



**MINUTES** (Approved on 11-4-15)

**TIME:** Wednesday, October 21, 2015, 4:00 p.m.  
**PLACE:** Room 16, Tacoma Municipal Building North  
733 Market Street, Tacoma, WA 98402  
**PRESENT:** Stephen Wamback (Vice-Chair), Donald Erickson, Meredith Neal, Brett Santhuff,  
Dorian Waller, Scott Winship  
**ABSENT:** Chris Beale (Chair), Anna Petersen

**A. CALL TO ORDER AND QUORUM CALL**

Vice-Chair Wamback called the meeting to order at 4:09 p.m. A quorum was declared.

**B. APPROVAL OF AGENDA**

The agenda was approved.

**C. APPROVAL OF MINUTES**

The minutes of the regular meeting and public hearing on October 7, 2015 were reviewed and approved as submitted.

**D. DISCUSSION ITEMS**

**1. Unified Development Code (UDC)**

Peter Huffman, Planning and Development Services Director, provided a briefing on the development of the Unified Development Code (UDC) which would make the development codes more accessible, effective, and predictable for customers, staff, and the community. He commented that the predictability piece was critical as many of the code sections that affect development are spread throughout the Municipal Code creating a web of code authorities and requirements that often conflict. Mr. Huffman noted that the goals of the UDC were to create a single source reference for all development related regulations/codes; organize development codes to align with the typical design/development process; resolve inconsistencies and conflicts; clarify authorities and streamline processes; and develop a user-friendly, web-based interface. He commented that the goals were in line with the strategic objectives of the department with regards to people, process, and policy.

The code sections that were being considered for consolidation included Title 2 - Building Code, Title 3 - Fire, Title 9 - Public Ways, Title 10 - Public Works, Title 12 - Utilities, and Title 13 - Land Use Regulatory Code. The proposal was to consolidate the titles into the new Title 19. He commented that bringing the codes together would also help them to develop comprehensive code and avoid conflict in the development of the code. Sue Coffman, Planning and Development Services Assistant Division Manager, commented that the process that they went through with Live-Work/Work-Live codes was an example of how to get the codes to work together within one code package and the UDC would encourage that type of code development.

The schedule was discussed. Mr. Huffman reviewed that in Phase 1 they had hired consultants and scoped the project out with a large amount research including analysis of the UDC of San Antonio. In Phase 2 they were getting into the details of the code construct and identifying the easy to resolve issues, recognizing that Phase 3 would be more complex. As they moved into 2016 there would be discussions with the Planning Commission as they amend Title 13 to reconcile with the new Title 19. Other project

goals would include clear delegation of authority for decision making; clear reference and standard guidelines; consolidation of code sections by related type of development versus by code authority; simplification of fees; and availability in an online format designed to improve accessibility.

Commissioners provided the following comments and questions:

- Commissioner Winship asked if there would be an index of acronyms. Ms. Coffman responded that how the glossary would be handled was still being considered, but they would ensure that definitions and acronyms are merged from the different code sections to eliminate conflicts.
- Commissioner Waller asked why Title 11 - Traffic and Title 14 - Urban Renewal were not being consolidated. It was noted that Public Ways would likely handle Traffic and that Urban Renewal was included in the tracking list.
- Commissioner Neal asked what the process would be for dealing with inconsistencies within the code and if there would be public involvement. Mr. Huffman responded that administrative inconsistencies would be dealt with internally. Structured code conflicts that are above administrative decisions would go through a public process of discussion.
- Commissioner Erickson asked if they could cite which municipalities adopted a UDC and if any of them were local. It was noted that Snohomish County had adopted a UDC. Mr. Huffman reported that San Antonio had been highlighted during Phase 1 for having some of the best practices.

## 2. Billboard Regulations

John Harrington, Planning and Development Services Division, facilitated a discussion to review public comments (testimony received at the public hearing on October 7, 2015 and written comments received through October 9, 2015), consider modifications to the proposed code amendments, and make a recommendation to the City Council. Mr. Harrington highlighted six representative public comments. Representatives of Clear Channel Outdoor (CCO) and business owners had commented that billboard advertising supports small business and non-profits. Three billboard owners had asserted that existing billboards were legal and in compliance with codes when built. Four commenters had expressed support for amortization and some concern for potential issues related to MAP 21. Twenty five commenters had expressed support for removal of billboards from the City. One landowner commented that CCO leases are difficult to get out of. There were also comments that regulations should protect development potential.

