

**PLANNING COMMISSION  
REGULAR MEETING  
CITY HALL – COUNCIL CHAMBERS  
May 22, 2012**

**ROLL CALL:** **Present:** Bruce Neil, Kristi Jensen, Greg Wasinger, Keith Fakkema, Jeff Wallin and Jill Johnson-Pfeiffer.

**Absent:** Gerry Oliver.

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

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

**MINUTES: MR. FAKKEMA MOVED, MS. JOHNSON-PFEIFFER SECONDED, MOTION CARRIED TO APPROVE THE APRIL 24, 2012 MINUTES AS PRESENTED.**

**PUBLIC COMMENT:**

No comments.

**SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (TIP)** – Public Hearing

Mr. Neil opened the public hearing on this item.

Mr. Peterschmidt reported:

The City is required by State law to submit an approved six-year Transportation Improvement Program. The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. The submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables the City to spend Federal funds on local transportation projects.

The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan. Coordinating projects in the Transportation Comprehensive Plan, the Six-Year TIP and the Capital Facilities Plan improve our communication and coordination with other agencies and help the City remain focused on a manageable list of transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A symbol in the status column of "S" means funding is secured while a symbol of "P" indicates the project is not funded.

Mr. Powers added that the recommendation to the Planning Commission is to conduct a public hearing and make a recommendation to the City Council to adopt the 2013-2018 Six-Year Transportation Improvement Program.

**Discussion**

Ms. Jensen pointed out that SW Heller Street Improvements have the number 12 listed as the improvement type code and there is no improvement type code number 12 in Appendix A. Mr. Peterschmidt said it is a typographical error and the improvement type code should be number 4 which is "Reconstruction, no added capacity".

Ms. Johnson-Pfeiffer asked what the Eagle Vista – West Extension does. Mr. Peterschmidt said the extension would provide access to the highway and would be a development driven project. Mr. Powers added that the extension would facilitate east/west circulation in the southern portion of the City limits and that we need to ensure that we have good east/west circulation as parcels develop. If we don't plan ahead for the project there will only be local street connections to the highway. This project will line up with Eagle Vista on the east side of the highway so that there is alignment that makes sense.

Mr. Neil asked for public comment. Seeing none the public hearing was closed.

**ACTION: MR. WALLIN MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE 2013-2018 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM WITH THE CORRECTION OF THE IMPROVEMENT TYPE CODE TO NUMBER 4 FOR THE SW HELLER STREET IMPROVEMENTS PROJECT. MOTION CARRIED.**

### **SIGN CODE – Public Hearing**

The Planning Commission continued its discussion of amendments to OHMC 19.36.080 (“Temporary and Special Signs”). Mr. Spoo summarized the changes that were made to the draft sign code resulting from comments made at the March Planning Commission meeting as follows:

#### Organizational Changes:

- Two main sections: (1) Private property (2) Public property
- Public property section reorganized by forum
  - Public rights-of-way = traditional public forum
  - City parks = traditional public forum
  - City vehicles = non-public forum
  - City buildings = non-public forum

#### Key Changes:

- Definition of political signs expanded. Mr. Spoo provided a comment letter from the American Civil Liberties Union (ACLU) regarding the definition of “political sign” (the letter is attached as Attachment A to these minutes)
- Permit system – eliminated (also commented on by ACLU)
- Time limits – 6 mos. eliminated. Shorter and more specific timelines remain
- Post election timeframe: 14 days
- Community events signs: can be posted 4-6 weeks prior, removal within a week.
- “Appearance of professionalism” language: Staff is seeking Planning Commission input. There are two choices - either keep the “appearance of professionalism” language in the code or remove it all together. Previously, the Planning Commission had a discussion about hand-drawn or hand-painted images and lettering. Based on public input and previous discussion, the Planning Commission wanted to allow for artistic signs that might have hand-drawn images or lettering. Planning Commission asked staff to draw a distinction between spray paint on plywood and more artistic signs. Mr. Spoo indicated that there is a question about whether these types of quality standards are desirable for temporary signs. Most communities don't have quality standards.

