to what is allowed in the setback, there are essentially no restrictions. So long as the lot coverage ratio is met, someone could conceivably pave the whole 25 feet right up to the back of their bulkhead. There is value in the setback relative to the function of the lake. He said he would support including flexibility if there were a vegetative area required. Patios, barbeque pits and similar things are all given exemptions, and as the restrictions within the setback are whittled away, its effectiveness will diminish.

Environmental Planning Manager Michael Paine reminded the Commission that Mercer Island dealt with the issue in the very specific way that Bellevue originally put in the code but later removed. Mercer Island has very specific impervious surface limits within the 25-foot setback and within the next 25 feet as well. They allow up to ten percent impervious surface area in the first 25 feet from the ordinary high water mark, and up to 39 percent in the next 25 feet. The original draft had the same restrictions, but they were eliminated when the setback was reduced from 50 feet to 25 feet.

Commissioner Laing asked what is allowed in a side-yard setback in terms of impervious surface. Ms. Helland said the overall impervious surface standard must be met, but in side-yard setbacks that are not shoreline setbacks it is possible to construct a deck, provided it is less than 30 inches tall.

Commissioner Laing said Commissioner Ferris's point is well taken. There is nothing in the code as drafted that would preclude someone from turning the entire area between the back edge of their house to the ordinary high water mark into pavement, other than the standards relative to site coverage and impervious surface. He asked if any property owner anywhere in the city could literally pave from corner to corner within their property lines. Ms. Helland said that likely would not be allowed because of the impervious surface requirements, and because of the front yard provisions that require half of the area to be in greenscape.

Commissioner Turner asked what the real likelihood is that someone could pave their back yard as suggested by Commissioner Ferris. Mr. Paine said it has happened already in the form of sports courts and other things within the 25-foot setback. Commissioner Turner said while that may not be the best approach relative to ecological functions, it is certainly something that should be expected in an urbanized area. If the Department of Ecology has a basis in law for taking another approach, they should make that clear.

Commissioner Ferris said the testimony delivered to the Commission regarding the 25 feet of shoreline between the structure setback and the ordinary high water mark has an ecological function that is different from the setback of any property that is not anywhere close to a shoreline. He said paving his setback entirely will have less of an impact on a lake body than would the same action taken by a shoreline property owner. The standard for the setback on the shoreline should be different from the standard imposed on every other property in the city.

Answering a question asked by Commissioner Tebelius, Ms. Helland said the impervious surface regulations are specifically incorporated by reference, and thus they do apply. What they do is limit the total impervious surface area to 50 percent of the entire lot.

Commissioner Ferris pointed out that a property owner with a large lawn and a small driveway with lots of vegetation around it could easily not trip the impervious surface threshold on the upper part of their property and elect to nearly cover all of the setback area with additional impervious surfaces. He suggested going back to a limitation similar to what Mercer Island has for the first 25 feet.

Commissioner Laing called attention to 20.25E.065.E.2 and suggested there could be something in that language that could be adapted to apply to impervious surface area within the 25-foot setback.

Chairman Carlson asked Mr. Klinge to weigh in on the issue. Mr. Klinge said it would be difficult for him to say what WSSA would support without talking to representatives of the organization. He said he was willing to seek an answer and to address the issue at the next meeting.

Commissioner Laing said the concept underlying the new Shoreline Master Program regulations and guidelines is the issue of no net loss. He said the Commission recognizes that the shoreline is largely urbanized. If it is true that someone could essentially pave the entire area between the back of their house and the ordinary high water mark, providing any kind of mitigation would be essentially impossible. The city would have a very difficult time explaining to the Department of Ecology how allowing the setback area to be paved meets the no net loss standard. He agreed the issue should be held over until the next meeting.

Ms. Helland said the Council likely will carefully consider how shoreline property owners are treated in comparison to citywide property owners. From that perspective, the workable solution might be to use the 50 percent greenscape provision and to call the shoreline the front yard of shoreline properties. That would allow for the application of the same standard citywide.

Commissioner Sheffels concurred. She pointed out that in effect the area toward the shoreline is the front yard of shoreline properties.

