

**SHORELINE ADVISORY COMMITTEE  
SUMMARY NOTES FOR MEETING #7  
CITY HALL – CONFERENCE ROOM  
March 7, 2012**

**ROLL CALL:**

**Present:** Rick AlMBERG, Mahmoud Abdel-Monem and Keith Fakkema.

**Absent:** Jennifer Myer, Jill Johnson-Pfeiffer and Helen Chatfield-Weeks.

**Project Staff Present:** Senior Planner, Ethan Spoo; Consultant, Gabe Snedeker; David Pater, State Department of Ecology

**Agenda Item I – Welcome and Introductions**

**Agenda Item II - Public Comment**

No public comment.

**Agenda Item III - Discuss committee comments and questions on Chapter 5, Shoreline Modifications**

Mr. Snedeker noted the following changes resulting from comments made by internal staff members:

- 1) Chapter 5, dredging regulations. Dredging changed to a permitted use for purpose of marina maintenance. See Table 3.
- 2) Floats are have been changed to permitted use at Marina and at Flintstone Park, prohibited elsewhere. Footnote in Table 3 acknowledges this fact.
- 3) Moorage buoys and balls made a permitted use in Maritime and Urban Mixed Use designations, conditional elsewhere to accommodate future expansion plans for marina.

Mr. AlMBERG asked if pier, float, dock and ramp combinations should be a permitted use in Urban Mixed Use designation. There is possibility of a floating guest moorage at the Flintstone Park. The Committee agreed that pier, float, dock, ramp combinations should be a permitted use in the Urban Public Facilities environment, but that it should be a conditional use in the urban mixed use environment because there might be a need to evaluate navigation and traffic if there were a future city pier which serves a larger constituency.

Mr. Snedeker asked if the Committee wanted to limit moorage facilities to be in proximity to Flintstone Park in the Urban Public Facility designation, thus eliminating moorage possibility at Windjammer Park. The Committee agreed, since it wouldn't even be feasible to have moorage at Windjammer Park.

Mr. Abdel-Monem raised the possibility of having non-motorized vessel facilities. Mr. Snedeker agreed to expound on possibility for non-motorized facilities in the draft. Concerning docks and floats, Mr. Abdel-Monem questioned the appropriateness of Windjammer Park. Most tidal conditions mean they will be resting on the substrate. Mr. Snedeker agreed to review the regulations and allow for non-motorized facilities.

The discussion moved to boat lifts and canopies and whether they should be allowed in the Urban Mixed Use designations due to the shallow depths and lack of historical demand. Mr. Snedeker will make adjustments to not allow boat lifts and canopies in the Urban Mixed Use. Mr. Snedeker also noted the boundary of the Maritime environment has been adjusted northward to encompasses the Yacht Club property.

Mr. Snedeker highlighted the following internal staff comments:

- 1) The first sentence of paragraph three under “Dredging and Disposal”, Chapter 5 is an opinion and shouldn’t be included in the paragraph.
- 2) Regulation c.2. in “Dredging and Disposal” should address feasibility of avoiding dredging and development should be sited so as minimize the need for dredging.
- 3) Regulation c.10 in “Dredging and Disposal” should be re-written to allow for dredge disposal at deepwater sites. Dredge within SMP jurisdiction is allowed as part of restoration.
- 4) Policy b. 5 in “Piers, Docks, Floats, and Mooring Buoys” Harbormaster suggested that mooring buoys be added to the list of facilities not allowing moorage of houseboats or live aboard vessels.

Mr. Snedeker explained the distinction between the standards for the Marina versus piers and docks. Many of the regulations don’t apply to marinas under the logic that marinas are where you want more intensive activity. Marinas are heavily regulated in terms under DNR aquatic lands leases.

Mr. Snedeker pointed out the “Light Transmittal” requirement (regulations c.5 “Piers, Docks, Floats, and Moring Buoys”). State agencies have been advocating for light transmission standards. The standard suggested in the draft SMP is 24% outside of marinas, which is taken from the Army Corps of Engineers regional general permit.

Mr. Fakkema asked why floats need to be installed in a north-south orientation as stated in regulation c.4.d. “Piers, Docks, Floats and Mooring Buoys.” Mr. Snedeker indicated that requirement will be deleted as it is not appropriate given the prevailing winds in Oak Harbor.

Mr. Abdel-Monem asked about applicability of the new SMP to Nichols Brothers on Navy property. Mr. Snedeker said Nichols Bros. would be subject to the new SMP. Standards have been built in such a way as to be more permissive for industrial and commercial uses. Regulation c.4.c “Piers, Docks, Floats, and Mooring Buoys, for instance, states that industrial or port uses may require a wider pier structure.

Mr. Fakkema asked how the 24% light flow requirement matches up to Americans with Disabilities Act (ADA) requirements. Mr. Snedeker said typically for any standard in any code, a reasonable accommodation can be granted based on an ADA requirement. Even if it is not mentioned explicitly, under the foundational aspects of these laws you need to make a reasonable accommodation for, whether that is pier width or any other design element.

