

## **Sultan Planning Board Meeting**

**April 17, 2007**

The meeting was called to order at 7:04 p.m. by Chairperson Latimore

Planning Board members Present: Kurt Latimore, Sarah Davenport Smith, Charles Van Pelt, Jeff Cofer, George Schmidt.

Staff Present: City Administrator Deborah Knight, Community Development Director Rick Cisar, and Planning Commission Secretary Tami Pevey.

### **Public Comment**

Board member Latimore observed a moment of silence for the families, students, and faculty of Virginia Tech.

Loretta Storm addressed issues regarding the upcoming hearing on non conforming uses; the agenda was not sent out on a list serve. Hearing notice problem states changes to non conforming use 16.80, and 16.18.06, which is not and thinks the issue should be re-noted. Referred to the upcoming hearing as a designer change and fails to see why it needs to be changed as it appears it is to be for one business and one purpose; not a reason to change globally and suggested it be addressed as a conditional use instead. Expressed appreciation for board members presence.

### **Changes to Agenda**

Board member Latimore added the meeting minutes from February 20, 2007 for approval

### **Committee Reports and Staff Presentations**

#### **1. *Comprehensive Plan Update and Supplemental Environmental Impact Statement (SEIS), Reid Shockey, Shockey Brent, Inc.***

Community Development Director Rick Cisar advised that Reid Shockey had a meeting in Snohomish and was unable to make it. He proceeded to update the board on the SEIS. Previous discussion talked about an addendum, but have found it advantageous to complete a supplemental SEIS. Advised the board it adds another sixty days to the expected timeframe for compliance with the hearings board. Concerned getting the document out to public for review so they will take it out for a 40 day public review. Then when the SEIS is presented to the board it will include public comments. Reviewed the tentative schedule as

provided in the agenda packet and gave the board members a heads up on what they can expect. Asked for board members approval to proceed.

Boardmember Latimore and Davenport Smith gave their approval, no objections.

Boardmember Schmidt asked for more clarity as it goes out to the public. Confirmed that they have 2004 EIS and in order to update it a supplemental will be used to amend it.

Community Development Director Rick Cisar stated the supplemental updates the revisions to the SEIS, but there is not as much detail with the supplemental. They will be using the information gained in the original EIS and supplementing it with modifications they are going to make. Reid Shockey will address just the changes and not the entire EIS.

Board member Schmidt questioned if that will be clear to the general public.

Rick Cisar stated he will ask Reid Shockey to provide a summary memo as to what is being processed and what the city is asking for.

Board member Schmidt stated that would be helpful.

Rick Cisar stated he will proceed and be back on May 15<sup>th</sup> with Reid Shockey. Board members will be provided documents in advance of the meeting so they have an opportunity for review.

**2. Staff update and adoption schedule for the Shoreline Master Program (SMP),  
Community Development Director Rick Cisar**

Rick Cisar provided the board members with a copy of the Shoreline Master Program and advised them that Aubin Phillips will be back to give greater detail. He reviewed the background history from 2002 forward to include grant funding. He further advised the board that the city currently has received up to \$76,000 in grant money with this program. It is expected to have the processed by 2009. The city expects to be an early adopter making Sultan the first one through the door in the Shoreline Program and he feels the city will benefit from that status.

The history included the planning commission having public hearings and meetings with various agencies involved. At the end of the public hearing process in 2002 the council closed the public hearing. Rick Cisar requested at that time that it be sent off to ecology and the attorney general's office for

review and then allow them to send it back. That process was completed and that's why it took a bit longer, otherwise they would have been done last year.

He feels confident that the final draft is being presented to board members this evening as it incorporates comments from the public, Department of Ecology, and the Attorney General's office. Rick Cisar reviewed the schedule for adoption as provided in the agenda packet.

City Administrator Deborah Knight clarified that the meetings for the council are June 14 and June 28; the second and fourth Thursday of every month.

Rick Cisar feels that hopefully they will complete the schedule as mentioned and adopt the SMP ordinance. He advised Aubin Phillip provided a short memo on what was changed. Also stated the entire document is available on the city website, a copy in library, and at the front desk in city hall. He is currently in the process of creating and distributing 10 copies to the city council. The adopting ordinance is four to five pages to include the step by step process regarding meetings, who attended, and comments received. He advised the board that at the next meeting Aubin Phillip will be present to answer questions and review further.