Ms. Helland said the last direction given by the Commission to the staff was to rely solely on the impervious surface regulations and the citywide vegetation requirements. She asked if there was specific direction to revisit applying some limitation on the amount of impervious surface area that can occur in the first 25 feet landward of the ordinary high water mark.

Commissioner Ferris said safeguarding the setback is important to the ecology of the lake, and the Shoreline Master Program likely will not pass muster with the Department of Ecology unless the issue is revisited.

Commissioner Turner asked if the Department of Ecology has any lingering thoughts that the shorelines are critical areas. Mr. Paine said there are endangered species in and along the Lake Washington shoreline. As such, it could be argued that the Lake Washington shoreline is a fish and wildlife habitat conservation area. It would not be impossible to believe that the Department of Ecology would raise the issue absent the provision of sufficient protections through the Shoreline Master Program. Most of the plans approved for jurisdictions along the lakes have addressed the issue through their own internal regulations.

Commissioner Tebelius pointed out that the Commission previously acted to decide what should be done and not done in the shoreline setback area. If the community wants to work with staff to find a solution, the Commission should hear what they come up with. If not, she said she was not willing to change her position from where it was when the Commission first looked at the issue.

Chairman Carlson said the Commission never intended to allow anyone to simply pave the entire shoreline setback area. If that is something that could result from the language of the draft, the language should be revisited.

Commissioner Turner said he was not ready to change his mind on the position previously taken by the Commission. He noted, however, that he was willing to entertain a proposal worked out between WSSA and the staff.

Ms. Helland pointed out that the action items speaks to structure. She said WSSA did not put a limitation on fire pits and barbeques, and if the staff are given direction to go talk to WSSA without first deciding whether or not there should be a more stringent impervious surface limitation, the talks will not achieve anything. Absent agreeing to take a step back to what was previously in the

draft, the Commission should just consider what it has before it and make a decision as to what direction to go.

The majority of Commissioners agreed that a mechanism for providing limits on impervious surface area within the shoreline setback should be identified and brought back to the Commission for consideration.

Ms. Helland called attention next to WSSA's Action Item 6 relating to residential moorage overwater structures.

Commissioner Tebelius commented that all issues relating to docks are subject to state and federal approval. There are no variance issues, and the city should just leave it at that. Ms. Helland said in fact the Commission previously directed the staff to retain some very specific standards, including a setback of ten feet, which can be encroached into with the permission of a neighbor, and a maximum dock length. The maximum dock length went from 80 feet, which is in the current code, to 150 feet for Lake Washington and Lake Sammamish, and 100 feet for Phantom Lake. Any deviation from the dock length standard should be through the variance process, and any deviation from the maximum dock size standard should be through state or federal approval. For Phantom Lake, the shoreline variance provisions, mooring piles and decking, should be shown as requiring state and federal approval. The shoreline setback does not require a variance but rather the permission of a neighbor.

Commissioner Tebelius agreed with the suggestion to require a shoreline variance to exceed the maximum dock length. Ms. Helland clarified that that position will require no action to be taken relative to Action Item 6.

With regard to Action Item 7 relating to Phantom Lake and the issue of allowing dock L's, Ms. Helland said the issue lies outside the scope of the Commission's prior direction. For that reason, additional direction is needed. L's relate to moorage and the prohibition exists because only small non-motorized watercraft are allowed in Phantom Lake, and such vessels are not generally moored.

Commissioner Ferris asked if an L has any identified environmental impact. Ms. Helland said the environmental impacts are associated more with total dock square footage, which is regulated.

Commissioner Laing noted that Chart 20.25E065.H.4 allows a maximum dock length of 100 feet on Phantom Lake, and a maximum dock size of 250 square feet. He said under those provisions, a dock that is the maximum length could only be two and a half feet wide. The same chart allows docks on Phantom Lake to be a maximum of four feet wide, which at the full length of 100 feet would yield a 400 square foot dock. He suggested the same square footage for Lake Washington and Lake Sammamish docks should be applied to Phantom Lake.

There was agreement to include footnote 4 in the Phantom Lake column allowing L's on docks with state approval.

At 10:00 p.m. a motion to extend the meeting by 20 minutes was made by Commissioner Tebelius. The motion was seconded by Commissioner Turner and it carried unanimously.