Mr. Snedeker asked the Committee about their preference for restrictions on renting out private moorage structures. This might happen near the waterfront condos due to potential for private docks. Most SMPs have restrictions because you don’t want defacto marinas. Currently the regulation states that a private moorage structure is only for use by owners and guests. Mr. Almborg asked if the regulation was necessary because the prevailing winds are so strong it is not practical to put a boat out there. A breakwater would be necessary for a moorage pier at Flintstone. Mr. Snedeker said he has seen condos with a short stubby pier with a structure that looks like a parking garage facing the water with a boat lift. This type of arrangement can make it workable. Generally, SMPs include this regulation to cover the potential of rentals. Mr. Spoo also pointed out that allowing rentals would be competition to the Marina.

Mr. AlMBERG asked if this applies to the Navy. Mr. SnedeKER said if moorage is only for service members, then it is not covered under this regulation, but if the Navy leases the property to a private operator it would be subject to the SMP.

Mr. AlMBERG asked what would happen if Nichols Brothers goes into the Crescent Harbor side and they want to buoy a tug or some kind of floating mechanism. Mr. SnedeKER indicated that the SMP allows for a broad range of possibilities for Nichols. Bros. We have tried to accommodate the possibility of Nichols Bros. Committee members agreed to keep the regulation which states that a private moorage structure is only for use by owners and guests.

Mr. SnedeKER highlighted the following regulations under Chapter 5, "Piers, Docks, Floats, and Mooring Buoys", regulations c.4 a - e:

Mr. Spoo noted that there will be an additional section discussing flood structures in Chapter 5.

**Agenda Item IV - Discussion of Chapter 6 focusing on nonconforming development and other sections as determined by committee Interest)**

Mr. AlMBERG asked about the review process for shoreline substantial development permit shoreline variance and conditional use permit applications. Mr. Spoo explained that the existing SMP gives authority to City Council for all decisions on shoreline substantial development permits, conditional uses and variances with Planning Commission making a recommendation. Mr. SnedeKER current trend is to keep City Councils and politics out of decisions for individual properties. Mr. Spoo said the draft gives review authority to staff for shoreline substantial development permits and to the hearing examiner for conditional uses and variances. Mr. SnedeKER said that most communities have staff do the shoreline substantial development permits administratively. Mr. Spoo added that staff already review site plans, short plats, and boundary line adjustments. Mr. SnedeKER said staff review is quicker for the applicant. There are different approaches to the conditional use and variances. Variances are often hearing examiner review, whereas conditional uses can go either to staff or hearing examiner. Mr. Spoo added that zoning code conditional uses and variances go to the hearing examiner. It might make sense to make the shoreline conditional use and variances consistent with the zoning code process. Committee members thought that it made sense to have consistency.

Mr. AlMBERG thought agreed and felt that hearing examiner is a speedier process than City Council and appeals go straight to Superior Court. When it comes down to legal land use issues, especially variances, it is more defensible to have the hearing examiner make the decision rather than Council.

Mr. Fakkema asked if we would ever envision having the Shoreline Administrator being someone other than the Development Services Director. Mr. Spoo said that there would have to be a lot of shoreline development for that to happen. In theory, the City could hire a shoreline administrator.

Mr. SnedeKER pointed out the "Non-conforming Development section in Chapter 6. The question is at what point should expansions, modifications, to existing development be made to comply with current rules? Mr. SnedeKER referred to the non-conforming uses and structures chapter in OHMC 19.18. Section 19.18.040(1)(a) says that if a nonconforming building or structure has been damaged or partially destroyed for whatever reason to an extent not exceeding 50% of its real valuation it may be restored to the prior level of nonconformity. Damage over 50% valuation means you must comply with new rules. Maintenance must not increase the degree of nonconformity and additions may not increase the degree of non-conformity. Mr. Spoo pointed out that you can expand an existing nonconforming use by 50% of the existing floor area one time only. Beyond the on time only expansion, minor expansions up to 5% are allowed annually.

Mr. Snedeker highlighted certain provisions of the newly proposed language:

- “A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act.  
*Committee suggestion* - add “if feasible” at the beginning of the sentence.
- “Modification or addition to a nonconforming structure shall not increase the building footprint lying within the above described setback area. “
- “If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds fifty (50) percent of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP.”  
*Committee suggestion* – Building code says 60%, use this figure for consistency sake.
- “If a nonconforming structure other than a single family home is unintentionally damaged to an extent not exceeding seventy five (75) percent of its real valuation exclusive of foundations, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.”  
*Committee suggestion* – Use 12 months, rather than six.
- “Single family homes that are unintentionally damaged may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, regardless of the extent of damage, provided that application is made for the permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.”  
*Committee discussion* – The regulations are more specific and are fair. There were concerns about what “to those configurations existing immediately prior to the time the structure was damaged” language means. Committee suggested stating that minor changes are allowed to the footprint but must be confined to the area the previous structure occupied (staff will refine this statement).
- “A nonconforming use that is discontinued for a period of twelve (12) continuous months shall not be allowed to be re-established as a nonconforming use.”  
*Committee discussion* – clarify that a vacant house doesn’t constitute a discontinued use and change the period of 12 months to 24 months.

#### **Agenda Item V - Briefly discuss Chapter 7 (Definitions)**

Committee asked to include definitions regarding the difference between soft and hard stabilization.

#### **Agenda Item VI - Meeting Schedule and Next Steps**

##### Next Meeting

March 21, 2012 at 5:00 p.m. (Later rescheduled to April 4, 2012 at 5:00 p.m.)

This should be the last meeting. Staff will provide a copy of the draft SMP highlighting staff and Committee recommended changes.

Meeting adjourned at 7:00 p.m.