DRAFT

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
MINUTES OF REGULAR MEETING

July 6, 2017 Shoreline City Hall
7:00 P.M. Council Chamber

Commissioners Present
Chair Craft
Commissioner Chang
Commissioner Maul
Commissioner Malek
Commissioner Mork

Commissioners Absent
Vice Chair Montero
Commissioner Thomas

Staff Present
Rachel Markle, Director, Planning and Community Development
Paul Cohen, Planning Manager, Planning and Community Development
Steve Szafran, Senior Planner, Planning and Community Development
Kristie Anderson, Code Enforcement Officer
Julie Ainsworth-Taylor, Assistant City Attorney
Nora Daley Peng, Senior Transportation Planner
Carla Hoekzema, Planning Commission Clerk

CALL TO ORDER

Chair Craft called the joint meeting of the Shoreline Planning Commission to order at 7:00 p.m.

ROLL CALL

Upon roll call by Ms. Hoekzema the following Commissioners were present: Chair Craft and Commissioners Chang, Malek, Maul and Mork. Vice Chair Montero and Commissioner Thomas were absent.

APPROVAL OF AGENDA

The agenda was accepted as presented.

APPROVAL OF MINUTES

The minutes of June 1, 2017 were approved as presented.

GENERAL PUBLIC COMMENT

There were no general public comments.

PUBLIC HEARING: ABATEMENT DEVELOPMENT CODE AMENDMENT

Chair Craft reviewed the rules and procedures for the public hearing and then opened the hearing.

Staff Presentation

Mr. Cohen reviewed that the Commission held a study session on June 1st to discuss the proposed amendment that would expand potential uses of the abatement funds to include other code enforcement activities in support of the Code enforcement program. He explained that currently, the abatement fund budget is about $100,000 per year, and it grows each year as civil penalty fines are contributed. The fund can only be used for the abatement of violations such as unsafe house boarding, removal of excess junk, abandoned cars, tenant relocation, etc. The proposed amendment would allow this surplus to be used for other code enforcement activities that are not currently funded such as training; outside legal assistance; noise, sanitation and tree experts; additional inspections; etc.

Mr. Cohen read the proposed amendment to Shoreline Municipal Code 20.30.775(A) (Attachment A) as follows:

> *"All monies collected from the assessment of civil penalties, costs, and for abatement reimbursements recovered from violators resulting from code enforcement actions shall be deposited in a code enforcement/abatement fund and utilized for future code enforcement action expenses. Eligible expenses shall include, but not be limited to, all costs for abatement whether or not the responsible party is identified, education and outreach, and one-time expenses associated with a specific case necessary for obtaining code compliance."*

Mr. Cohen referred to the memorandum from Ms. Anderson, which answers the questions the Commissioners raised at their last meeting. He noted that Ms. Anderson was also present to answer any additional questions the Commissioners might have.

Commissioner Mork asked Ms. Anderson to clarify her answer about whether or not the City could consider raising the fee for violations so that it becomes a deterrent rather than a cost of doing business. Ms. Anderson said that, currently, the City's fines are written in 14-day increments ($500 for the first 14-day period, $750 for the next 14-day period, and $1,000 for each subsequent 14-day period), and civil penalties start accruing after the compliance date on the Notice and Order. The penalties increase rapidly, and she has not seen evidence that they are too low. There is a provision that requires the City to reduce the penalty by 80% following voluntary compliance. The City has a per-tree penalty in the Critical Areas Ordinance, but there is no per-tree cost in the general clearing and grading provisions. However, they have sometimes used a $2,000 penalty per incident for intentional violations or disregard.

Chair Craft clarified that, as currently written, if a clearing and grading permit has been issued with conditions and the conditions are ignored, whether one or many trees are removed, there would just be one fine. He asked if fees could accrue on a per-tree basis rather than a per-violation basis. Ms. Anderson said she presented this concept to the City Attorney's Office, and the response was that it is a violation of the clearing and grading permit and could only be applied on a per-violation basis.

