

DRAFT
CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
MINUTES OF REGULAR MEETING

February 6, 2020
7:00 P.M.

Shoreline City Hall
Council Chamber

Commissioners Present

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

Staff Present

Rachael Markle, Director, Planning and Community Development
Steve Szafran, Senior Planner, 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, Davis, Lin, Malek and Maul.

APPROVAL OF AGENDA

The agenda was accepted as presented.

APPROVAL OF MINUTES

The minutes of January 16, 2020 were approved as presented.

GENERAL PUBLIC COMMENT

There were no general public comments.

STUDY ITEM: DEVELOPMENT CODE AMENDMENT – PROFESSIONAL OFFICES IN R-8 AND R-12 ZONES

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Mr. Szafran advised that the City Council adopted Ordinance 881 on December 9, 2019. The ordinance adopted two Comprehensive Plan amendments, including Amendment 3, which added Professional Offices to the Medium Density Residential (MDR) land use category in Land Use Policy LU2. He explained that, currently, office uses are allowed in the Residential (R) R-18 through R-48 and Town Center (TC) zones with an approved Conditional Use Permit (CUP), but Professional Offices do not have any indexed criteria or conditions to address impacts to adjacent residential uses. The proposed amendment:

- Adds Professional Office as an allowed use in the R-8 and R-12 zones through an approved CUP.
- Clarifies the definition of Professional Offices, allowing different types of offices that function like a professional office.
- Adds index criteria to mitigate impacts to adjacent residential neighborhoods.
- Clarifies and expands CUP procedures and requirements.
- Adds a new definition for Contractor Construction Service Office.
- Adds a definition for Construction Service Office/Yard.
- Adds a definition for Outdoor Storage.

Mr. Szafran explained that Professional Office is defined as an office used as a place of business by a licensed professional such as an attorney, accountant, architect, engineer or a person in another generally recognized profession who uses training and knowledge of a technical, scientific or academic discipline as opposed to manual skills. Professional Offices shall not include outdoor storage, fabrication or transfer of commodity. Mr. Szafran further explained that a Contractor Construction Service Office would be defined as a type of professional office for the general administrative and accounting functions of a licensed contractor and may include a showroom. A Construction Service Office/Yard would be a more intense construction business where building materials, heavy equipment, tools, machinery and vehicles may or may not be stored outdoors. Outdoor Storage would be defined as the storage of any product, materials, equipment, machinery or scrap outside the confines of a fully-enclosed building.

Commissioner Craft observed that the proposed amendments are intended to address Professional Office uses and voiced concern that the proposed definitions related to Contractor Construction Service uses include showrooms and storage yards, which might be construed as sales and marketing establishments that have office components. He cautioned that the intent is to integrate Professional Offices into what has historically been low-density environments, and the expectation would be that the uses would be small professional offices that are non-invasive to the surrounding community. He expressed his belief that showrooms and storage yards do not belong in this conversation.

Mr. Szafran summarized that the uses discussed above are proposed to be added to Table 20.40.130, which is the Non-Residential Use Table. He noted that the Construction Service Office/Yard use is proposed to only be allowed in the Mixed Business (MB) zone, and the Contractor Construction Service Office and Professional Office uses are proposed to be allowed as conditional uses in the R-18 through R-48 and TC-4 zones, permitted outright in the Commercial (C) zones and allowed as conditional uses in the R-8 and R-12 zones.

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Mr. Szafran explained that the purpose of adding index criteria to the uses is to ensure that the proposed uses do not cause a negative effect to the surrounding neighborhood. Since Professional and Contractor Construction Service Offices are similar uses, the proposed index criteria are the same. The criteria include:

1. Located on an arterial street or within 400 feet of an arterial street.
2. Hours of operation limited to 7am to 6pm Monday through Friday and 10am to 5pm Saturday and Sunday.
3. Subject parcel is abutting a R-18 through R-48 zone or abutting a Neighborhood Business (NB), Community Business (CB), Mixed Business (MB) or Town Center (TC) 1, 2 or 3 zone.
4. No outdoor storage.
5. Parking shall be on a paved surface, pervious concrete or pavers. No commercial parking is allowed in required side or rear setbacks.
6. Compliance with all dimensional requirements set forth in Table SMC 20.50.020(1).
7. One sign complying with Table 20.50.540(G) is allowed but may not be internally illuminated.
8. Outdoor lighting shall comply with SMC 20.50.240(H).
9. No onsite transfer of merchandise,
10. Showrooms shall be limited to 50% of the net floor area of the building.
11. Parking areas shall be screened from adjacent single-family residential uses by either a 6-foot foot opaque fence or a Type-1 landscape buffer.

Commissioner Maul referred to Criteria 6, noting that the table includes height limits, setbacks, lot coverage, hardscape and density.

Commissioner Davis asked if Criteria 8 is similar to the residential lighting requirements, and Mr. Szafran responded that it addresses all outdoor lighting. For example, security lighting would have to be downlit and shielded so it doesn't go past the property line.

Mr. Szafran recalled that the City Council raised several questions about the administration of existing and proposed CUPs. He reviewed the questions, as well as the proposed amendments to address each one, as follows:

- **Can a CUP be revoked? If yes, what would the criteria be?** As proposed, the Director may revoke a CUP if the applicant fails to comply with the terms of a permit
- **Does a CUP run with the land or is it personal to the permit holder?** As proposed, the CUP would run with the land unless expressly stated otherwise in the CUP approval.
- **What happens if a CUP is abandoned for a certain amount of time?** As proposed, if the conditional use is discontinued for a period of 12 consecutive months, the permit shall expire and become null and void.
- **When does a CUP expire?** As proposed, any conditional use permit that is issued and not utilized will expire within two years from the date of the City's final decision and become null and void if no specific time is addressed. Upon written request of a property owner or their authorized representative prior to the date of CUP expiration, the Director may grant an extension of time up to, but not exceeding, 180 days.

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Mr. Szafran advised that the proposed amendments were evaluated based on the Development Code Amendment Criteria (See Staff Report). At this point, staff is not prepared to make a formal recommendation, as this is a discussion only. A public hearing is tentatively scheduled for March 5th.

Dean Williams, Attorney, said he was present to represent Melissa and Joseph Irons and Irons Brothers Construction. He voiced concern that a distinction is being created between Professional Offices and Contractor Construction Service Offices without any practical effect. Although the definitions are different, the conditions are almost identical. He cautioned that when you create two classes of individuals and then judge them on the identical criteria, it creates a situation down the road where different uses will be judged differently under standards that are written exactly the same. He noted that the Comprehensive Plan amendment only added Professional Offices to Policy LU2. He commented that adding all the different classification is inconsistent with the Comprehensive Plan amendment and doesn't serve any practical effect. There is also no reason to believe that an architect, for instance, wouldn't want to have a showroom as part of his/her office.

In the context of Irons Brothers Construction, Mr. Williams pointed out that there is no distinction between the office and the showroom. They advertise having a showroom in order to show some of the products they might be able to use in a project, but the showroom distinction in the proposed CUP criteria would not have any effect.

Mr. Williams voiced concern that the hours of operation proposed in Criteria 2 are too limited. It would be much more appropriate, particularly in a professional office situation, to allow meetings by appointment only outside of the regular hours. He said it is unclear if the hours of operation apply to all business activity or if employees can come and go.

Mr. Williams said the proposed amendments are also unclear as to the definition of a Commercial Vehicle. Contractors and many other business owners have the names of their businesses on their cars, and they may not have another vehicle. It would be much better to say "vehicles that can only be used for a commercial purpose."

Chair Montero asked whose idea it was to add the Contractor Construction Service Office and Construction Service Office/Yard classifications. These classifications are not found in any of the other cities he has researched. Mr. Szafran said the classifications were added by staff after looking at different intensities and uses and coming up with appropriate criteria to manage them. He emphasized that the proposed amendments are intended as a starting point. If the Commission likes having different classifications of offices, they could assign different types of mitigation. However, when trying to fit a contractor into the definition of Professional Office, staff felt it should be two separate uses.

