

**SHORELINE ADVISORY COMMITTEE  
SUMMARY MEETING NOTES FOR MEETING #4  
CITY HALL – CONFERENCE ROOM  
December 7, 2011**

**ROLL CALL: Present:** Helen Chatfield-Weeks, Rick Almberg, and Keith Fakkema

**Absent:** Mahmoud Abdel-Monem, Jill Johnson and Jennifer Myer

**Project Staff Present:** Senior Planner, Ethan Spoo; Development Services Director, Steve Powers; Consultant, Gabe Snedeker; Project Manager AHBL; David Pater, State Department of Ecology

**Agenda Item I – Welcome and Introductions**

**Agenda Item II - Public Comment:**

No public present for comment.

**Agenda Items III, IV, and V – Review of Edits to Chapter 2 and 3, Recap discussion of Chapter 3, Discussion of Remaining Portions of Chapter 3**

Mr. Almberg had questions about specific sections of the draft SMP. Urban Mixed Use management policy number 2 indicates that Low Impact Development (LID) should be required “to the maximum extent feasible,” whereas Urban Public Facilities Environment, management policy 5 says that LID shall be required “where feasible.” Why the difference? Is “maximum extent feasible” a more onerous standard?

Mr. Snedeker acknowledged the difference in language and recommended a broad statement at the beginning of the Water Quality section that would apply to the same standard to all shoreline development.

Mr. Fakkema commented that “should” and “shall” is used throughout the document. Mr. Snedeker indicated that the convention is to use “should” for policy language and “shall” for regulations.

Mr. Snedeker directed attention to the changes in Chapter 3 that were made in response to comments at the last meeting:

- Conservancy Environment, Management Policy 8. Staff added a policy at committee request to study the impact from erosion processes in the Maylor Point wetland complex on Oak Harbor.
- Economic Development, Policies. Changes were made to policies 1 and 2 to address over water commercial uses. At committee request, staff changed policy 1 to reflect that commercial development should occur consistent with the provisions of the master program. Previously, this policy indicated that commercial uses should only occur “where such development already exists.” Policy 2 tone was changed from negative to positive. Previous language *limited* commercial development to water-dependent, water-related, or water-enjoyment uses. New language *encourages* water-dependent, water-related, and water-enjoyment uses. More specific language on shoreline commercial uses is contained in the Commercial Use section in Chapter 4.
- Archaeological and Historic Resources, Policies and Regulations. Corrections were made to change references to Whatcom County to City of Oak Harbor and to remove references to

specific tribes. The SMP will reference a definition of relevant tribes. Mr. Fakkema asked if relevant tribes ever change? Mr. Snedeker said not usually.

- Public Access section. This section places limits on City authority to require development design changes to protect shoreline views. In the November meeting, the Committee felt that specific limits should be placed on City authority to require these changes, so as to protect private property rights and protect the City legally. New language has been inserted to this effect, specifically:
  - A new Policy 6 has been inserted that states that views from private property are not expressly protected.
  - Changes were made to Regulation 7 regarding improvement standard for the Waterfront Trail. Previously, this policy required all multifamily development to dedicate 12-foot landward of the Ordinary High Water Mark (OHWM) for the Waterfront Trail. New language expands this to all new private development for which public access can legally be required.
  - Policies 10 – 19 are not new, but were moved from a later part of the public access section so as to separate the regulations for physical access from those concerning views.
  - Policy 20 has been reworded to clarify that private development shall minimize obstructions to public views. Previously, there was some ambiguity about how this applied to views from private property.
  - Policy 21 introduces the concept of a view study, which can be required by the Shoreline Administrator when public views are anticipated to be significantly impacted.
  - Policy 22 acknowledges that whenever a new structure is built, there will be some impact on the view and sets up a process for assessing this impact. 22a and b gets at the size of the impact, 22d assesses property value impacts resulting from view protection.
  - Policy 23 discusses what type of mitigations can be required based on identified view impacts.

Mr. Almborg asked who the Shoreline Administrator is referred to in Policy 20. Mr. Snedeker said the Shoreline Administrator is the Development Services Director.

A discussion ensued about the nature of shoreline views and how they impact adjacent and upland development. Mr. Almborg questioned where the view regulations apply. Mr. Snedeker answered that view regulations apply to properties within the shoreline (generally 200 feet from OHWM), but that a view study would determine impacts and mitigations on a case-by-case basis. Mr. Almborg asked if the SMP would restrict shoreline development to the benefit of upland development. Mr. Spoo clarified that the view from public property is protected in the SMP, not private property.