Commissioner Mork said her understanding is that clearing and grading are addressed in two separate code sections: Critical Areas Ordinance and General Clearing and Grading. She asked if the proposed amendment would apply to both. Ms. Anderson said the fine outlined in the Critical Areas Ordinance is per tree, as well as a certain fee per square foot of disturbance in a critical area. These penalty levels have been recently updated to be much higher. In the general provisions, the fine is per violation and not per tree.

Commissioner Malek asked how the City responds if a violator does not comply with a Notice and Order. Ms. Anderson said the City would start the process of working through the legal system to get a Warrant of Abatement. Commissioner Malek asked if fines would continue to escalate. Ms. Anderson said the civil penalty would continue to accrue, and the violator would also be responsible for other fees associated with the process. Commissioner Malek referred to a situation on 10th Avenue where fines and fees were in excess of $400,000. These fines make it more than just the cost of doing business. Ms. Anderson clarified that the critical area fines were applied in this case.

Commissioner Malek asked how the City would handle a situation where a property owner cuts down a tree on adjacent property to create a view. Ms. Anderson said it would become a civil action between the two property owners.

Commissioner Mork asked if the abatement fee would also apply to projects that do not do the Deep Green Incentive Program correctly. Mr. Cohen said the amendment would be a component of code enforcement, and the Deep Green Incentive Program is part of the code enforcement process. Therefore, the provision would apply to violations of the Deep Green Incentive Program, too.

Commissioner Chang asked what is meant by the term "costs" as included in the proposed amendment. Assistant City Attorney Ainsworth-Taylor said "costs" means the external costs that are incurred in order to abate a violation or perform the action of the civil penalties. Chair Craft summarized that "costs" is an umbrella that could capture a variety of associated fees related to abatement. The fees, costs and reimbursements would be deposited in the abatement fund and used for the eligible expenses noted in the code provision. The intent of the code amendment is to expand the expenditure options for the fund, which is currently curtailed to just one thing.

Chair Craft referred to the last sentence of the proposed amendment, specifically, the words "shall include, but not limited to." He clarified that while the amendment would not limit the aspects for which the funds could be applied, the umbrella is that they could only be applied to future code enforcement/abatement expenses. Assistant City Attorney Ainsworth-Taylor agreed that, as written, the funds would have to be used for code enforcement purposes only.

Public Testimony

No one in the audience indicated a desire to provide testimony.

Continued Planning Commission Deliberation and Action

COMMISSIONER MAUL MOVED THAT THE COMMISSION FORWARD THE AMENDMENT TO SMC 20.30.775, RELATED TO THE COLLECTON OF ABATEMENT PENALTIES AND COSTS, TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL AS PRESENTED BY STAFF. COMMISSIONER MALEK SECONDED THE MOTION.

Commissioner Mork reminded the Commissioners that many citizens support and encourage the preservation of trees. She raised concern that the current fee structure for clearing and grading violations under the general provisions is not enough to be a deterrent. Assistant City Attorney Ainsworth-Taylor reminded the Commission that the public hearing is limited to the proposed amendment that would expand the utilization of the civil penalties and costs that the City incurs. Concerns about the current fees must be addressed as a separate issue for a future meeting.

THE MOTION CARRIED UNANIMOUSLY.

STUDY SESSION: TRANSPORTATION MASTER STREET PLAN

Staff Presentation

Ms. Daley-Peng reviewed that amendments to the Transportation Master Plan (TMP) were presented to the Commission on April 6, 2017. Following that presentation, two amendments to the TMP's Master Street Plan were revised based on feedback from the Commissioners, additional coordination with Sound Transit, and discussions with the City Manager's Office.