Mr. Spoo continued reviewing the changes to the draft sign code:

#### Signs within public ROW

- Limits on commercial sign types (portable A-frame, flag pole banners, residential directions “open house” signs, subdivision directional signs designating new development and community events and fund raisers)
- Garage sale deleted - only allowed on private property

#### Signs within public parks

- Signs cannot be installed (may not be affixed to park equipment, land of facilities in any way, this prohibition includes pounding a temporary sign into the ground)
- Transitory signs allowed (signs such as those used for protest, picket, demonstrate etc.)
- Exceptions - signs for sponsorships in Windjammer and Volunteer Parks. Notifications for youth sports leagues and information banners in Gateway-Beeksma Park.
- City vehicles/buildings: are non-public forums and signs are not allowed

Mr. Spoo reported that there were two meetings with Downtown Merchants Association. On April 18, they discussed:

- Flag banners
- A-frames/sandwich boards: ability to have & location
- Remote placement of temporary signs
- Event signage – clarified
- Sign directory

On May 16 the Association re-emphasized their desire for a sign directory.

Mr. Spoo concluded by noting that substantial work went into this project by the Planning Commission and staff. The draft code is detailed and specific and public input was sought and considered and we have done our best to meet constitutional standards. Mr. Spoo also noted that additional legal review is likely. Mr. Spoo recommended that the Planning Commission conclude their discussion and forward the draft sign code to the City Council for their approval.

#### Discussion

Mr. Fakkema commented that he noticed “public right-of-way” was not defined in Section 19.36.020 and asked if “public right-of-way” was defined somewhere else in the code. Mr. Powers said that the definition was either in the zoning definitions or the subdivision code but that it should be in the sign code section as well and will be added.

Mr. Fakkema commented that he objected to the change in Section 19.36.080(1)(b)(ii)(C) which deletes Christmas and replaces it with Holiday Season, but he realized that it would not be changed.

Mr. Wallin asked if the banners were only allowed in the CBD zone public right-of-ways. Mr. Spoo said that was correct.

Ms. Johnson-Pfeiffer asked if the flag pole holes in the sidewalks were public or privately owned. Mr. Spoo said they are on public property. Ms. Johnson-Pfeiffer said she was concerned that any type of speech could also go into the flag pole holes.

Mr. Wasinger asked if permission was granted to put the holes for the flags in the sidewalk. Mr. Powers said that since the sidewalk is the City's we didn't need permission. Mr. Powers also noted that there is language in the code that says, before placing a sign in the public right-of-way, you have to get permission from the private property owner adjacent to the sign. This language has been used in other communities and has been upheld.

Ms. Johnson-Pfeiffer commented that the expensive planters downtown should be protected from signs because the planters are intended for a specific purpose (beautification). She was concerned that there could be a "free-for-all" of signs in the planters and all it would take is one sign to start a "free-for-all." Mr. Spoo offered to craft language about what type of sign holder could be used in the planters in an effort to protect the planter but still allow speech. Ms. Johnson said her preference was to keep the signs out of the planters. Mr. Powers offered that there could be a subset within the public forum within the public right-of-way that says that you don't utilize planters that are above ground as opposed to the strips that are more traditionally available for the placement of signs.

Mr. Wallin thought that there was already discussion about the type of sign holder that would be allowed i.e. thin metal stakes as opposed to thick wooden stakes. Mr. Spoo said that language could be crafted but we shouldn't restrict to a certain type of sign holder that is more expensive. That could effectively amount to content restriction because you would not be allowing an underfunded candidate to express their viewpoint. In the interest in maintaining the city's investment in the planters and avoiding underground pipes that might be in the planter, we can craft language to that effect.

Mr. Neil asked if we are still allowing the dancing pizza person in the right-of-way. Mr. Spoo said that the dancing pizza signs have not been called out as prohibited but if you look at the list of types of signs allowed in the public right-of-way the dancing pizza sign is not listed and would not be allowed as the code is drafted.

Mr. Fakkema voiced his support of Ms. Johnson-Pfeiffer's comments about not allowing signs in the raised planters.

Ms. Jensen asked whether the planters were private property in the public right-of-way. Mr. Powers said that the planters were purchased with public dollars so they are public property. Mr. Powers said that as long as there is the ability to have some form of political speech sign within the CBD that he didn't believe it was necessary to allow them on every location within the public right-of-way. Staff can look at language that prohibits all temporary sign from being in those planters so long as we allow political speech signs elsewhere within the right-of-way within the CBD.

Mr. Neil asked for public comment.