Commissioner Maul observed that the proposed amendments appear to be addressing different types of uses. To him, Professional Office uses might include an architect who uses a conference room to show designs and products to clients. A Contractor Construction Service Office seems similar to Aurora Plumbing, where you have a sales room where they sell products, a back room full of parts that people can buy to fix their own stuff, and a warehouse where trucks come and go. He voiced concern that the two definitions are so similar that there is not a clear distinction for two very different uses. A Contractor

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Construction Service Office could have significantly more impact on adjacent residential properties. He said he is concerned that the proposed definitions do not provide enough clarity.

Commissioner Craft emphasized that the proposed amendments would impact abutting residential zones. While he wouldn't be opposed to a Professional Office use adjacent to his home, he wouldn't want a Contractor Construction Service Office and its associated commercial vehicles, etc., located next door. The two environments are distinctly different. While he appreciates staff's intent, perhaps there are better opportunities to provide clarification for Professional Office uses in specific locations. While the home-office environment serves an important purpose in the community, because of proximity to low-density residential areas, there needs to be a certain level of regulation to address noise, light, exhaust, storage and other issues.

Commissioner Malek explained that business incubation often happens at the home level, and if successful, businesses eventually move to commercial zones. However, the proposed amendments would allow a fledgling business incubation to expand to a full-blown business and operate in perpetuity. He noted that, as proposed, there would be no limit on the number of office uses that would be allowed to locate in a given area. He cautioned that if they allow areas to grow organically, at what point would it be fair or unfair for businesses to come and go as they become fully established. While he understands that the City would retain the right to revoke the permit if a business gets too big, the proposed amendments do not clearly outline how that would work. Absent a subarea plan, the proposed amendments could end up undermining commercial corridors where business investors have purchased commercial real estate for the purpose of their businesses.

Chair Montero agreed with Commissioner Malek. An individual contractor with a truck in his yard is totally different than a professional office. Larger cities designate Professional Office Zones that act as buffers between the residential and commercial areas. He expressed his belief that including "contractors" as a type of professional office use would be a disservice to what the Commission is trying to accomplish. Chair Montero said he supports allowing Professional Offices in residential zones, but he is not in favor of allowing construction service offices and yards with multiple employees to locate in residential zones.

Regarding Commissioner Malek's previous question, Mr. Szafran said any parcel that is zoned R-8 or R-12 can apply for a CUP for a Professional Office, and as proposed, there would be no limit on the number of Professional Offices that can locate in any given area. It might be possible to add a separation requirement. Commissioner Malek said there needs to be a clear line to distinguish between business incubation and full-fledged businesses that need to graduate to larger spaces in the commercial zones. He said he would support allowing Professional Offices in the R-8 and R-12 zones, but it would be inappropriate to allow construction service offices and/or yards in residential zones without clearly defined limits and boundaries.

Commissioner Davis summarized that she could also support allowing Professional Offices in residential zones. She acknowledged that people do not want contractor equipment and heavy, loud, stinky commercial vehicles adjacent to their homes, but she could see situations where a contract could fit into the definition as a licensed professional, as long as there are clear boundaries as to what is and is not allowed in terms of equipment and anything else that would be disruptive to the neighborhoods. Commissioner Maul concurred and said he works with contractors who have offices in buildings in

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downtown Seattle, but their trucks aren't coming and going and they aren't moving materials back and forth from that location.

Commissioner Craft agreed and commented that the Professional Office definition should not preclude contractors, as long as there aren't construction vehicles, stored materials, etc. He pointed out that there is quite a bit of R-8 and R-12 zoning in the City. While it is fine to have a mix, the proposed amendments could, theoretically, result in more professional offices than residences in the R-8 and R-12 zones. One argument would be to let market forces determine the appropriate number, but he is not sure that is the type of environment they want to promote for Shoreline.