Ms. Daley-Peng advised that Amendment 1 is related to amenity zones. Amenity zones are the 5-foot areas between the sidewalk and roadway, and they are typically landscaped. Currently, bridges are exempt from the amenity zone requirement based on the fact that landscaping on bridges would add weight and have to be sustained by a permanent irrigation system. While reviewing Sound Transit's design plans for the 185th Street Bridge, it was suggested that the Master Street Plan be updated to more clearly require non-landscaped amenity zones on bridges for streetscape amenities such as hard surface design treatments, light poles, artwork, banners, etc. The proposed amendment provides a wider range of design options for amenity zones on bridges.

Ms. Daley-Peng reviewed that Sound Transit is in the design and permitting phase for the Lynnwood Link Extension, which includes the 185th Street Station to the east of Interstate 5 and the parking garage to the west of Interstate 5. It also includes improved sidewalks, bicycle facilities and amenities on the bridge that connects the two facilities. At the April 6th meeting, a Commissioner asked if the existing 185th Street bridge was seismically fit. She reported that Sound Transit's proposal for re-channelization of the bridge does not trigger a seismic retrofit. The design review and permitting process will go through the Special Use Permit (SUP) process, and once the application is determined complete, the public comment period will begin (likely this summer, but there is not definite date), and the process will include a public hearing before the Hearing Examiner. The Hearing Examiner will make the decision on the SUP.

Ms. Daley-Peng recalled that at the April 6th Planning Commission meeting, staff recommended resolving a 10-foot difference between the Master Street Plan within the TMP and the 185th Street Station Subarea

Plan's conceptual 185th Street cross section by including in the "notes' column of the Master Street Plan the consideration of the 185th Street Multimodal Corridor Strategy when determining the required right-of-way and planned curb-to-curb width along 185th Street. Upon further discussion with the City Attorney's Office, staff has been advised that, since the conceptual cross section for the 185th Street Corridor was part of the adopted 185th Street Station Subarea Plan, it governs over the Master Street Plan. Therefore, there is no need to amend the Master Street Plan. Staff is recommending that Amendment 2 be withdrawn.

Ms. Daley-Peng advised that the City has advertised the 185th Street Multimodal Strategy, and the deadline for submittals is July 31st. The City is looking forward to selecting a consultant team and hopes the project will be under contract by this fall. The plan is to come back to the Commission at milestones along the project schedule. It will likely be a 1½-year process. The next steps will be to conduct a study session with the City Council regarding Amendment 1 (amenity zones on bridges). The goal is for the City Council to adopt the amendment in November or December.

Chair Craft asked Ms. Daley-Peng to clarify why Amendment 2 is being withdrawn. Ms. Daley-Peng explained that the cross section in the 185th Street Station Subarea Plan identifies a planned right-of-way width of 76 feet. The Master Street Plan has a 66-foot planned right-of-way width. The cross section in the subarea plan anticipates the need for more room to accommodate multiple modes of transportation. The City Attorney clarified that, because the 185th Street Station Subarea Plan was adopted into the Comprehensive Plan, it takes precedence over the Master Street Plan.

Commissioner Chang asked about the seismic safety of the 185th Street bridge. Given the age of the bridge, she questioned how it could be considered safe. Ms. Daley-Peng said she does not have the details because it is a Sound Transit design. However, Sound Transit, in coordination with the Washington State Department of Transportation, has determined that the 185th Street bridge is seismically fit. Chair Craft asked if the bridge is seismically fit or not seismically obsolete. He agreed with Commissioner Chang's concern, given that the bridge will be loaded with more weight and it is old. Ms. Daley-Peng said her understanding is that the bridge is seismically fit, and the proposed improvements would not trigger a seismic retrofit. Commissioner Chang agreed that the proposed improvements are pretty light, but the main issue is the age of the bridge. It was built in the 1960s when they didn't know very much about seismic design. Given the level of construction that is proposed, Chair Craft suggested it would be a good idea to retrofit the bridge. He asked what level of advocacy the City could provide with regard to this specific issue, or is it too late. Ms. Daley-Peng advised that the opportunity to provide additional feedback would be during the SUP process, which will include a public comment period and a public hearing. She noted that Sound Transit submitted its SUP application last month, but it was deemed incomplete. They expect that a complete package will be submitted this summer.

