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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
MINUTES OF REGULAR MEETING

January 3, 2019
7:00 P.M.

Shoreline City Hall
Council Chamber

Commissioners Present

Chair Montero
Vice Chair Mork
Commissioner Craft
Commissioner Davis
Commissioner Lin
Commissioner Maul
Commissioner Malek

Staff Present

Rachael Markle, Director, Planning and Community Development
Paul Cohen, Planning Manager, Planning and Community Development
Julie Ainsworth-Taylor, Assistant City Attorney
Carla Hoekzema, Planning Commission Clerk

CALL TO ORDER

Chair Montero called the regular 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 Montero, Vice Chair Mork, and Commissioners Craft, Lin, Maul and Malek. Commissioner Davis arrived at 7:03 p.m.

APPROVAL OF AGENDA

The agenda was accepted as presented.

APPROVAL OF MINUTES

The minutes of November 29, 2018 and December 6, 2018 were approved as submitted.

GENERAL PUBLIC COMMENT

There were no general public comments.

STUDY ITEM: PLAT ALTERATION – PERMANENT REGULATIONS (SMC 20.30.420)

Assistant City Attorney Ainsworth-Taylor reviewed that on December 10, 2018, the City Council adopted interim regulations (Ordinance No. 849) to address plat alterations. She explained that the City’s existing subdivision regulations do not adequately address the statutory requirements set out in the Revised Code of Washington (RCW) for plat alterations in a streamlined manner. Currently, the City Council is responsible for making a decision on each and every plat alteration that comes up. Ordinance No. 849 established regulations for the administration of plat alterations as required by the RCW. The regulations are effective for six months from the date of adoption, and the intent is for permanent regulations to be adopted before the interim ordinance expires.

Assistant City Attorney Ainsworth-Taylor reminded the Commission that interim regulations are allowed to bypass the standard adoption process of Planning Commission review/public hearing/recommendation before City Council adoption. She announced that, as per the adopted ordinance, the City Council will hold a mandatory public hearing on February 4th prior to the Commission’s public hearing on February 21st. The ordinance also directs staff to refer to the Planning Commission for permanent regulations for plat alterations.

Assistant City Attorney Ainsworth-Taylor explained that the Final Plat is considered the final subdivision document that is filed and recorded with the County. As per RCW 58.17.170, a subdivision is governed by its terms of approval, which can sometimes include notes that are placed on the “face of the plat.” The interim ordinance is consistent with the process set forth in the RCW to alter a recorded plat. She referred to a 2011 court case (Jones v. Town of Hunts Point), which found that notes on the plat were the city’s obligation to enforce, just as it would do for any other development regulation or condition that is placed on a plat.

Assistant City Attorney Ainsworth-Taylor advised that plats in Shoreline go all the way back to the early 1900s and they have a variety of restrictions. Restrictions that are considered inoperable by law (i.e. racial restrictions) are automatically stricken, but they remain on the actual recorded plats until someone files for them to be officially stricken. Other restrictions include controlling on lot size and precluding additional subdivision. For properties in the Mixed Use Residential (MUR) zones, these restrictions are becoming problematic and prohibit the subdivision of properties into unit-lot subdivisions for fee-simple townhome development.

Assistant City Attorney Ainsworth-Taylor explained that the interim ordinance allows plat alteration applications, but requires that the majority of the property owners within the plat agree to the alteration. If the application only involves a specific area of the plat, the majority of the property owners impacted must support the application. The interim ordinance also includes a provision that allows the restrictive covenants that were put on the plat at the time it was recorded to be changed, but it requires the participation of all property owners within the plat. She emphasized that the interim ordinance only applies to the plat notes, which are the City’s obligation to enforce, and not private restricted covenants.

Assistant City Attorney Ainsworth-Taylor advised that the interim ordinance also requires that notice has to be sent to everyone in the plat. Although a public hearing would not automatically be required, property owners within the plat can request a public hearing within 14 days after receiving the notice. The City

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could also request a public hearing. If no public hearing is requested within the 14-day window, the Director of Planning and Community Development can administratively approve the plat alteration. If a public hearing is requested, the Hearing Examiner conducts the hearing and either approves or denies the plat alteration.

