

**SHORELINE ADVISORY COMMITTEE
SUMMARY MEETING NOTES FOR MEETING #3
CITY HALL – CONFERENCE ROOM
November 2, 2011**

ROLL CALL: Present: Helen Chatfield-Weeks, Mahmoud Abdel-Monem, Rick Almborg, Jill Johnson, Keith Fakkema and Jennifer Meyer
Absent: Chris Skinner
Project Staff Present: Senior Planner, Ethan Spoo
Consultant - Gabe Snedeker, Project Manager AHBL

Agenda Item I. - Welcome and Introductions

Agenda Item II - Public Comment:

No public present for comment.

Since there was no public comment, staff took questions from Committee members.

Ms. Johnson commented that requiring uses in the Urban Mixed Use designation to be water-oriented is too prescriptive. She asked if water-enjoyment referred to use of the water or enjoyment of water views.

Mr. Snedeker explained that the Washington Administrative Code (WAC) sets minimum guidelines for the Shoreline Master Program (SMP). The Guidelines promote water-oriented uses. There is a provision allowing non-water-oriented commercial uses as part of mixed use developments. Enjoyment of the water is both visual and physical. Applicants for shoreline permits are required to show how their proposal furthers notions of water-dependent, water-related or water-enjoyment.

Agenda Item III - Recap of Chapter 2 and 3

Chapter 2 Recap

Mr. Snedeker led a discussion recapping Chapters 2 and 3. At the bottom of page 9 the Urban Mixed Use Environment policies were revised due to concerns raised at the last meeting about requiring or promoting lateral public access to the Waterfront Trail. The policy has been reworded to promote (not require) private connections to the Waterfront Trail.

Mr. Almborg was concerned about the word "shall" in Urban Mixed-Use Management Policy number 5, and that this access language might require access leading to a "taking." Mr. Snedeker and Mr. Spoo indicated that more specific direction is given in Chapter 3, Section 6 in regards to access and proximity to the Waterfront Trail. Further, staff offered to change "shall" to "should."

Mr. Snedeker pointed out that Urban Conservancy Management Policy number 8 has been added (at the Committee's request) to address concerns about fill in the Maylor Point wetland area. Mr. Almborg asked and staff agreed to insert the word "erosion" in Policy 8.

Chapter 3 Recap

Mr. Fakkema asked if view restaurants would be discouraged based on Economic Development policy b.2. on page 18. Mr. Snedeker answered that view restaurants are water-oriented, and are therefore not discouraged by the policy.

Committee members commented that they preferred positive as opposed to negative language, “preferred” versus “discouraged.”

Ms. Johnson asked about Economic Development policy b.1. on page 18 and whether it prohibits new over water commercial uses. Mr. Snedeker said that the Guidelines more strictly limit over water uses to locations where it already exists. He offered that to revise the statement to allow commercial uses in areas consistent with the proposed environment designation system.

Ms. Johnson inquired whether Economic Development policy b.1. prohibits commercial uses that might locate on the municipal pier if eventually built. Mr. Snedeker responded that the Guidelines limit new over-water construction to water-dependent uses.

Mr. Almberg commented that the City has a historical claim to the Maylor pier and part of the structure is still there. He said we should not prohibit overwater commercial uses in our SMP at that location based on historical use. Mr. Snedeker agreed to review the Guideline language pertaining to over water uses and historical structures.

Ms. Johnson asked if Economic Development policy b.1 precludes commercial ventures like kiosk’s selling postcards, sunglasses and things that you see in water-related tourist towns. Mr. Spoo and Mr. Snedeker agreed to look into the issue in more depth. Mr. Snedeker said the plain reading of the Guidelines says that businesses can be located in existing over water structures, but that it would be problematic to have a trinket shop built in a new pier over water which is not necessary in support of a water-dependent use. The Committee also pointed out that kiosks are portable/temporary and are moved in and out on a seasonal basis. Mr. Snedeker believed the language would apply whether it is a permanent or temporary structure. Seasonal displays may be accommodated under a broader accessory use category.

