

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
November 22, 2011**

ROLL CALL: Present: Bruce Neil, Keith Fakkema, Jeff Wallin, Greg Wasinger, Kristi Jensen, Gerry Oliver and Jill Johnson.

Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.

Chairman Neil called the meeting to order at 7:30 p.m.

MINUTES: MS. JENSEN MOVED, MR. FAKKEMA SECONDED, MR. OLIVER ABSTAINED, MOTION CARRIED TO APPROVE THE OCTOBER 25, 2011 MINUTES AS PRESENTED.

PUBLIC COMMENT:

None present for comment.

SIGN CODE UPDATE – Public Meeting

The Planning Commission continued its discussion of amendments to OHMC 19.36.080 (“Temporary and Special Signs”). Staff addressed Planning Commission questions from the October meeting about the temporary sign code amendments. The proposed Code amendments address time, manner, and place provisions for temporary signs, especially political signs, located on public property.

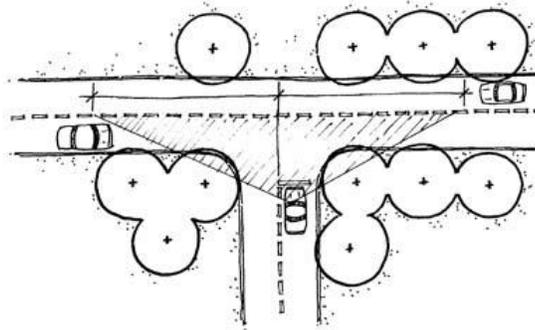
Mr. Spoo highlighted the following Planning Commission questions and answers:

- **Question:** Does the *Collier vs. City of Tacoma* case mean that someone can put up a political sign for an unlimited amount of time prior to the event or election? What is the State’s definition of “pre-election” in regards to time limits?
- **Answer:** According to the Municipal Research Services Center (MRSC) of Washington, pre-election time limits are unconstitutional. “It is not legally possible to limit the time in advance of an election that political signs can be posted in the places where political signs are allowed.” The State does not define pre-election.
- **Question:** Can someone put up a political sign on the “Welcome to Oak Harbor” entrance sign or on the trees along SR20 because these are within the public right-of-way? If so, couldn’t these signs stay up for an indefinite period of time?
- **Answer:** The *Collier* case concluded that political signs cannot be prohibited within the public right-of-way. However, the Washington State Department of Transportation (WSDOT) has issued an opinion prohibiting political signs within state highway rights-of-way. City staff does not know whether the WSDOT prohibition is correct or how it aligns with the conclusions of *Collier*.
- **Question:** What is the definition of a political sign? Does the City have any ability to limit the content of political signs?
- **Answer:** OHMC 19.36.020(31) defines political signs as “signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot.” According to longstanding case law, with the exception of obscenity, the City cannot regulate the content of signs.

- **Question:** How have other communities handled these issues?
- **Answer:** Staff attached relevant codes from Pierce County, City of Redmond, and City of Kirkland to the agenda packet. Staff provided the codes as examples, but their legality or constitutionality has not been researched.

Mr. Spoo provided an additional handout (Attachment A) regarding the City of Redmond.

Mr. Spoo displayed the following depiction of the “vision triangle” while explaining that signage would not be allowed within the “vision triangle” for safety reasons.



Mr. Spoo also reported that the City Council will be considering a six-month extension of the interim sign code which will extend the interim ordinance to June 2012.

Planning Commission Discussion

Mr. Neil asked if the “dancing pizza” signs would be addressed. Mr. Spoo said that these types of signs fall outside of the scope of this amendment.

Ms. Jensen asked to have real estate signs addressed in the draft code. Mr. Spoo indicated that real estate signs will be addressed.

Ms. Johnson asked if signs could be addressed in the Comprehensive Plan in terms of aesthetics. Mr. Powers said that the Urban Design Element does not have specific policies or goal statements directed at signage but there are statements that address community aesthetics and possibly the aesthetics of the right-of-way or discussions about appropriate design treatments for gateway entries into the community. If the Commission thinks work needs to be done from a goals and policies perspective to lay a clearly defined foundation for our sign code in the Comprehensive Plan that can be discussed in the Comprehensive Plan Docket agenda item that will follow. As for the “dancing pizza” signs, Mr. Powers noted that six months is not a lot of time to address sign codes and if the project takes longer we may not be able to meet the six month deadline but staff could provide some language for review.