Assistant City Attorney Ainsworth-Taylor referred to Attachment A of the Staff Report, which outlines the proposed permanent regulations. She advised that, although the Commission has no authority over the fee schedule, the rate tables were included to coordinate with the adoption process. She reviewed the proposed permanent regulations, specifically noting the following small changes that were made after the Staff Report was sent out:

- The interim regulations called for notice to all property owners within the subdivision, as well as all property owners within 500 feet of the proposed action. The permanent ordinance (SMC 20.30.425(C)(1) changes this provision to require that notice only be sent to property owners within the subdivision.
- A new section (SMC 20.30.425(C)(2) was added to address how notice of a requested public hearing would be distributed.
- Note 6 was added to Table 20.30.050 to clarify that if a public hearing is requested, the plat alteration application will be processed as a Type C Action rather than a Type B Administrative Decision.
- Table 20.30.060 adds “Plat Alteration with public hearing” as a Type C Action.

Assistant City Attorney Ainsworth-Taylor concluded her presentation by advising that a public hearing before the Planning Commission on the proposed permanent regulations has been tentatively scheduled for February 21st. Based on the City Council’s public hearing on February 4th, staff may have additional information to share with the Commission prior to the hearing.

Commissioner Malek asked if it would be possible for the Commission to have an additional study session prior to the hearing based on the outcome of the Council’s February 4th hearing. Assistant City Attorney Ainsworth-Taylor explained that the City Council is required by State statute to hold a public hearing after adopting the interim regulations. There was very little public comment on the interim regulations, but comments may come up at the Council’s hearing that could inform some changes within the code.

Commissioner Malek observed that if notes are stricken from a plat through an administrative action, it relieves the City of its duty to enforce them. He asked what would happen if the notes are also part of a subdivision’s private restrictive covenants. Assistant City Attorney Ainsworth-Taylor answered that the proposed regulation would not impact private restrictive covenants. Commissioner Malek asked if the intent is to remove the restrictive notes from the face of plats so the City is no longer responsible for enforcement. Assistant City Attorney Ainsworth-Taylor responded that applicants are requesting to remove the notes because many of the restrictions are contrary to current zoning.

Commissioner Malek said he read through the examples of restrictions that were provided in the Staff Report and found that most are no longer relevant. He said he supports expediting the process, which is currently quite laborious. He disclosed that he is currently working with a group to alter plats in the MUR-70’ zone.

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Commissioner Malek asked for an explanation of a Type C Action, and Assistant City Attorney Ainsworth-Taylor answered that it is a quasi-judicial process, and examples of existing Type C Actions include Conditional Use and Special Use Permits. The hearings would take place before the City's contracted Hearing Examiner.

Chair Montero asked if the City Council received any written comments relative to Ordinance 849. Assistant City Attorney Ainsworth-Taylor answered that two comments were received, one from the Shoreline Preservation Society and another from the Interurban Tree Association, asking that the City slow down and reconsider the permanent regulation. They were concerned that the proposed change would strip away private covenants, which is not the case. In addition, she noted that the City could follow the process outlined in the State statute regardless of whether the permanent regulation is adopted or not. She agreed to provide copies of the letters to the Commissioners.

Commissioner Maul asked how the City would determine whether or not a majority of the property owners within the subdivision agree to the change. Assistant City Attorney Ainsworth-Taylor answered that applicants would be required to collect signed declarations from the property owners before filing an application. The City's website provides a submittal package, which includes an example declaration. All of the declarations would need to be attached to the application package before it is deemed complete.

Commissioner Maul noted that changing a private Covenant, Conditions and Restriction (CCR) would require the support of 100% of the property owners vs. a majority to change the notes on the face of the plat. Assistant City Attorney Ainsworth-Taylor explained that notes or restrictions are placed on the plat by the legislative body that approved it, and changing these restrictions requires support from a majority of the property owners. If a CCR is approved at the same time as the plat is recorded, removal would require support from 100% of the property owners. Private CCRs that are recorded separately after a development occurs require support from 75% of the property owners.