Mr. Szafran advised that Amendment 1 will come before the Commission again on September 21st for a public hearing on the complete package of 2017 Comprehensive Plan amendments.

Public Comment

There were no public comments.

STUDY SESSION: WIRELESS TELECOM FACILITIES DEVELOPMENT CODE AMENDMENT

Staff Presentation

Assistant City Attorney Ainsworth-Taylor said the purpose of the study session is to talk about eligible wireless facility modifications, which is the first piece the Commission will hear in regards to wireless facilities. In coming months, they will also hear about other minor modifications to the code to facilitate a new technology (small cell facilities) that the industry is using to launch their upcoming 5G system.

Assistant City Attorney Ainsworth-Taylor explained that the Federal Government has preempted the ability of local governments to regulate personal wireless facilities. The Telecommunications Act was passed in 1996, which limits the zoning authority of local governments when it comes to conditioning and locating systems. As per the act, local governments:

- Cannot do unreasonable discrimination against the providers.
- Cannot prohibit or effectively prohibit the siting of facilities.
- Must act within a reasonable time.
- Must issue denial in writing, supported by substantial evidence.
- Cannot regulate radio frequency except in regards to Federal Communication Commission (FCC) ruling.

Assistant City Attorney Ainsworth-Taylor advised that the Middle Class Tax Relief and Job Creation Act (Spectrum Act) was passed in 2012. It imposed substantive and procedural limitations upon local government authorities to regulate modifications of existing wireless antenna support structures and base stations. The FCC subsequently issued implementing regulations in 2015. These rules address "Eligible Facilities Modifications" (EFMs) and provide clarification to terms and phrases used in the Spectrum Act. For example, the rules state that cities cannot deny and shall approve any EFM request for an eligible support structure that does not substantially change the physical dimensions. EFMs are modifications to existing wireless towers or base stations, including co-location, removal, or replacement of transmission equipment.

Assistant City Attorney Ainsworth-Taylor explained that the FCC rules define "substantial change" in relationship to changes in the physical dimensions of the tower or base station and the rules set criteria for such things as height and width modifications. While the FCC rules do allow the City to condition approval on compliance with building and other structural/safety codes, the City cannot ask for information to justify and/or support the project's need. Whether a proposal is considered a "substantial change" or not is based on the proposed dimensional changes. A statute in the City's code sets up what the standard will be, and the applicant will have to demonstrate that the application meets those standards in order to get the modification approval. Once an EFM is approved, any further changes to the facility are set on the baseline of the original structure, and not on any extension from the EFM.

Assistant City Attorney Ainsworth-Taylor advised that the FCC rules also establish a timeframe for issuing a decision on an application, which is commonly referred to as the "shot clock." Local governments are required to issue a decision an EFM application within 60 days from when the application

was filed. While the City's timeframe for reviewing applications typically starts when an application is deemed complete, the timeframe for EFM applications will start at the filing date. However, if an application is deemed incomplete, the City can notify the applicant within 30 days and the shot clock will be tolled. If the City fails to meet the "shot clock" deadline, the application is deemed granted.

Assistant City Attorney Ainsworth-Taylor said the proposed amendment to Shoreline Municipal Code (SMC) 20.40 will create a new section (SMC 20.40.605) expressly addressing EFMs under the Spectrum Act and the FCC's implementing rules. The proposed amendments would apply to existing structures, and not new facilities. As proposed, the new provisions:

- Set forth the definitions established by the FCC.
- Establish a review process that conforms with the 60-day "shot clock."
- Denote that EFMs are still subject to compliance with building and safety regulations.
- Clarify that if a request does not satisfy the criteria for an EFM, the request will be processed under SMC 20.40.600, the regular Wireless Facilities Code.
- Set forth an appeal process for any decision of the City in regard to EFM applications. Appeals would go to Superior Court via LUPA.