Jeff Capell, Deputy City Attorney, addressed legal questions from Commissioners concerning billboard regulations. He reported that amortization is legally viable process and that the State Supreme Court decision in the 1998 Rhod-A-Zalea & 35<sup>th</sup> v. Snohomish County case had established that amortization is a viable path for getting rid of nonconforming uses.

Commissioners provided the following comments and questions:

- Commissioner Winship asked if there were any legal requirements with regard to the duration of an amortization period. Mr. Capell commented that a reasonable amount of time is required, but there weren't any specific time requirements.
- Vice-Chair Wamback asked if creating a new amortization period would make it more likely they would have to comply with the MAP 21 compensation clause. Brian Boudet, Planning Services Division Manager, recommended that the Commission include a finding noting the concerns about the legal issues surrounding amortization. Mr. Harrington commented that a representative of the Washington State DOT had reported that the local jurisdictions would have to develop their own regulations for the new routes similar to what the State had done. He added that the State regulations were requiring fair compensation on State routes.
- Commissioner Erickson asked if the new amortization would be considered a reset or an extension. Mr. Boudet responded that they could specify that the intent was to extend and not reset the amortization period in their recommendations.
- Commissioner Erickson noted concerns from the public testimony about the exchange program benefitting CCO almost exclusively and asked if they were creating a monopoly. Mr. Capell responded that the current ownership is an existing present situation.

- In response to a question about whether billboards were real or personal property, Mr. Capell explained that when a billboard is being moved to a location it is personal property, but when it is fixed to the ground it becomes a fixture and part of the real property.
- Commissioner Santhuff asked if they could pursue the option of having fixed term permits for future billboards. Mr. Capell responded that it could be done, but unless the applicant and regulatory authority were in agreement it could become an appeal issue.
- Commissioner Erickson asked about the distinction between legal nonconforming and illegal-nonconforming. Mr. Capell responded that the Rhod-A-Zalea & 35<sup>th</sup> v. Snohomish County case had defined a nonconforming use as one that lawfully existed prior to the existing code. He added that the State Supreme court had also said that for things like life, health, and safety interests you can regulate existing nonconforming uses out of existence so long as you don't violate constitutional provisions, primarily from the Takings Clause.

Vice-Chair Wamback recessed the meeting at 5:50 p.m. The meeting resumed at 5:58 p.m.

The maps of buffer options for Downtown were reviewed. Mr. Harrington discussed new options including removal of the Conservation District buffer; removing the school buffer; reducing the historic building buffer; removing the historic building buffer; removing the buffer for Downtown Residential (DR); allowing wall signs in the DR area; and removing the dispersion requirement from existing pole signs. Discussion ensued. Commissioners concurred on removing the Conservation District buffer; removing the school buffer; reducing the buffer from historic buildings to 100 feet; removing the Downtown Residential buffer; and a dispersion requirement of 200 feet from any billboards in the same view corridor.

The proposed Billboard Code Amendments were discussed. Mr. Harrington reviewed the recommendations including pole mounted billboards limited to old billboard zones; wall signs permitted in all billboard zones; exchange ratios; physical characteristics for size, height, design, illumination, landscaping, and maintenance; buffers and dispersal; and 3 and 5 year amortization periods.

Commissioners provided the following comments and recommendations:

- Vice-Chair Wamback asked if the paragraph discussing dispersal of freestanding signs larger than 300 square feet was still necessary as they were no longer permitted on the Billboard Use Matrix. Mr. Boudet suggested modifying the second paragraph to specify the dispersal requirements from larger and smaller signs. Commissioners concurred.
- Commissioner Erickson suggested removing the 3 and 5 year amortization periods from the recommendations out of concern that it could be interpreted as resetting the amortization period. Vice-Chair Wamback noted that he had suggested a statement in the cover letter that billboard owners had continued to extract value from assets that had been fully amortized.
- Commissioner Winship suggested removing the word 'legal' from 'legal nonconforming' in their recommendations to avoid confusion. Commissioners concurred and requested that their concerns be noted in the Findings of Fact and Recommendations Report.
- Commissioner Santhuff suggested having fixed term permits for future signage. It was noted that amortization had already been vetted by the courts as a mechanism for placing a limitation on the duration of the sign and a fixed term on permits would possibly be subject to additional litigation.
- Vice-Chair Wamback asked if the existing 311 faces and 93,684 square feet was the appropriate ceiling for what would be allowed. Commissioner Erickson commented that they could potentially end up with more square footage, but fewer signs. Commissioners concurred with removing the cap on total square footage to prioritize removal of pole signs.
- Vice-Chair Wamback asked if there should be a lower threshold for the requirement that billboards be removed or made conforming for any alteration within a two-year period where the cumulative value exceeds 200% of the value of the existing development or structure. Mr. Boudet noted that the 200% threshold is a reference to conformance requirements in other sections of the Land Use code. Commissioners concurred to changing the threshold to 100%.
- Commissioner Santhuff recommended labeling the offset sign in the design standards illustration.

The draft Findings of Fact and Recommendations Report was discussed. Mr. Harrington reviewed that the key findings including that conditions and community feelings had not changed since 2011; pole signs are considered not compatible with the city; wall signs are now the preferred way of having billboards in

the City; amortization is an effective tool for removing nonconforming billboards that are not moved or made conforming; an exchange program should encourage wall signs. Vice-Chair Wamback noted that some findings would likely need to be changed to reflect the changes made to the proposed code. Mr. Boudet reviewed that they would summarize the changes to the proposed code in Finding 42.

Commissioners provided the following comments and recommendations:

- Commissioner Erickson asked if they had specified in the definition of wall signs to exclude frames or other structures. Mr. Boudet responded that there currently was not anything in the code excluding frames for wall signs.
- Vice-Chair Wamback noted that Finding 39 would require buildings be at least two stories for wall signs and would eliminate single story buildings. Commissioner Erickson expressed support for maintaining two-story minimum to reduce issues related to vandalism.
- Commissioner Santhuff asked if Finding 32, which stated that the proposed amendments were inconsistent with the goals and policies of the Comprehensive Plan, was supposed to say “consistent”. Commissioners concurred with revising it to say “consistent”.
- Mr. Boudet suggested adding a Finding 43 that would discuss the legal issues and outstanding questions around the extended amortization period and MAP 21. Vice-Chair Wamback suggested adding the language between Findings 40 and 41.
- Commissioner Santhuff suggested that references to billboards as “legally nonconforming” should be changed to reflect changes to the language in the proposed code. Commissioners concurred to revising the language to “the other 308 billboard faces are nonconforming to the current code”.
- Commissioner Santhuff recommended including a finding addressing what the City needs to do with illegal nonconforming signs to identify and remove them. Vice-Chair Wamback suggested adding a statement between Findings 13 and 14 that the Commission’s intent is not to legitimize a sign that may have been installed incorrectly or inconsistent with its original intent.

The draft Letter of Recommendation was discussed. Vice-Chair Wamback noted that he had requested the addition of language reflecting the discussion including that they supported the general process; a reminder that the Commission has been involved with the issue for a long time; that nothing has changed that would cause them to take a more relaxed position than the 2011 Planning Commission; concerns related to amortization; that the Commission opposes digital billboards and pole signs over 300 square feet; and that they believed the proposal would result in fewer billboards and some of the existing billboards becoming conforming.

Commissioner Erickson motioned to transmit the Cover Letter, Finding of Fact and Recommendations, and Proposed Land Use Regulatory Code Amendments to the City Council with all of the discussed modifications. Commissioner Winship seconded. The motion was approved unanimously.

#### **E. COMMUNICATION ITEMS & OTHER BUSINESS**

Lihuang Wung, Planning Services Division, requested the cancellation of the November 18<sup>th</sup> Planning Commission meeting to accommodate a special meeting of the Infrastructure, Planning, and Sustainability Committee. Commissioner Winship motioned to cancel the November 18 meeting. Commissioner Santhuff seconded. The motion was approved unanimously.

Mr. Boudet reported that the November 4<sup>th</sup> meeting agenda included the Planning Work Program for 2016-2017.

#### **F. ADJOURNMENT**

At 7:33 p.m., the meeting of the Planning Commission was concluded.