**Mr. John Voigt** (732 La Conner Street, Coupeville WA) asked what the effective date would be if the ordinance was adopted. Mr. Powers said the effective date would be five days after it was published in the newspaper.

Planning Commission discussed whether or not to leave the "Appearance of professionalism" language in the code. Commission members agreed that the language should be left in the code.

**ACTION: MS. JOHNSON-PFEIFFER MOVED, MR. WALLIN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE SIGN CODE ORDINANCE INCLUDING THE LANGUAGE “APPEARANCE OF PROFESSIONALISM” AND THE ADDITION OF THE DEFINITION OF PUBLIC RIGHT-OF-WAY AND SOME INCLUSION OF RESTRICTIONS FOR RAISED PLANTERS WITHIN THE CENTRAL BUSINESS DISTRICT. MOTION CARRIED.**

**SHORELINE MASTER PROGRAM (SMP) – Public Meeting**

Mr. Spoo briefed the Planning Commission on their role in the SMP project which is to listen, understand, question and make recommendations. Mr. Spoo noted that the SMP is also being reviewed by the Department of Ecology (DOE). It is possible that DOE will have comments that affect the draft and those proposed changes will be reviewed with the Planning Commission.

Mr. Spoo explained the purpose of the Shoreline Management Act (state legislation that guides the creation of SMP's) and the Shoreline Master Program is to promote and enhance public access, prioritize water dependent and water oriented uses over non-water oriented uses, and to preserve and restore the environment.

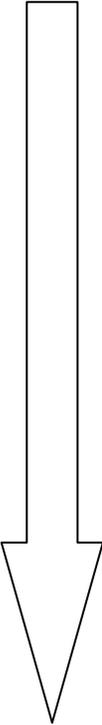
Mr. Spoo noted that the shoreline jurisdiction is 200 feet back from the ordinary high watermark (OHWM) and also includes wetlands that cross that 200 foot mark and goes to the edge of the wetland.

Mr. Spoo explained that the SMP requires DOE approval and if we don't meet their standards DOE will step in and adopt an SMP that suits their needs. This is our chance to exercise our local preferences in the SMP.

Mr. Spoo explained that jurisdictions are required to meet what is called “no net loss” of ecological functions. Ecological functions are hydrology, vegetation and habitat. We have to demonstrate that whatever development occurs in the shoreline jurisdiction meets no net loss.

Mr. Spoo moved on to Chapter 2 of the SMP and explained Shoreline Environment Designations. They are akin to zoning and are a type of overlay zoning that applies within the shoreline jurisdiction and they apply in addition to the underlying zoning.

Mr. Spoo displayed the following table which shows the State designations and the proposed designations for Oak Harbor and describes the types of allowed uses:

State Designation	Types of Uses Allowed	Purposed Designations	Types of Uses Allowed	Intensity
Natural	Low intensity, recreation, restoration	N/A	N/A	Less intense
Aquatic	Applies to area waterward of OHWM. Uses must be water-dependent, public access, or ecological restoration.	Aquatic	Same as for State	
Urban Conservancy	Focus is on maintaining or restoring sensitive lands, wetland, etc.	Residential Bluff Conservancy	Focus on maintenance of bluff, plus permitting single-family residential in appropriate places	
Shoreline Residential	Residential, public access, recreation	Residential	Single-family, recreation, public facilities.	
High intensity	High intensity commercial, industrial, residential. Preference order: water-dependent, water-oriented, non-water-oriented.	Maritime	High intensity, water-dependent, commercial and industrial uses.	
		Urban Mixed Use	High Intensity, water-oriented commercial and residential.	
				More intense

While displaying the map depicting the proposed shoreline environment designations for Oak Harbor, Mr. Spoo reviewed the designations and explained that the map is just a depiction of the approximate location of shoreline jurisdiction and is not accurate enough to do a determination on a parcel-by-parcel basis. Mr. Spoo also noted that Maritime allows for industrial and commercial uses and allows for water-dependent industry (shipping, boat building, aquaculture, etc.). The Residential - Bluff Conservancy allows appropriately sited residential development along the bluff and is generally more precise than the existing designation "Natural".