Ms. Helland noted that WSSA also was asking to have dock grating deleted as a requirement for Phantom Lake. She noted that the request was outside previous direction given by the Commission. Mr. Paine suggested that Fisheries will require grating regardless. He said it is better to leave the standard in the draft for the Department of Ecology to see.

Ms. Helland indicated that WSSA Action Item 10 related to staff's Comment 11 and regarded the dock ten-foot side setback. She said the standard is consistent with what is done on upland

properties, and it can be encroached upon with the permission of the neighboring property owner.

Commissioner Tebelius said shoreline property owners should not have to seek approval from their neighbor to encroach on the ten-foot setback. Certainly none of the older properties had to have it. A boat lift only holds a boat and certainly is not an additional intrusion of any kind. Ms. Helland said boat lifts are considered to be navigability intrusions, and collectively the ten-foot setback provides for 20 feet of clear space between properties. Commissioner Tebelius said the setback is simply impractical on narrow lots.

Commissioner Ferris commented that where two narrow lots are situated side by side, and where they both have a dock, the collective 20 feet would provide ample space for either property owner to bring in their boat and park it. If there were a boat lift on one or the other properties holding a boat, it would be far more difficult for the neighbor to get a boat in or out. He said the standard is reasonable, especially given that the setback can be encroached on by simply obtaining the approval of the neighboring property owner. If the neighbor refuses to grant approval, the requesting property owner can simply locate his boat lift on the opposite side of his dock.

Ms. Helland said the issue comes up with regularity. Staff would prefer neighbors to work out their issues without involving the city.

Commissioner Tebelius said if a dock complies with the ten-foot setback, there should be no restrictions on including a lift in the ten-foot area. If that language were included, there would be no problems between adjacent property owners because the code would clearly allow it.

Commissioner Laing agreed with the position of the staff and the proposed language. He said the problem is that many property owners own the underlying shorelines, and just as someone would not tolerate having someone parking their car across the front lawn property line, few will tolerate having someone's boat that exceeds ten feet in length parked over the shoreline property line, nor should they have to. If two neighbors are able to come together and enter into an agreement relative to encroaching on the ten-foot setback, all will be well. Navigability is not the real issue. He agreed that city staff should not be put in the position of having to deal with property encroachments.

Ms. Helland noted that throughout the city if a property owner wants to locate a shed of some sort within a side yard setback, permission must be obtained from the adjacent property owner.

With the exception of Commissioner Turner, the Commissioners favored the language proposed by staff.

From the audience, Mr. Klinge pointed out that absent direction from the Commission to consider the WSSA language in Action Item 16, the issue will not be addressed. Ms. Helland said the issue is related to shoreline stabilization. She said in a previous meeting the Commission concluded that 20.25E.080 is completed, and the staff were directed to negotiate changes to 20.24E.065. Accordingly, the staff has not entertained additional changes to 20.25E.080.

There was consensus among the Commissioners for staff to work with WSSA on finding a solution.

Ms. Helland said the change previously made to the shoreline stabilization was within the scope of the Commission's prior direction to staff. The focus was on removing disincentives for doing the right thing. The language was revised to allow for a sloped upland rather than having to replace a vertical wall bulkhead with another vertical wall bulkhead. The proposal of WSSA, however, goes far beyond the direction previously given by the Commission and relates back to a vertical wall and eliminating the feasibility test.

Mr. Klinge pointed out that none of the language on page 19 was included in the July draft of the Shoreline Master Program. He said all WSSA wants is for staff to compare the proposed language with the language in the current draft and to let the Commission decide which should be used. The staff position is that vertical walls should be mandated out, while the WSSA position is that they should be encouraged out. Replacing a vertical wall with a vertical wall does not generate any new impact.

Commissioner Ferris said there is general agreement among experts that a battered wall is a better solution than a vertical wall. If a vertical wall is to be replaced, the property owner should be required to show reason why they cannot replace it with a battered wall before being allowed to replace it with another vertical wall.

Mr. Klinge countered that the WSSA language encourages battered walls but in language that is softer than what is in the current draft.

Ms. Helland said the language revisions made to the section were predicated on a communication from earlier in the summer that sought to add some clarity. No attempt was made to change the direction the Commission had directed.