Mr. Neil said that he believed that the dancing signs were a distraction at intersections.

Mr. Wallin commented that he has seen sign ordinances that have stipulations regarding the “vision triangle”.

Mr. Oliver commented that he knew a special needs person that makes his money by carrying a sign and would hate to take away that job option.

Ms. Johnson asked if the City can allow a certain amount of “visual retail space” to control community aesthetics. Mr. Spoo said that he had seen that done in some of the city codes but that he couldn’t speak to its constitutionality. Mr. Powers added that it would have to be framed from something other than an aesthetic perspective.

Mr. Wallin commented that he has seen where other communities have a permit process and each candidate is allowed a certain number of spots on public property and they pay a permit fee. He wasn't sure about allowing signs on public right-of-ways because most of the cities that he looked at didn't allow signs on public right-of-ways. He found another Seattle document that said you aren't allowed to put signs in public right-of-ways. He also stated that the Supreme Court has upheld and allowed cities to maintain the part of the Code that doesn't allow temporary signs. We can't just say political signs but have to address all signs in the same way so it will stand up constitutionally.

Mr. Powers said that the consequence of treating all signs the same is that the regulations would include real estate signs and signs used to advertise charity/civic organization fund raisers.

Ms. Johnson said that she wouldn't mind that consequence. She didn't think that public property was an appropriate place for commercial, charity or political communication. Ms. Johnson also asked if the "vision triangle" applied to private property as well, e.g. the corner of Whidbey Avenue and SR20. Mr. Spoo said that the "vision triangle" would apply to private property as well.

Ms. Johnson commented that if there was a planter in front of a store and a political sign is placed there it implies commercial endorsement, is there language that says you have to get the storeowner's permission to put your sign there. Mr. Spoo said that Municipal Research Services Center (MRSC) recommends that you get the signature of the adjacent property owner even though it is in the public right-of-way.

Ms. Johnson asked about liability and who would be responsible if there was an injury or damage from a sign on public property. Mr. Spoo believed it would be the person that put the sign up. Ms. Johnson believed signs on public property should not expose the City to undue financial risk.

There was discussion about signs that were obscene versus uncomfortable. Mr. Powers noted there are many subtopics to the sign code and when cities dive into sign codes the process can take a year or more. Mr. Powers stressed that this amendment was to address what is political speech and how we can or cannot regulate it and recommended that the Commission narrow the discussion to that issue.

Mr. Neil commented that he wanted everyone to have their political signs but he didn't want to see fifty political signs in Windjammer Park and he didn't want to see them along the tree line all year long. He wanted to see the sign code be as restrictive as possible but to be constitutional as well.

Ms. Jensen asked if the City Attorney would be able to address some of Planning Commission's questions. Mr. Power indicated that he has spoken with the City Attorney about attending one of the Planning Commission meetings.

Mr. Wasinger asked if temporary signage was tied to permanent signage for retail. Mr. Powers indicated that the sign provisions regarding banners changed about six years ago. There is a limitation on banners if you don't have permanent signs. Mr. Powers didn't believe that there are regulations which limit the temporary signs for permanent commercial properties other than placement of the a-frame signs which don't count toward the total number of signs. The Code sets limit on the number of signs which each property can have. It is a function of the size of the building and the facade and other characteristics that come into play.

Ms. Johnson commented that signage may be economy driven. When the economy is down people don't have the money for the nicer signs so there is signage overload and the signs look junky.

Mr. Oliver asked if murals on the side of buildings were considered signage. Mr. Powers said that there is a section in the sign code that provides a definition of signs which essentially says if a commercial message is involved, it is signage. If it is purely art and is not advertising a particular business then it would not be seen as signage.

Ms. Jensen pointed out the sandwich boards at the top of Dock Street and asked if it would be better to have a kiosk. Mr. Powers noted that the sandwich boards were allowed temporarily to help during the Pioneer Way construction project. He also noted that we can't have off-premise signs for certain business and not for others. Off-premise signage is typically where billboards have been addressed. Most communities don't allow off-premise signage.

Mr. Fakkema asked if it was possible to say that no one candidate could have his/her signs closer than 100 yards from one sign to the next. Mr. Spoo said that his best guess was no, because it gets back to the issue of not limiting the number of signs due to free speech rights.