Commissioner Maul pointed out that even if a note is removed from the face of a plat, the restriction would still be in place if it was also adopted as a CCR. He asked if removing the CCR restriction would require a separate action. Assistant City Attorney Ainsworth-Taylor explained that support from 100% of the property owners would be required if a plat alteration application involves a concurrently-recorded CCR.

Commissioner Maul asked how the Hearing Examiner would make a decision if a property owner requests a hearing. Assistant City Attorney Ainsworth-Taylor answered that the current code provides criteria for approving subdivisions, and the criteria would apply to plat alterations, as well. In addition, the basic decision-making criteria under the RCW is that the alteration is in the best interest of the public.

Commissioner Malek asked about the proposed rate for a plat alteration. Assistant City Attorney Ainsworth-Taylor answered that the hourly rate would be a two-hour minimum at the current hourly rate of \$199. The 2019 cost for a public hearing before the Hearing Examiner is \$3,723.

Commissioner Malek asked if Director Markle would be responsible for overseeing plat alteration applications. Director Markle answered that she would oversee and make a final decision on plat alteration applications if no public hearing is requested. Assistant City Attorney Ainsworth-Taylor added that the

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Planning and Community Development Department would still be responsible for processing applications if a public hearing is requested and presenting a staff report to the Hearing Examiner.

Commissioner Malek asked if it is realistic to follow the process outlined in the proposed permanent regulations from the standpoint of staff time required. Director Markle said she anticipates the proposed change will increase the level of staff effort. Less time would be required to process a Type B application because it does not require a staff report and presentation to the Hearing Examiner. However, that is not a significant part of preparing a decision and doing the analysis. She said staff has had a number of discussions with developers in the MUR-70' zone that are likely to encounter the need to address plat notes, but not a lot of have come forward to date. She does not foresee a huge wave that will significantly impact staff time.

Commissioner Davis asked if staff has found that adjacent property owners have taken advantage of the requirement that notice be given to property owners within 500 feet of a proposed plat alteration. Assistant City Attorney Ainsworth-Taylor answered no, noting that most people do not even know the notice requirement exists because the interim regulations are so new. The one plat alteration application that received a request for a public hearing is only a 2-lot short plat, and the hearing request was made by one of the property owners, as well as property owners outside of the plat. The statute is directed at making sure the people who are directly impacted by the restriction have a say in what is going on.

Because the sites would be limited to the existing development regulations, Commissioner Davis questioned the value of allowing adjacent property owners within 500 feet to request a public hearing for a plat alteration application. Assistant City Attorney Ainsworth-Taylor clarified that, as currently proposed, only property owners within the plat would have the ability to request a public hearing. She explained that the interim ordinance allows adjacent property owners to request a hearing to voice opposition and attempt to restrict development. However, even if the plat alteration application is denied, the property owner would still be allowed to develop as the current zoning allows, which means condominium development rather than fee-simple lots.

Commissioner Maul asked if the public hearing would be noticed to the entire public or just to the property owners within the plat. Assistant City Attorney Ainsworth-Taylor answered that it would be noticed just like any other public hearing on the City's website, mailings to property owners within the subdivision, and posted on the site. Any member of the public would have the ability to participate in the hearing. Commissioner Maul observed that the proposed permanent regulations would apply primarily in the light rail station areas, which were rezoned to MUR following numerous public hearings. He voiced concern that allowing for an additional hearing could slow down or interrupt the redevelopment process. Assistant City Attorney Ainsworth-Taylor emphasized that the way the statute is written in RCW 58.27.215, notice must be provided to property owners within the plat. If a public hearing is requested, there would be no limitations and notice must be given to all members of the public to participate. The current process has been in place since the 1940s. However, she agreed that with the advent of the Growth Management Act, having notes on plats that restrict future zoning is counterintuitive to how planning is currently done.