The Committee moved on to the Archaeological and Historic Resources section of Chapter 3. Mr. Snedeker reminded the Committee that this section was taken from Whatcom County’s SMP and the local tribal names were plugged in. Mr. Fakkema asked if the individual tribes could just be listed as “tribes” with a general reference. Mr. Snedeker said yes.

Critical Areas

Mr. Snedeker said that the existing critical areas regulations are being adopted into the SMP and the path for relief from these regulations in shoreline jurisdiction by law has to be the Shoreline Variance.

Environmental Impacts and Mitigation

Mr. Snedeker reiterated that all development, no matter where it occurs in the shoreline environment, must be consistent with no net loss of ecological functions.

Ms. Johnson asked if there was any interpretation of environmental impacts and mitigation that includes visual corridor. Mr. Snedeker said that the law does not speak to anything broader than ecological function.

Mr. Snedeker directed attention to Regulation b on page 25 which is the mitigation sequence. First avoid, then minimize, then rectify, then reduce, then compensate, then monitor. Avoidance and minimization are given a higher priority under the law. Applicants must demonstrate how the sequence was followed.

Mr. Almberg commented that the regulation says you can’t mitigate. Mr. Snedeker disagreed because it isn’t always possible to avoid or minimize and sometimes compensating is what you

are able to do. As an example, a decision about a building a dock in location A or location B or a dock of size 50x or 25 x. Cost can be consideration in mitigation sequencing.

Ms. Johnson was uncomfortable with the word “avoid.” Mr. Snedeker said that the mitigation sequence language comes directly from the law. He wouldn’t recommend changing it.

Ms. Meyer pointed out a correction to the last sentence on page 26. The word “Base” should be added after “Seaplane”.

Public Access

Mr. Snedeker commented that Oak Harbor has done a great job in securing public access in the form of the Waterfront Trail. The priority in the draft SMP is maintaining and improving existing access, signage, and maintaining the relationship with the Navy. The law says impacts to public access, either from new demand, or impairing existing access must be mitigated.

The first policy under Public Access says that the City should provide and enhance existing public access. Policies 2 and 5 refer to visual access. Mr. Snedeker also spoke about the Public Trust Doctrine which holds that the waters are for the enjoyment of the public and that public right should be protected.

Ms. Johnson commented about views. She said an inventory of views today would find that Whidbey Coffee has views solely because the parcel in front of them is undeveloped. Mr. Snedeker explained that the existing SMP sets the height limit at 35ft in the shoreline area.

Mr. Almborg asked about addressing taking of private property. Mr. Snedeker said that taking of public property is addressed in the regulations. Mr. Snedeker reviewed the Public Access Regulations and noted that the regulations are almost verbatim from the WAC. Number 3 addresses local concerns about proximity to the Waterfront Trail.

Mr. Almborg thought it would be best end Public Access policy 3 at “...Waterfront Trail” due to concerns about requiring access through private property. He feared this policy might give rise to unwarranted access requirements by the City. Mr. Snedeker explained the rest of the paragraph is necessary for compliance with the State law’s criteria assessing demand and access. That language allows the Shoreline Administrator to determine the necessity of public access based on demand. Mr. Spoo added the City is only interested in requiring access when it has the legal justification to do so.

Ms. Johnson offered an example of a property owner building a wall blocking visual access in which case the Shoreline Administrator would have the ability to say no. Mr. Snedeker agreed that Ms. Johnson’s statement was correct.

Mr. Snedeker pointed out that the City’s existing SMP is more restrictive than the proposed language. Mr. Spoo also pointed out that the existing developed nature of Oak Harbor’s shoreline means that the Public Access policies will apply to very few parcels.

There was discussion about whether Public Access Regulation number 7 is still relevant. Mr. Almborg pointed out that the properties along the Waterfront Trail zoned for multifamily use already have easements in place.

Mr. Spoo and Mr. Snedeker agreed to come back to the committee with a suggestion on whether to delete or enhance Public Access Regulation #7.

Mr. Snedeker directed attention to regulation number 10.