Mr. Spoo indicated that staff would look closer at whether the City can prohibit signs in the public right-of-way as Mr. Wallin has pointed out that other cities have done. Staff will also invite the City Attorney to answer questions at the next meeting.

Mr. Wallin wanted to look into the possibility of being specific about eliminating signage in parks and light poles but allow signs in planter strips and other appropriate areas.

2012 COMPREHENSIVE PLAN AMENDMENT DOCKET – Public Meeting

Mr. Kamak explained that a preliminary docket is compiled each year with input from the public and the Planning Commission. This is done prior to a December 1st deadline and therefore this November Planning Commission meeting is a good time to discuss potential ideas and items for the preliminary docket.

Mr. Kamak explained that there are three types of Comprehensive Plan Amendments:

- **Sponsored Amendments**
Sponsored amendments can either be *private* or *public*. An example of a *private* amendment is a request for changes to land use designations that result in a change to the Future Land Use Map in the Comprehensive Plan. *Public* sponsored amendments are requests for changes to policies with the Comprehensive Plan. Since changes to policies have potential for a larger community-wide impact and may affect other referenced plans, the procedures to consider these changes are different than the private sponsored amendments.
- **Mandatory Amendments**
These are amendments mandated by the State through the Growth Management Act or other laws. The updates to the Capital Improvement Plan are done every year fall under this category. This year the Shoreline Management Program will be on the docket under this category. The requirements of RCW 36.70A.130 (3) related to review of urban growth areas and any revision to accommodate urban growth projected to occur for the succeeding twenty years will also be under this category. Currently this requirement is titled as "UGA Capacity Analysis" and is currently on the City's docket. Mandatory Amendments are automatically given a Priority A in accordance to OHMC 18.15.050 (4).
- **Discretionary Amendments**
These amendments are added to the annual docket to proactively add, amend, revise, delete or further goals and policies in the Comprehensive Plan. Discretionary items can be added to the docket by boards, commissions, city council and by the director of

development services. This is the category under which the Planning Commission can add items for consideration. The Planning Commission discussed a couple issues at the October meeting that can potentially be added to the docket under this category. One was the list of non-enterprise project in the Capital Improvements Plan, its priority and relevance for current times. The idea of providing opportunities for large commercial developments was also brought up at the last meeting. Ideas such as these or other policy changes fall under this category. Mr. Kamak noted that OHMC 18.15.050(3)(c) also requires that discretionary items from boards and commissions shall be added to the docket only after such items have received a majority vote by said board, commission or council.

Mr. Kamak reminded the Planning Commission that the Comprehensive Plan is a general policy and goal document and should not be too specific. If it is too narrowly focused staff may not be able to apply it effectively.

Mr. Kamak concluded his presentation by recommending that the Planning Commission discuss potential discretionary items for the 2012 Preliminary Comprehensive Plan Docket, provide public input opportunities on potential discretionary items under consideration and vote on each discretionary item to add to the preliminary docket for City Council consideration.

Planning Commission Discussion

Ms. Jensen stated that she would like to revisit the 2006 Commercial Land Inventory. She wanted the City to be proactive and have land available.

Mr. Wallin asked if the hearing by the Growth Management Hearings Board might affect the commercial land inventory. Mr. Powers said that in one sense it will, because if we are planning for a larger population, in theory you need a larger amount of commercial property to support that population. In another sense, not so much, because the focus of the hearing was more about the capacity for residential land. In 2006 we identified that we were short approximately 40 acres of commercial properties to serve the City. The Council added some property at that time but chose not to add some of the other properties that were suggested by the Planning Commission at that time. So we are still shy of the amount needed according to the 2006 analysis.

Mr. Oliver asked what type of commercial businesses we want to attract, if it is "big box" stores there is only one parcel in Oak Harbor that is even close and that parcel is short by 2.25 acres.

Ms. Johnson commented that the point of putting the review of the 2006 Commercial Land Inventory on the docket is so that the community could have that conversation. If in that process of review the Planning Commission is uncomfortable with recommending carving out more land for "big box" stores then we are saying that our community value is just to wait until someone comes in and pays the price for the property that is available. Or if goal is to attract more of those then we make more land available and make it easier come in now.