Commissioner Lin asked if the proposed permanent regulations would allow property owners to file an application to remove a native growth protection area. Assistant City Attorney Ainsworth-Taylor answered that anything that is part of a recorded plat, including the release of native growth protection

areas and easements, can be sought for alteration, but the City would still have to find that the change is in the best public interest.

STUDY ITEM: PLANNING COMMISSION'S ANNUAL REPORT TO CITY COUNCIL

Chair Montero reminded the Commissioners of their dinner meeting with the City Council on February 11th. He referred to the draft letter that was prepared by staff to serve as the Commission's annual report to the City Council. Mr. Cohen explained that the letter is intended to highlight what the Commission accomplished in 2018, as well as issues it wants to pursue in 2019. Once approved by the Commission, the letter will be discussed at the joint meeting with the City Council.

Vice Chair Mork requested more information about the Shoreline Master Program (SMP). Mr. Cohen advised that the City is required to update the SMP, which applies to the 200-foot jurisdiction between the Ordinary High Water Mark (OHWM) all the way down the coastline. He reminded them that Ms. Redinger made an initial presentation on the topic at the Commission's last meeting, and the actual code amendments will be presented to them on January 17th.

Vice Chair Mork asked why the list of 2019 work items is relatively short. Mr. Cohen advised that the list is intended to serve as a starting point, and it could be expanded as the Commission feels appropriate. Commissioner Maul recalled that the Commissioners initially talked about adding "housing choices" to the list, but staff didn't feel there would be sufficient time in 2019.

Director Markle pointed out that, in addition to the five items on the list, the Commission will still be working on Comprehensive Plan amendments, including one publicly-initiated amendment. They will also do a batch of Development Code amendments. Based on staff experience, she anticipates at least two or three emergency issues will come up that will require Commission attention. For example, work related to residential care facilities, subdivision regulations, and trees in the MUR-70' zone was added to their 2018 work program. She emphasized that the five items on the list are long-range planning issues, and there are only 1.5 to 2 long-range planners on staff. She also pointed out that, while there is funding in 2019 to do the townhome design project, the housing choices project is not funded until 2020. She said she anticipates that the townhome design project will require a significant amount of staff time, Commission input and public involvement.

Commissioner Malek suggested that revisions to the Commission's Bylaws should be added to the list, given that a subcommittee is currently working on a proposal for the Commission's consideration. He said he would also like to add an independent review of cottage housing. Mr. Cohen said the review of cottage housing was included under the topic of housing choices. Commissioner Malek suggested that it be pulled out as a standalone item.

Commissioner Davis asked staff to elaborate on what the discussion about housing choices would include. Mr. Cohen answered that it would primarily apply to single-family neighborhoods, and the intent is to look at a variety of housing choices (i.e. accessory dwelling units, cottage housing, tiny homes, vacation rental by owner, etc.) While there may be a market for these different housing choices, people are also worried about how they might impact and change neighborhoods. Staff believes the topic is big enough that it requires significant public involvement starting in 2020.

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Commissioner Davis said she is proud of the work Shoreline has done to address housing for the homeless. In her research she came across the interesting idea of emergency shelters during extreme weather. She suggested the Commission could discuss potential code amendments that would support and encourage these types of temporary uses. She noted that the City of Lynnwood recently passed an ordinance related to this topic. Mr. Cohen asked if these shelters would be the City's responsibility or if they could be privately operated. Commissioner Davis said the City of Lynnwood's provisions are intended to help churches and non-profit organizations provide temporary shelters on their properties, and the temporary use permit makes sure the shelters meet certain requirements.

Mr. Cohen agreed to update the letter to include the items discussed by the Commission.

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

Vice Chair Mork advised that the Bylaws Subcommittee (Mork, Malek and Craft) would meet soon to prepare a recommendation for the Commission.

AGENDA FOR NEXT MEETING

Mr. Cohen announced that the January 17th agenda will include a presentation on proposed amendments to the Shoreline Master Program (SMP) and final discussion of the Commission's annual report to the City Council.

ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

William Montero
Chair, Planning Commission

Carla Hoekzema
Clerk, Planning Commission