Mr. Almborg expressed concern that the public views from Smith Park could prohibit shoreline development which might block views from the park. Mr. Snedeker reminded the Committee that the view regulations place limits on private development for the purposes of protecting public views, but do not prohibit private development altogether. There are limitations on the City's ability to restrict private development which has view impacts. In no case can the City change the building height or require a view corridor of more than 25% of the width of the property. Mr. Almborg commented that 25% was a lot. Mr. Snedeker suggested adjusting the percentage to the Committee's liking. Mr. Pater added that the Shoreline Management Act (SMA) focuses on the 35-foot height limit and the City's SMP already contains a height restriction. He sees any additional regulations as a local choice.

Mr. Powers offered the Copeland Property as an example of how the City worked with an applicant to preserve a view corridor. As part of that project, staff treated Jensen Street as the public view corridor worthy of preservation. Staff worked with the developer to arrange site elements and preserve the view along the Jensen corridor to the water. The site contained a pedestrian corridor along this corridor preserving views to the water. Mr. Spoo said Mr. Powers' example was a good example of the scope of change that the City could require of a developer. Mr. Snedeker clarified that it

Discussion continued about what the view corridor percentage should be. The Committee indicated a level of discomfort with the 25% limit. Mr. Fakkema raised the scenario where a developer only wants one building, rather than multiple. Mr. Spoo and Mr. Snedeker explained that there are several ways to address view impacts, including public viewing decks, or changes to building massing among others. The policies are designed to trigger a look at alternatives, while at the same time protecting property rights. If the impact to the property owner is a significant financial burden, the Administrator can step the mitigation back. Staff agreed to revisit the percentage for the next meeting.

#### **Agenda Item VI. Chapter 4 – Shoreline Use Standards and Setbacks**

Mr. Snedeker drew the Committee's attention to the shoreline use table which outlines preferred uses for each shoreline environment. "X" signifies prohibited, "C" is a conditional, and "P" permitted.

Mr. Snedeker pointed out that non-water oriented uses in Urban Mixed Use are conditional. Conditions require mixed use with public benefit, or presence of a roadway between the use and the shoreline. Mr. Spoo reminded the committee that most of Oak Harbor's shoreline is already developed. Staff expects that most shoreline development will be expansions on existing uses such as placement of fences, decks, sheds. New uses may be proposed on the Copeland property or on the property between the condos but few other opportunities for new uses exist. Mr. Snedeker pointed out that public piers, such as the Flintstone Pier, are a conditional use in the Urban Mixed Use environment, since dredging with associated environmental impacts would be required.

Mr. Spoo noted that industry is now a permitted use in the maritime environment. The City's existing SMP prohibits industrial uses outright. In light of recent discussions about a boat builder, we have made industry a permitted use in the maritime environment designation. Mr. Snedeker noted that there are additional regulations that would apply to industrial uses in Chapter 4. Mr. Fakkema asked how the Maritime and Aquatic environments differ. Mr. Snedeker said that Aquatic is land below OHWM, Maritime is above and located at on the isthmus of the Maylor Point peninsula.

Mr. Snedeker pointed out that the new waste water treatment plant is a conditional use in Maritime, Urban Public Facility and the Conservancy environments. Mr. Spoo noted that the reason it is a conditional use is so that environmental impacts may be considered and mitigated. Mr. Pater added that the conditional use allows closer scrutiny by the Department of Ecology.

Conversation transitioned to shoreline setbacks. Proposed shoreline setbacks for each environment are contained in the development standards table. Mr. Snedeker described existing setback regulations in the adopted SMP and the built conditions in Oak Harbor. He said the City doesn't have good mapped data about the OHWM. Project staff visited the shoreline today with DOE staff. Staff discovered that the OHWM is further landward than previously thought. Given that existing properties are much closer to the OHWM than is recommended by Ecology, we are trying to put appropriate setbacks in place that will satisfy Ecology and recognize existing conditions on the ground. The current SMP requires a 30-foot setback from OHWM for single-family residential and 40 feet for multi-family. The new SMP proposes a 50-foot setback, but with averaging allowed. If existing residences are closer, then the property in-between may use a setback which is an average of the two adjacent residences. In no case

shall the setback be less than 35 feet. There are two components to a setback: (1) the structural setback and (2) the Vegetation Management Zone (VMZ).

There was more discussion about setback averaging a.k.a. the “string line” and the possibility for additions to existing (“non-conforming”) structures within the setback. Mr. Pater said he has seen SMPs which allow 500 square foot additions in setback areas with requirements to enhance 500 square feet of the VMZ as a tradeoff.

Mr. Fakkema asked if the Waterside Condominiums have the 50 foot setback. Mr. Snedeker said that that Waterside Condominiums setback is 10 feet from OHWM. Mr. Fakkema asked if it was fair to have everyone else have 50 feet but not them. Mr. Snedeker noted that the averaging (string line) provision would allow less than 50 feet where there is existing development on adjacent lots. Where a particular provision precludes reasonable use of property, there is a shoreline variance process.