Ms. Jensen pointed out that there isn't even enough acreage for the medium size store that would need 1.5 acres. Discussion continued about the rezoning process and challenges associated with compliance with the ACUIZ and APZ planning regulations.

There were additional questions about public noticing, the docket process and timelines.

MOTION: MR. WALLIN MOVED, MS. JENSEN SECOND, MR. OLIVER OPPOSED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADD A REVIEW OF 2006 COMMERCIAL LAND INVENTORY TO 2012 COMPREHENSIVE PLAN DOCKET. MOTION PASSED.

Ms. Jensen expressed concern about the public notices and people not understanding what is advertised for discussion at Planning Commission meetings. Mr. Kamak indicated that the process has been designed so that there is ample time for the public to participate and that the City Council meetings garner more public attention. The Council will have at least two meetings on the docket items and maybe through those discussions the public will understand what is being tackled in the amendment process.

MOTION: MR. WALLIN MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADD A REVIEW OF THE NON-ENTERPRISE PROJECTS IN THE CAPITAL IMPROVEMENT PLAN TO 2012 COMPREHENSIVE PLAN DOCKET. MOTION CARRIED.

Ms. Johnson asked if view corridors would be a Comprehensive Plan amendment. Mr. Powers said that view corridors are talked about in the Comprehensive Plan. Ms. Johnson indicated that she would like a clear understanding of view corridors that the community cares about in the Comprehensive Plan. Mr. Kamak noted that view corridors are indicated on a map and in policies. Some of them have already translated into code, the height limitations in the CBD district are an example. There was a study done that identified this area as a view that needed to be protected. Mr. Powers added that it might be worthwhile to examine the view corridor policies again to establish firmer footing for some code language.

Mr. Powers suggested that assuming there is no meeting in December, staff will present information and language and then the Commission can decide if the item should remain on the list at the meeting in January.

Ms. Jensen asked Ms. Johnson if she was asking to keep Pioneer Way connected visually to the waterfront in certain places. Ms. Johnson said that wasn't her only goal but that she wanted make sure there was a clear inventory of where the community views are and that if things develop in a certain way that we are still going to protect them over the long haul so that we don't have a situation where all of the sudden there are certain parts of town that have no waterfront connectivity and we are building a brand around having that waterfront connectivity.

MOTION: MS. JOHNSON MOVED, MR OLIVER SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADD A REVIEW OF THE VIEW CORRIDORS TO 2012 COMPREHENSIVE PLAN DOCKET. MOTION CARRIED.

Ms. Johnson suggest addressing the visual clutter situation in the Comprehensive Plan Docket and tied to that would be a discussion of landscaping. Ms. Johnson thought that landscaping was economically driven and as businesses get poor they can't maintain certain types of landscaping. Mr. Kamak commented that landscaping is a sensitive topic for the community and there are many policies that address landscaping. Mr. Kamak also pointed out that the Code provides options and one of the options is zero-scape. Mr. Kamak cautioned against reacting to the current situation especially when it comes to the Comprehensive Plan because these are documents that are looking ahead 20, 30, 40 years. The Code can be used to address current times.

Ms. Johnson asked about addressing the sign issue in the Comprehensive Plan. Mr. Powers indicated that most of the issues that were discussed are Code issues and not Comprehensive Plan issues. Policies that relate to signage in the Comprehensive Plan are general e.g. "Signs in keeping with Oak Harbor's character". Mr. Powers suggested that the Planning Commission could look at the Code issues at a later time or add a review of policies that address signage in the Comprehensive Plan. Staff will come back with all the policies that address signage in the Comprehensive Plan. The Planning Commission can look at them and if the members think

that the policies are adequate it can be removed from the list before making a recommendation to the City Council.

Ms. Johnson indicated that she would be more comfortable reviewing the policies that address signage in the Comprehensive Plan before getting into the Code.

MOTION: MS. JOHNSON MOVED, MR. WASINGER SECONDED A MOTION TO REVIEW THE EXISTING SIGNAGE POLICIES WITHIN THE COMPREHENSIVE PLAN. MOTION CARRIED.

Ms. Johnson asked if design overlay districts would be within the Comprehensive Plan topic. Mr. Powers said it is. Mr. Johnson recalled that there was a design overlay district for the downtown area which would allow the downtown to have different signage and visual requirements than on the highway. Mr. Powers commented that the policy is in the Comprehensive plan as is the policy for Midway Boulevard but the policies have not translated into ordinance yet. Ms. Jensen asked why the policies were not in ordinance yet. Mr. Powers said that it was a staff resource issue.