Planning Commission Discussion

Commissioners had questions about the Residential Bluff Conservancy designation. Mr. Spoo explained that the current SMP's designation of the bluff area as "Natural" which states that any type of residential use within 200 feet of the OHWM is not allowed. The proposed designation (Residential Bluff Conservancy) would allow uses within 200 feet as long as there was a geotechnical survey of the slope.

Commissioners asked about the Navy property which is designated "Conservancy" and whether the designation could be changed if the land were to be used in another way. Mr. Spoo said that the SMP would have to be amended in order to change the designation. Commissioners

asked if labeling something “conservancy” would ever allow a change of use. Mr. Spoo said that it was possible and that there is a legal avenue to do so but it is probably not likely because the areas that are designated conservancy are wetlands and have a high ecological value. DOE would ask how no net loss could be achieved if a wetland was opened up for development. Mr. Spoo also noted that the Navy is not subject to the City SMP, federal actions on federal land are not subject to the SMP only private action on federal land is subject to the SMP. Mr. Powers added that it is not the ownership of the land that is driving the designation but the ecological function of the land that is driving the designation.

Commissioners asked if it was possible for areas that were developable now to change if a wetland was to expand into that developable land. They also asked if no net loss was measured from today’s conditions. Mr. Spoo said that the City is required to do an inventory and characterization report every 7 years to look at where the boundaries of the wetlands are so, we are setting a baseline as to what the conditions of the shoreline is now and no net loss will be measured against that in the future. Mr. Powers noted that the data that was used to develop the map was through the National Wetland Inventories map.

Mr. Spoo moved on to Chapter 3 - General Provisions. Mr. Spoo explained that the general provisions apply to all areas within the shoreline jurisdiction and are not environment specific. The two things that generated the most discussion in the Shoreline Advisory Committee were public access and vegetation conservation. Mr. Spoo reminded the Commission that public access was one of the three main goals of the Shoreline Management Act. The definition of public access includes both physical and visual access to the shoreline. So it is not just paths, trails and walkways along the shoreline, it also includes views of the shoreline from public areas. This is based on the Public Trust Doctrine which says that waters of the State are publicly owned and are available for the public’s enjoyment and use. In order to promote the Public Trust Doctrine the State sometimes requires public access over private properties in specific instances. To put this in perspective there are very few opportunities for the State to require public access with new development along our shoreline because most of the Oak Harbor shoreline is already developed. Mr. Spoo reiterated that the regulations only apply to the shoreline jurisdiction and are only triggered by new development. Mr. Spoo also noted an exclusion to the public access requirement, which states that single-family residential and subdivisions of 4 lots or less are excluded. Mr. Spoo cited several other exclusions and requirements and noted that the key point is to balance private property rights with the public interest.

Mr. Spoo talked about Vegetation Conservation which is a DOE required element. Vegetation Conservation provides human and environmental benefits such as shoreline stabilization, filters sediments and provides food to aquatic life in the form of insects. Ecology prefers a buffer and setback system with buffers of 30 feet in urban settings. Oak Harbor’s draft SMP proposes a two-zone vegetation conservation system composed of a vegetation management zone (VMZ), also known as a buffer, and a setback. Zone 1, nearest the water, is a 30-foot (VMZ) buffer from the OHWM. Zone 2 is a 50-foot structural setback from the OHWM, extending 20 feet beyond the vegetative buffer. Whenever new development is proposed beyond 50% of the assessed value of the property, a shoreline landscaping plan that complies with vegetation conservation requirements must be submitted. Mr. Spoo detailed the regulations that apply to Zone 1 and Zone 2.

#### Planning Commission Discussion

Commissioners asked about non-conforming uses. Mr. Spoo said there were provisions for expanding non-conforming uses. If you wanted to expand a non-conforming use a conditional

use permit would be required. Mr. Powers added that there is not a specific square foot threshold but the threshold comes as a result of the value of the proposal permit.

Mr. Spoo concluded his presentation and noted that next month the Planning Commission would cover Chapter 4 of the draft SMP.

Mr. Neil asked for public comment.

**Carl Freund** (2498 SW Freund Street) expressed his concern about the mapping that has been used and would like to see it updated to reflect the portion of his land that has been designated as upland for a long time. He also noted that the seven acres adjacent to the Dillard property was a man-made wetland permitted by DOE and the Army Corp of Engineers and the materials that came out of that wetland was put as fill on the adjacent land that was designated uplands and he didn't want to see it labeled as "Conservancy".