Commissioner Malek observed that, in the Irons Brothers case, they were operating on one business lot and purchased another across the street as an assemblage, and the expansion was not really consistent with the concept of a business office out of someone's home. The expansion moved the business from a small, low-impact state to a professional institution that has higher utilization of infrastructure and impact to the surrounding residential community.

Vice Chair Mork agreed there is a big difference between a professional office with an attorney or another professional as opposed to a situation where there are many people coming to the site. She supports the proposed definition for Professional Office, and professional construction engineers could fall into the same category, but they wouldn't have multiple visitors at the same time and they wouldn't exacerbate the problem by taking up exceptional amounts of parking. Businesses that sell products should only be allowed in commercial zones.

Commissioner Lin said she supports allowing non-intrusive professional offices in residential zones. She pointed out that the current code allows adult family homes as commercial uses in residential zones, but there are limits on the number of employees, parking requirements, etc. She asked if a similar approach could be used for Professional Office uses to ensure they are less intrusive. She also asked if it would make sense to tie the CUP to the applicant rather than the property. Mr. Szafran said the proposal is that the CUP would apply to the parcel, unless the Director says otherwise through the CUP process. If a CUP is approved and the business ends up relocating, Vice Chair Mork asked if a new, entirely, different business would be allowed to locate on the site using the same CUP or if an entirely new CUP would be required. Chair Davis expressed her belief that the zoning should revert back to the original, lower zoning. Conditional uses should be considered exceptions to the rule, and allowing a CUP to run with the land doesn't make sense. Mr. Szafran asked what would happen if someone builds an office building on an R-8 parcel, and the original business relocates. Should a new CUP be required if the new business is different?

Chair Montero summarized that the Commission would like staff to tighten the definition for Professional Office and consolidate the definitions for Professional Office and Contractor Construction Service Office. Transferability of a CUP should stay with the property owner and not the parcel. Assistant City Attorney Ainsworth-Taylor said her research found that both options are used throughout the state. As proposed, the determination of whether a CUP runs with the land or is personal to the applicant will be made by the Director. Commissioner Davis raised concern that allowing the CUP to run with the land could result in planning being done based on profitability.

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Commissioner Craft commented that there needs to be some understanding that whatever the physical structure on the parcel is going to be used for, it must be in such a condition that conversion to a residential use would be possible. A person who wants to build an office environment may want to look elsewhere and locate in a commercial area that is more suitable for the business. He summarized that the Commission is interested in placing some limits on Professional Office uses to limit the impact to surrounding neighborhoods.

Commissioner Craft said he is still concerned that the potential geographical spread associated with the proposed amendments is much larger than it should be. Vice Chair Mork asked staff to provide a map showing the location of the properties that could be impacted by the proposed amendments.

Chair Montero said the Commission is also interested in limiting the number of Professional Office uses allowed in the City. Commissioner Craft suggested that a better approach might be to create a new zone for Professional Office uses. They have spent innumerable hours creating zoning for the type of growth and affordability they want, and it appears that the proposed amendments are an attempt to “sneak something in the back door.” This does not seem appropriate to him.

Commissioner Malek asked if there are any jurisdictions that use a quasi-judicial approach for processing CUPs. This would allow public input rather than it simply being an administrative decision. Assistant City Attorney Ainsworth-Taylor answered that a number of jurisdictions require CUPs to be approved by a hearing examiner.

Vice Chair Mork asked Mr. Szafran to describe what happens if a permit holder violates the terms of a CUP. Mr. Szafran answered that the Director can suspend or revoke any CUP for any of the reasons listed in SMC 20.30.300(C). Assistant City Attorney Ainsworth-Taylor added that the permit would be suspended and the permit holder would be allowed an opportunity to cure. If it comes to revocation of the permit, the permit holder would have to cease operations at the site or be in violation of the code. At that point, code enforcement action would apply. The permit holder could appeal the revocation to the hearing examiner.

The Commission agreed to push back the public hearing date to allow time for additional study.