**3. Staff update of the Nonconforming Use Amendment for Sky Valley Automotive , Community Development Director Rick Cisar**

Rick Cisar advised that in September 2006 Warren Jerden, owner, approached the planning board for expansion of Sky Valley Automotive. In 1995 when the zoning district was changed Sky Valley Automotive became an illegal non conforming use and is not allowed in the urban center zone. Explained a non conforming single family residence can expand, but the code is silent to commercial uses. Further explained if building is destroyed or in needed of repair and if that repair exceeds 25% of building valuation they would lose the use of the building for that use and must reconstruct the building and conform to the set back requirements.

At the next meeting there will be a public hearing that needs to look at two elements for review; should we modify our current non conforming use provisions to provide for the expansion of non conforming uses like we do for single family non conforming uses that would be city wide. Sky Valley Automotive is recommending increasing the threshold from 25% to 75%. The rational being a business invests money into a building and damage such as a flood causes them to exceed the 25% threshold they would then lose their business and their building under the current code.

Staff is researching what other cities are doing in regards to non conforming uses. Current code speaks of single family uses, but nothing in regards to commercial/industrial. Mr. Cisar admitted he did make errors in regards to notices, but stated he plans ahead and gives to the paper ahead of time in case he makes an error. He will correct it and have it in the paper to meet deadlines.

Board Member Van Pelt confirmed the reason it is non conforming is because it is auto repair, and that if it was for instance a grocery store, it would be okay.

Rick Cisar explained if it was a retail use it would be allowed. The intent of urban center zone focuses on pedestrian. Auto repair is deemed commercial and has an adverse impact to pedestrians. The code change two years ago considered Main Street as pedestrian and Highway 2 was oriented to automobile so the it was modified to allow for automobile type uses with direct frontage on Hwy 2. A new lube/oil shop being presented in the near future located near the Hoot Owl Car Wash. Sky Valley Automotive is on Main Street with no Highway 2 direct access. At the same time we don't allow single family uses in urban zone, but have a mixture of both in that zone.

Deborah Knight requested that Rick give an explanation on why the code change is necessary to accommodate Sky Valley Auto and that there is not another option.

Rick Cisar stated they looked at different options in order to allow them to expand. One would be to modify the code but going through a process without being adjacent to Highway 2 makes it difficult. To modify the comp plan is a very long process. A question came up as to whether or not there was such a thing as a land use variance and that doesn't exist. Looking at non conforming uses in general, he reminded the board members they are small commercial facility that want to expand. Without expansion they would need to relocate and it may not be practical for them to do so.

Board member Van Pelt asked what was the original intent of moving automobile uses and rezoning?

Rick Cisar stated to get them on the Highway and in the HO zone. Code also silent to automobile retail sales such as when Napa left they lost their non conforming use status. Orientation downtown is pedestrian; had a mortuary earlier but it was taken out by the planning commission. Finding Highway Zone and Urban Zone and making it all work can be difficult.

Deborah Knight reminded the planning board if the planning board wants to make a recommendation to allow non conforming use they end up with two

issues: if community desire is to be more pedestrian friendly, allowing it would stretch out the timeframe to accomplish that desire. The other issue is that although application specific to particular property, change to code makes it available to everyone for use so they need to consider the broader impacts. Advised it will be presented at a later meeting in regards to the broader impact. Need to consider how broad or narrow do you want to define your non conforming use and how that impacts the community.

Rick Cisar advised that every city looked at it a little bit differently. A lot of non conforming use standards are administered by staff. One city gives a recommendation to planning commission, criteria standards set, and then once it is abandoned the change is no longer allowed. Stated his staff report in the future will give details and alternatives, and the business owner will be present for questions and discussion.

Board member Schmidt asked if the information and timeline will be outlined before May 1<sup>st</sup>, or they will receive it before May 1<sup>st</sup>.

Rick Cisar stated they will receive the information before May 1<sup>st</sup>.

Board member Latimore confirmed if there was an application for construction now.

Rick Cisar stated no, they applied in the past but it was denied because of the non conforming use status.

Deborah Knight stated the difficulty comes in because not just this business and this business owner; change necessary to determine non conforming use needed for all to clarify.

Board member Van Pelt questioned if the business owner had a back up plan to move to a commercial area.

Rick Cisar stated they want to expand and turn ownership over to the son.

Board member Latimore asked If the building was totally damaged they couldn't replace the structure

Rick Cisar stated no, they would lose their non conforming status. You could put a building back that conforms to the standard, but you couldn't have that use back.

Board member Latimore clarified they could replace building to have building in compliance, but couldn't resume the use, and that threshold is currently 25%.