Mr. AlMBERG stated that there has not been discussion about no net loss for the private property owner - it's not equitable. Mr. Pater said that was a hard thing to reconcile because the State Guidelines went through eight years of maceration at the legislative level. The Guidelines are intended to change the way development had been happening prior to that and there will be those situations, unfortunately. Mr. AlMBERG asked, if those are the State's Guidelines, why are we spending \$125,000 going through them? Why don't we just take the adopt the legislation as the standard? Mr. Pater said it is really a local/State partnership in developing these Master Programs. The Guidelines are written so master programs can be tailored to address local issues.

Mr. AlMBERG questioned the benefit of going from a 35-foot setback to a 50-foot setback. What is the equity to the property owner when applying setbacks and other regulations like view corridors and public access? Mr. AlMBERG suggested there was no net loss for property owners. Mr. Snedeker said that was a legitimate concern the Guidelines do not address or resolve. We have to meet state law, but respect constitutional takings (nexus and proportionality) legal standards, as well. When no net loss and takings law collide, the law, as enforced by the Attorney General will make sure a taking does not occur. Mr. Pater added that the shoreline variance process will also help make sure takings do not occur.

Using the vacant lots in Dillard's as an example, Mr. AlMBERG questioned the impact of new setbacks of 50 feet on those properties. Why is 50 feet better than 35? Mr. Spoo said there wasn't a magic number but there is research being done at the State level about what width of buffer is effective in urban settings and in rural settings.

Mr. Snedeker reminded the Committee of the string line provisions. In all likelihood, the string line provision will reduce the required setback to 35 feet in the Dillard's example. Mr. Snedeker explained that the minimum of 35 feet VMZ was derived by looking at scientific studies and what has been approved by DOE elsewhere. Communities have tried to justify 20 feet, but Ecology rejected that.. 30 feet might be where we ultimately land as a minimum. Some studies suggest 30 to 35 foot buffers can adequately remove pollutants. Studies also suggest wider buffers are needed to protect a broader range of functions. Functional yard area is needed between buffer and structure to allow window washing, house painting, house residing, etc. Additionally, there's a safety factor. Structures need to be setback from OHWM to protect them from storms. We are teasing out what no net loss means in a developed urban environment. Mr. Pater commented that the City has an advantage in going through the process later after other jurisdictions have tested setback requirements in already developed areas with Ecology.

Mr. AlMBERG asked about impervious surfaces and how the percentages match up with our new Low Impact Development (LID) code. Mr. Spoo said that the new LID code doesn't have impervious area limits. There are building coverage limits but driveways, patios and things that are outside the building are not limited in the City's code. Mr. Spoo indicated that the impervious surface limits in the SMP are typical standards used in other cities.

Mr. Snedeker said no net loss will mean that more restrictive standards apply inside the shoreline than outside of it. Mr. Spoo commented that the SMP takes the LID concept a step further by requiring it to the "maximum extent feasible," whereas the LID code makes LID optional in most cases with the notable exceptions being parking and native vegetation areas. Mr. Snedeker commented that we are also taking the updated NPDES Phase 2 permit into account which will make LID mandatory in 2015. LID is cost effective because you're not building vaults, conveyance, or catch basins, etc. Mr. AlMBERG agreed based on his development experience.

Mr. Snedeker requested that the Committee read the use standards in Chapter 4, especially the commercial use standards on page 50. Mr. Snedeker indicated that staff had tried to be flexible with commercial use standards, while at the same time meeting state standards recognizing that economic development is a major City objective. Mr. Spoo asked the Committee to look Commercial use regulation number 3 regarding over water uses. The regulations defines allowable over water commercial uses. Generally speaking, these are limited to uses which are accessory and incidental to water-dependent uses.

Mr. Snedeker pointed out that Commercial use regulation 4(a) is in our existing SMP and requires a minimum 20% open space exclusive of right-of-way for non-water-dependent. Mr. Spoo indicated he is unsure where that provision came from or why it is in the existing SMP. Mr. Snedeker thought it made sense for the open space to have a relationship to the shoreline.

Mr. AlMBERG commented that he would like to see site plans which show how all of the regulations (public access, setbacks, views, etc.) work together. Mr. Snedeker said he would look to see if funds were available in the budget.

Mr. Snedeker asked the committee to bring questions and concerns on the use requirements and the vegetation requirements to the next meeting.

#### Next Meeting

Next meeting was scheduled for Wednesday, January 4, 2012. Later, this meeting was rescheduled via e-mail for **January 11, 2012.**

Meeting adjourned at 7:00 p.m.