STUDY ITEM: 2020 COMPREHENSIVE PLAN AMENDMENTS

Mr. Szafran reviewed that the Growth Management Act (GMA) limits the review of Comprehensive Plan amendments to no more than once a year. To ensure the public can view all of the proposals in a citywide context, the GMA directs cities to create a docket or list of the amendments that may be considered each year. For 2020, there is one privately-initiated amendment and two city-initiated amendments. None of the items on the docket have been evaluated by staff. He reviewed each of the amendments as follows:

- **Amendment 1 – Amend Table 6.6 of the Parks, Recreation and Open Space Plan to acquire park and open space between Dayton Avenue and Interstate 5 and between 145th and 165th Streets.** Table 6.6 of the Parks, Recreation and Open Space (PROS) Plan is a list of general capital projects that are targeted for acquisition between 2024 and 2029. The amendment will consider acquisition of park and open space between Dayton Avenue to I-5 and between 145th Street to

165th Street instead of the more constrained area of Aurora Avenue to I-5 and 155th Street to 165th Street. The proposed amendment will provide additional opportunities to meet the level of serve targets for parks for the Westminster Triangle Neighborhood as demonstrated in PROS Plan Figure 4.17.

- **Amendment 2 – Amend the Point Wells Subarea Plan to be consistent with an Interlocal Agreement between the City of Shoreline and Town of Woodway.** The amendment proposes to amend the Point Wells Subarea Plan and associated Comprehensive Plan Policy LU-51 related to Point Wells to implement the Interlocal Agreement approved by the City Council on October 7, 2019. The agreement pertains to Shoreline’s support for Woodway’s future annexation of Point Wells and coordination of land use planning and development regulations for the area by the Town of Woodway and City of Shoreline.
- **Amendment 3 – Amend the Land Use Element to include a new policy requiring commercial uses within commercial and mixed-use zones.** This is a privately-initiated amendment to add a new Land Use Element Policy LU-9 to require commercial uses in the City’s mixed-use and commercial zones. Currently, there are no regulations that require mixed-use or commercially-zoned parcels be developed in the commercial and mixed-use zones, which means purely residential projects can be developed. The applicant has also submitted a companion Development Code amendment that would list specific development regulations for the commercial spaces in those zones.

Mr. Szafran summarized that the Commission is being asked to make a recommendation on which of the proposed amendments should be studied in 2020, and staff is recommending that all of them be added to the final docket.

Kevin Atkinson, Shoreline, asked the Commission to support allowing Amendment 3 to be included on the 2020 Docket. He pointed out that Shoreline is the only City in Puget Sound that allows parcels in commercial zones to be developed to 100% residential use. All other cities require mixed-use in commercial zones. From the perspective of a balance sheet, residential development is easier to develop and has a quicker rate of return for investors, and that is why every other city protects and nurtures its commercial zones. If left to the discretion of a developer, they will go for the quick and easy money. It is time for Shoreline to look at the evidence of the current policy and make a change.

Commissioner Maul voiced support for including all three proposed amendments on the 2020 Docket for further consideration. In particular, he agreed that it is time to think about requiring commercial uses in the commercial and mixed-use zones (Amendment 3). However, he has some specific thoughts about the companion Development Code amendment. Commissioner Craft agreed that more time will be needed to consider the Development Code amendment. Mr. Szafran said the amendment would be included in the batch of Development Code amendments that will be considered in 2020.

VICE CHAIR MORK MOVED THAT THE COMMISSION FORWARD A RECOMMENDATION TO THE CITY COUNCIL THAT ALL THREE OF THE PROPOSED AMENDMENTS BE INCLUDED ON THE 2020 COMPREHENSIVE PLAN AMENDMENT

DOCKET. COMMISSIONER MAUL SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business.