Assistant City Attorney Ainsworth-Taylor advised that a public hearing on the proposed amendments is scheduled for August 3rd, and the amendments will be presented to the City Council in September for study and adoption.

Commissioner Chang requested further explanation about how the "shot clock" rule would be applied when applications are deemed incomplete. Assistant City Attorney Ainsworth-Taylor clarified that the clock would stop when an application has been deemed incomplete, but the City would only have 10 days following resubmittal to start the clock again.

Chair Craft clarified that the industry is preparing facilities for a 5G scenario. Assistant City Attorney Ainsworth-Taylor said the facility changes would basically be new antenna arrays and structures to facilitate the deployment of personal wireless services. They can also include the new small-cell technology, which is the 5G technology that will be addressed at a future meeting. Chair Craft asked if the small-cell technology is arrayed in a way that is denser or does it have to stay on the existing facilities. Assistant City Attorney Ainsworth-Taylor answered that while small-cell technology can be added to an existing structure or base station, it is typically sited on utility poles and structures. A lot more facilities will be required within a given radius, but they will boost the capacity of the system. Chair Craft concluded that, from a visual standpoint, they are attached to other things rather than a cell tower. Assistant City Attorney Ainsworth-Taylor said they can be attached to anything that will get the signal going, including a tower. In order to be classified as an EFM, the technology must be attached to a facility that already has existing system arrays on it at the time of application.

Public Comment

Nancy Morris, Shoreline, voiced concern about the deployment of 5G and left some reference materials for the Commission's consideration. She said she is against the deployment of 5G on the basis that it threatens the safety of not only humans, but wildlife, particularly pollinators. People have no idea of the

impacts, as no long-term study has ever been done. However, there is compelling research available that warns of the continued increasing exposure to humans by microwave frequencies. Continuing to increase the microwave background exposure without thinking in terms of the precautionary principle puts everyone at risk.

Ms. Morris commented that the primary motivation of 5G by companies is to ultimately connect everything to the internet and it can only be for purposes of consumer control and company profits. The wireless industries usually tout imaginary and irrational benefits with no discussion of risks to society, which includes babies, children, elderly, and those with chronic illnesses. It also includes cybersecurity threats, hacking vulnerability, and microwave exposures reaching a tipping point to harm health of humans, wildlife and trees. The FCC has still not considered the tremendous potential of wired technologies, especially fiber optics, to provide higher data rates, greater cybersecurity, and greater safety for human health. The FCC should not exclude fiber optics due to any cost comparisons with wireless technologies, as they currently do.

Ms. Morris referred to a statement from Dr. Ronald M. Powell, a PhD physicist who consults with various science groups and governments on the effects of microwave technology. What is very serious about the FCC law from 1996 is that it is very outdated and based on information that is 20 to 30 years old. None of its conclusions are based on current research. There is a tremendous amount of new research available by well-respected scientists. She observed that the 1996 Telecommunications Act continues to deny state and local governments the right to bar the installation of wireless technology on environmental and health grounds. Perhaps this is the greatest offense to the local rule at this time. As the deployment continues and people do not speak up, the side effects will probably finally become apparent in a number of years. Unfortunately, it will be after the fact.

Chair Craft encouraged Ms. Morris to attend the public hearing on August 3 and provide additional comments.

DIRECTOR'S REPORT

There was no Director's Report.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

There were no reports or announcements from Commissioners.

AGENDA FOR NEXT MEETING

Mr. Szafran reviewed that the July 20th meeting agenda will include a study session on the Surface Water Master Plan Update.

ADJOURNMENT

The meeting was adjourned at 8:01 p.m.

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Easton Craft	Carla Hoekzema
Chair, Planning Commission	Clerk, Planning Commission