Mr. Snedeker said that regulation 10.b. is in the existing SMP and can be problematic because it can lead to ad-hoc decision driven by land use politics. He noted most communities with views have inventoried view corridors. They have adjusted side yard set-backs to make sure there are views down streets. Mr. Spoo added that having the 35 foot height maximum along the shoreline will do a lot to preserve views given Oak Harbor's sloping topography.

Committee members agreed that regulations 10.b. could be politically problematic. Mr. Snedeker suggested the City could put parameter language limiting the Shoreline Administrator's authority such as "minimum necessary to address the significant impact". Discussion continued about the best way to balance public and private concerns.

Mr. Snedeker suggested working on the language to put parameters on the allowable building envelope and setback reductions. The City can create greater certainty by narrowing the Administrator's latitude.

Mr. Snedeker suggested that the City might choose not to protect view corridors. Visual access could be preserved and mitigated in other ways like platforms or trails or public access components that are integrated in the project. The second policy option is that the City maps the view corridors and customize standards (setbacks, height) to protect these corridors. A third approach might be to direct the City to do the corridor analysis in the future. Finally, we can narrow the Administrator's discretion in requiring changes to setbacks, building envelopes, etc.

Mr. Alberg proffered that the language be refined so that the public interest is protected. Mr. Snedeker said that the protecting view from public property has a strong legal basis, but from private property there is a weak legal basis.

The Committee agreed that "*existing upland development*" should be removed from Regulation 10.b. and that this regulation needs more work. Staff will bring language back for review at the next meeting.

Agenda Item IV – Discussion of Chapter 3 – Shoreline Vegetation Conservation

Mr. Snedeker and Mr. Spoo began a discussion on vegetation conservation within the shoreline with the Committee. Mr. Spoo noted that this section will affect many more properties than will the public access requirements.

Mr. Snedeker said no net loss is the driving force behind vegetation conservation and no net loss is not about aesthetics. The vegetation conservation policies and regulations discourage property owners from removing vegetation without mitigating for the function it provides. The vegetation conservation regulations are flexible enough to allow development of buildings and yards and maintenance of existing structures. DOE will want to see a vegetated buffer that preserves native vegetation close to the shoreline. Outside the vegetated buffer, there will be increased flexibility, but no net loss still applies. Native needs to be replaced with native in the buffer.

Mr. Snedeker spoke about the Vegetation Management Zone (VMZ) which is 30 feet from the ordinary high water mark. Mr. Spoo added that, due to the low bluff beach, there aren't any buildings in Oak Harbor within this 30 feet that he can think of.

Ms. Johnson asked how the VMZ applies to the high bank areas. Mr. Snedeker explained that in order to protect shoreline function as well as structures along the bluff, a 30-foot setback from the top of bluff will likely be required. The existing SMP sets the minimum structural setback from the top of slope at 25 feet or as recommended by a geotechnical report.

Mr. AlMBERG asked where no net loss applies. Mr. Snedeker replied that it applies to everything within the shoreline jurisdiction which is 200 feet from the high water mark.

Mr. Snedeker said that the Committee will need to fine tune the draft VMZ language. The draft has been prepared from what he believes generally matches the community and his experience with Ecology. Mr. Snedeker also looked through Coupeville, Port Townsend and Anacortes SMP's to see what has been approved. It is easy to make the case for wide 100 foot buffers in undeveloped forest environments to protect function. It is difficult to make that ecological case where the environment is developed. The science tells us that you can get fairly effective water quality treatment out of about a 30 to 35 foot enhanced buffer with native vegetation in developed areas. You can get better with a wider buffer but there is a real point of diminishing returns in the data in terms of the effectiveness of pollutant removal. Ecology is going to want to see buffers at around 50 feet in this developed urban environment. The current SMP has setbacks of 30 feet for residential and 40 feet for multifamily.

Mr. Snedeker concluded the meeting by asking the Committee to look closely at the tables in Chapter 4. He directed attention to C. Shoreline Development Standards, TABLE 2 – Summary of Shoreline Development Standards and the associated note beneath the table. At the next meeting the Committee will deal with the specifics of the setback question.

Meeting Scheduling and Next Steps

Next meeting – Wednesday, December 7th at 5:00 p.m.

Meeting adjourned at 7:35 p.m.