REPORTS OF COMMITTEES AND COMMISSIONER ANNOUNCEMENTS

Commissioner Malek reported that Blue Square Real Estate (BSRE), the developer for Point Wells, was given a resubmittal deadline of December 18, 2019. The judge explained that the original hearing examiner incorrectly assumed that he could not rule to reactivate the application, when in fact, it was possible. He gave the applicant another chance to submit, and BSRE did so on December 12th. The resubmittal was designed to address no less than 42 issues of code non-compliance, but was not fundamentally different than the original submittal. There are still a lot of discrepancies with the County. For example:

- There is a lack of clear engineering solutions and tables to address issues of secondary access through Woodway.
- Some of the dwelling units in the proposed design are in the landslide hazard area, and the resubmittal does not identify how this risk will be addressed.
- The proposed 18-story buildings exceed the 9-story height restriction if the applicant doesn't provide access to high-capacity transportation, and Sound Transit does not have any plan to put a rail station there. BSRE has applied for a variance to change that ruling.
- There is disagreement as to the boundary of the ordinary highwater mark and construction of buildings within that area.
- BSRE is looking for a reduction in the parking requirement without providing any clear count for how much senior housing would be provided.

Commissioner Malek summarized that the judge's order allowed for a one-time reactivation for BSRE to resubmit an application and correct the mistake of the hearing examiner who originally declined their request. Both the judge's remand order and the resubmittal documents are available on line. They are also available on the Richmond Beach Community Association's website for Point Wells. The Town of Woodway also has a website for Point Wells, as does Snohomish County. The Everett Herald is another good source of information. He said the court sees the reactivation as a one-time opportunity rather than an avenue for future reactivation requests. The intent was to right a wrong and allow the applicant an opportunity, without prejudice, to do a resubmittal. If the resubmittal does not address the issues called out by the County, BSRE will not receive any additional extensions.

Assistant City Attorney Ainsworth-Taylor clarified that the judge's decision only allowed for the reactivation that BSRE asserted they were vested to and the County had argued they were not vested to.

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BSRE has exercised the reactivation and the permits are now back under the same numbers and under the regulations they were originally vested to in 2011. The application will continue on to the Court of Appeals, and the City has completed its briefing round. One more briefing round is left to do, and then there will be oral argument on the high-capacity transit issue, which is the only issue that was appealed.

If the City changes its Comprehensive Plan to reflect the Interlocal Agreement with Woodway, Commissioner Malek asked how it would change the applicant's current vesting status. Assistant City Attorney Ainsworth-Taylor responded that the project would remain vested to the County's code because the property is still within the County's jurisdictional base. Any annexation agreement, whether it be with Shoreline or the Town of Woodway, would address and usually retain the vesting of permits that are currently under consideration.

If the Comprehensive Plan is changed as proposed by Amendment 1, Commissioner Malek asked if the change would apply to the Point Wells Property if BSRE loses its vesting right. Assistant City Attorney Ainsworth-Taylor answered no, and explained that the City's Comprehensive Plan has no application in Point Wells, which is located in unincorporated Snohomish County. Currently, the property's land use designation is Urban Village, and it is primarily zoned Planned Community Business, with a small amount of Industrial zoning. Commissioner Malek asked if the City's Comprehensive Plan would have some influence if BSRE is using Shoreline services and access roads. Similarly, wouldn't Woodway have some influence over ingress/egress and the scope of the build. Assistant City Attorney Ainsworth-Taylor advised that is an argument to be made.

Commissioner Maul asked the benefit of the City spending time on a subarea plan for Point Wells. Assistant City Attorney Ainsworth-Taylor explained that when the subarea plan was created in 1998 and 1999, it was intended to show the City's intent and interest in annexing the property. However, the subarea plan has no true impact on the Point Wells development.

AGENDA FOR NEXT MEETING

Mr. Szafran advised that the February 20th agenda will include an update on the 185th Corridor Study and a Finland presentation on land use and transportation planning. The Commission will continue its discussion on the proposed Development Code amendment related to professional offices in the R-8 and R-12 zones on March 5th.

ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

William Montero
Chair, Planning Commission

Carla Hoekzema
Clerk, Planning Commission

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