Mr. Klinge argued that the WSSA provision is comprehensive. It includes a discussion of what replacement means; the same "existing legally established" language that the draft has; explains that replacement structures are allowed in all circumstances on Lake Washington and Lake Sammamish because of the demonstrated need to protect the shoreline from boat traffic and wind-driven storms; and more language describing what a sloping rock revetment is, including explanations of where such structures are to be located.

Ms. Helland reminded the Commission that shoreline stabilization began with the critical areas code. From that point the language has been revised to allow for full replacement of vertical walls. The WSSA proposal represents yet another departure from the language that in the long run will move away from the use of vertical walls.

Commissioner Tebelius said the problem with the draft language is that sloped revetments are required, and the cost for the homeowner is enormous.

A motion to extend the meeting by 15 minutes was made by Commissioner Tebelius. The motion was seconded by Commissioner Ferris and it carried unanimously.

Commissioner Ferris said if a property owner is going to take out a vertical concrete wall, the cost to replace it with another vertical concrete wall will be much greater than the cost of putting in a sloped revetment. The repair of existing walls is a completely different discussion.

Ms. Helland said replacement is entirely owner-driven. If the decision is made to replace an existing vertical wall, the replacement provisions apply. There is no requirement to replace an existing wall when repairs are needed. Chairman Carlson suggested adding clarity on that point would be helpful.

Chairman Carlson asked what about the proposed WSSA language is unsatisfactory to staff. Ms. Helland said their language goes well beyond the language that is in the draft. If the issue is just that repair and replacement need to be separated out for purposes of providing clarity, that can easily be done.

Mr. Klinge said a compromise would be to say that sloping rock revetments are required unless there are special circumstances. However, there is important language in the WSSA proposal that should be included, particularly the clarification regarding Lake Sammamish and Lake Washington

where the need for shoreline protection has been demonstrated. By not including that language, the door would be left open for the city to require shoreline property owners to come in with an expert to prove that shoreline protection is necessary for every single replacement. Additionally, the WSSA proposal specifies that the slope should be 3:1 unless special circumstances justify a greater slope, and specifies that a sloping rock revetment must be located so that the top of the revetment is no further waterward than the top of the vertical wall.

Ms. Helland said the exception that is carved out in paragraph (D) on the last page of the WSSA letter is part of the problem because it conflates a permitting process with a substantive standard. It would be disconcerting to get rid of the feasibility requirement as a result. She agreed to review the WSSA proposal and to provide additional comments and clarifications at the next Commission meeting.

Chairman Carlson said in any case care should be taken to avoid including inadvertent loopholes that will serve as a red flag. Not having a clear standard with regard to battered rock revetments as a preference to vertical walls is one such red flag.

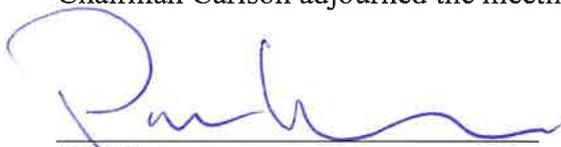
Commissioner Laing noted that everyone agrees sloped revetments are preferable to vertical concrete walls. However, there are three issues relative to shoreline stabilization that need to be resolved between WSSA and the staff: 1) the issue of using a carrot rather than a stick relative to doing a sloped revetment; 2) the issue of a demonstrated need for shoreline armoring on Lake Washington and Lake Sammamish; and 3) the issue of minimum parameters for sloped revetments, including where they are to be placed, how they are to be placed, and what they are to look like.

Ms. Helland informed the Commission that WSSA has also made a request relative to nonconforming residential development; their request is to be able to replace overwater boathouses. She said absent direction from the Commission, staff will let the issue lie. Chairman Carlson said unless there is a clear and convincing argument for revisiting sections the Commission has deemed complete, no revisions should be entertained. The Commissioners concurred.

A motion to defer all other pending issues to the next Commission meeting was made by Commissioner Ferris. The motion was seconded by Commissioner Tebelius and it carried unanimously.

11. ADJOURNMENT

Chairman Carlson adjourned the meeting at 10:53 p.m.



Paul Inghram
Staff to the Planning Commission

2/13/2013

Date



John Carlson
Chairman of the Planning Commission

2/13/2013

Date

* Approved as amended January 16, 2013