Mr. Kamak noted that there are a lot of policies that have not translated into Code possibly because they haven't surfaced as an issue yet or because staff resources are not available to put them all into Code. Mr. Wallin recognized that the list of items could be lengthy and asked who would dedicate the staff resources. Mr. Powers said that the Council would decide on what staff would tackle. Secondly, in a year where there are mandated items, the mandated items have priority A and discretionary items fall to priority C. Some of the items are more challenging than others and there would be staff input as to what could realistically be accomplished. Mr. Wallin asked if the Planning Commission could prioritize the items. Mr. Powers said they could. Mr. Kamak noted that one of the review criteria in the Comprehensive Plan amendment process is staff resources.

Ms. Jensen asked if the City had panhandler rules. Mr. Oliver asked about City Hall renovation.

Mr. Powers indicated that the City Hall renovation was on the non-enterprise list in the Capital Improvement Plan but has been removed. Both the panhandler rules and the City Hall renovation are not Comprehensive Plan issues.

ADJOURN: 9:32 p.m.

- (v) **Removal of Signs in Disrepair.** The Public Works Department may remove any sign which is in a state of disrepair from the public right-of-way or public property at any time. For purposes of this subsection, a sign is in a state of disrepair if it is ripped, torn, broken, faded, obliterated, obscured, dilapidated, blown down, knocked over, or in any other state in which its message has ceased to be readable or legible.
- (4) **Temporary Window Signs.** Temporary window signs shall not be included in the sign area for each façade.
- (5) **Signs on Kiosks.** Temporary signs on kiosks are permitted, but the signs shall not exceed four square feet in area.
- (6) **Temporary Uses and Secondary Uses of Schools, Churches, or Community Buildings.** Temporary signs relating directly to allowed temporary uses under these regulations and secondary uses of schools, churches, or community buildings may be permitted for a period not to exceed the operation of the use. The signs need not be processed through the Design Review Board and are subject to the following requirements:
- (a) Signs must be portable in nature.
 - (b) No more than one on-premises sign and one off-premises sign shall be permitted per temporary use, except by virtue of having been in consistent operation prior to the existence of this chapter, and due to the fact numerous individual operators participate in the operation, the open-air crafts and farmer's market, commonly known as the Saturday Market, shall be allowed two on-premises signs in addition to one off-premises sign.
 - (c) No sign shall exceed six square feet per sign face.
 - (d) Maximum sign height shall be six feet measured from the pre-existing ground level to the top of the sign.
 - (e) Signs shall not be portable readerboard types, electrical or neon. Only indirect lighting is allowed.
 - (f) Sandwich board or "A" board signs may be used in compliance with this subsection. Temporary Uses and Secondary Use of Schools, Churches, or Community Buildings, provided they are used only during the days the temporary or secondary use occurs and are removed after the use ceases for each day.
- (7) Any temporary sign not otherwise provided for under subsections (1) through (6) of this section shall meet the requirements for commercial signs set forth in subsection (1) of this section.
- (8) This section shall not be construed as permitting any sign otherwise prohibited.
- (l) **Sign Programs.**
- (1) **Purpose and Intent.** A Sign Program is intended to integrate the design and placement of signs proposed within a multi-tenant or multi-building development project. A Sign Program provides a means for defining common sign regulations for multi-tenant projects to encourage maximum incentive and latitude in the design and display of multiple signs and to achieve, not circumvent, the intent of this Chapter.
 - (2) **Applicability.** The approval of a Sign Program shall be required whenever any of the following circumstances exist, or whenever an applicant requests the approval of a Sign Program:
 - (a) Two or more separate tenant spaces are to be created on the same parcel;
 - (b) Two or more separate tenant spaces are to be created within the same building;
 - (c) Two or more buildings are designed to be created on the same parcel.
 - (3) **Approval authority.** A Sign Program shall be reviewed and approved, modified, or denied by the Design Review Board using the Type I process set forth in the Zoning Code.
 - (4) **Application Requirements.** An application for a Sign Program shall include all information and materials required by the Administrator. At minimum, the following shall be required:
 - (a) A vicinity map/site plan