Mr. Spoo said that the map that shows the shoreline environment designation is an approximate map and if there is better information about where the actual edge of the wetland is we will take that into consideration and if the information shows that the wetland is not on Mr. Freund's property then we wouldn't consider that part of the shoreline jurisdiction.

**OHMC Chapter 17.24 SIDEWALKS, CURBS AND GUTTERS INSTALLATION – Public Meeting**

**ACTION: MR. WALLIN MOVED, MS. JENSEN SECONDED A MOTION TO MOVE THIS AGENDA ITEM TO THE NEXT PLANNING COMMISSION REGULAR BUSINESS MEETING. MOTION CARRIED.**

**ADJOURN: 9:37 p.m.**



April 24, 2012

Planning Commission  
City of Oak Harbor, WA

VIA ELECTRONIC MAIL

**Re: Draft Language for Temporary Sign Code**

Dear Planning Commission Members:

AMERICAN CIVIL  
LIBERTIES UNION  
OF WASHINGTON  
901 5TH AVENUE, SUITE 630  
SEATTLE, WA 98164  
T/206.624.2184  
WWW.ACLU-WA.ORG

The American Civil Liberties Union of Washington State (ACLU) welcomes the opportunity to comment on the draft code for temporary signs that the City of Oak Harbor Planning Commission is currently in the process of revising. We are a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties, including the freedom of speech.

JESSE WING  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

We thank the City and its staff for engaging positively with us on the sign code issue to meet our common goal of preserving constitutional protections for freedom of speech while meeting the City's interest in reasonable regulation. We understand that the City will continue to work on the draft code, and look forward to offering our input in that process. So for now, we want to express some general concerns based on the memo written by Ethan Spoo, dated March 14 2012, which contained a rough draft of the temporary sign code.

**The draft code unduly restricts protected speech on the basis of its content—such content-based classifications should be eliminated. Time limits should be uniform across all temporary signs.**

Political speech is the lifeblood of our democracy—the true core of free speech, and deserving of the highest protection under both the state and federal constitutions. Such speech should not be restricted by the government based on its content, but this is what the draft code appears to do.

First, the definition of a “political sign” in the draft code only appears to include those political signs used for electioneering purposes. So some common political signs would be excluded from that definition. For example, under the current language, it would be permissible to post a sign in a planting strip that expresses support for a congressional candidate, but it would not be permissible to post a sign expressing support for a bill that is presently before Congress. The Commission should ensure that the sign code protects all political speech, not just electioneering signs.

Second, the code permits only the display of four relatively narrow categories of signs (political signs, real estate open house signs, portable A-frame signs, and garage sale signs) in public areas, like planting strips, which courts consider a “traditional public forum.” This excludes protected speech that does not fall into those categories from areas that have traditionally been open for such speech—on the basis of the signs' content.

Third, signs should not be banned simply because they contain hand-drawn or hand painted images or lettering. In speech, the medium is sometimes a part of the message, which means this could be viewed as a content-based restriction.

Finally, the seven-day post-election removal period for political signs is too short. In practice, this provision places more onerous restrictions on political signs than other signs. For example, a political sign that is posted on Election Day could only be on display for a total of eight days, while other signs could be on display for six months, or even longer. Oak Harbor's legitimate interest in avoiding unsightly debris and litter caused by old signs could be achieved simply through a uniform time limit on all temporary signs.

Accordingly, we recommend eliminating the content-based classifications in the proposed code, and uniformly applying the proposed six-month time limitation to all temporary signs.

**The proposed permitting process should be eliminated.**

The draft speech code requires a permit to be issued before most signs can be set out. As a general rule, requiring people to get a permit from the government before engaging in protected expressive activities raises significant constitutional questions, particularly in the context of regulating protected speech on private property. On a more practical level, we share the pragmatic concerns about the permitting process that have been expressed by members of the Commission—not only does creating more red tape hinder free speech, but the educational objective of the permitting program would be better served by other means, such as direct outreach by the City. We therefore recommend eliminating the permitting process.

We look forward to providing further input as the Commission continues its discussions, and appreciate the Commission's consideration of these comments. Please do not hesitate to contact me with questions or concerns.

Sincerely,

Shankar Narayan  
Legislative Director

Cc: Steve Powers, Development Services Director  
Ethan Spoo, Senior Planner