Rick Cisar stated it is currently 25% and in research the average is 50%. It is a possible recommendation by staff as it is currently used by the building official in flood plain mitigation. It is determined by having an appraiser go out and look at the assessed valuation factoring in the consumer price index.

### **ACTION – APPROVAL**

#### **1. Approval of the April 3, 2007 Minutes.**

Board Member Davenport Smith requested changes as follows:

Pg 1

“explained MS4 permits for smaller cities”, insert “these” between MS4 & permits.

Pg 2

“Cities required to have the permit in place”, change “permit” to “SWMP”

Pg 3

“permit fees” is one word

blank line mid page needs to state AKART stands for “all known available methods”

pg 5

“smith stated no, phase two now” needs to say “phase two is the last”

Board member Van Pelt moved to accept the April 3<sup>rd</sup> minutes with changes recommended. Boardmember Davenport-Smith moved to second the motion. All board members in favor; motion passed.

#### **2. Approval of February 20, 2007 minutes**

Clarified by Planning Commission Secretary Tami Pevey that the minutes were already approved with changes, board members now being given the minutes with changes.

### **DISCUSSION ITEMS**

#### ***Planning Board presentations to City Council for periodic updates and majority/minority reports.***

Rick Cisar presented the concern that if the board had a split vote how would majority and minority present their case to council. The council is provided with planning board minutes.

Board member Davenport Smith confirmed if she understood correctly that the council was provided minutes only when split vote or as a general practice that they are always given the minutes.

Rick Cisar stated as a general practice.

Board member Latimore confirmed that those indicated voting patterns.

Rick Cisar stated yes, what you see in minutes is what the council is given. He said he can provide more detail in the agenda packet given to the council and stated in the past the chairperson has come to council meetings to present and that has worked out well.

Board member Latimore was not opposed to presenting to council; not sure a structured timeframe was needed to accomplish that, but agreed there will be certain times where it could be useful. Personally doesn't like majority/minority report and would prefer to let the minutes stand as they are.

Board member Davenport Smith stated during the last discussion there was a question of whether or not minutes are being provided to council. Now that they know they are, doesn't feel an additional report would be helpful or necessary.

Deborah Knight clarified that the Planning Board minutes are included when making recommendation to council; otherwise they are not going to council on a regular basis.

Board member Cofer agreed with Board member Latimore and doesn't think majority/minority report would be good for the board in general. Confident that there is solidarity amongst board members, but doesn't want to assign assumption to every board that convenes. Feels that in the wrong circumstances it could be used to undermine the board and that majority rules, anything else can be researched in the minutes.

Board member Davenport Smith questioned if they were to have a split vote, when recommendation given to council would they be advised of a split vote.

Rick Cisar stated what has been done in the past would be to advise them how many yea's and nays; however, he suggests putting all minutes in council packets.

Deborah Knight clarified if it would be attached to staff reports.

Rick Cisar stated even when no recommendation they can be placed in the staff report. In the past staff would do a text amendment, send it to the city attorney and when they came back they would be difficult to read; May appear differently from intent, but no changes.

Board member Van Pelt also agreed with Board member Latimore, but questioned if this particular situation is addressed in rules of the board.

Rick Cisar stated it is silent to that type of report.

Board member Cofer stated to apply it retroactively and feels would be a disaster and the board is much better off without it.

Board member Davenport Smith felt if the minutes are sent, no need for special report.

Board member Schmidt was in agreement.

### **PUBLIC COMMENT ON AGENDA ITEMS ONLY**

Loretta Storm – Regarding majority/minority explained that became important because of dissension in the commission. It was felt by some that their points of view and points of law weren't being reported to council so that they would have all the facts to maybe make an alternate decision beside what was being presented to council; however she doesn't see the same problem with this board. Extremely helpful to have discussion and communication amongst members to achieve the best results. As long as the votes are recorded, feels that is adequate.

Regarding non conforming uses, appreciated Deborah Knight's comments on global ramifications. The board had a clear vision in the 1995 plan, as well as the 2004 plan that Main Street was to be a pedestrian friendly, flower lined street. Already had the Hoot Owl and Sky Valley Automotive in place, didn't see a need for another place. As long as they are there already is fine, but enlarging those businesses and changing codes that would have larger ramifications to the community doesn't make sense.

### **PLANNING BOARD COMMENTS**

Board member Van Pelt stated that as we look at this, apparently the vision in 95 was tree lined, flower lined downtown. Need to keep in mind we affect both the new end of town and the old part of town and we need to keep in mind what would move. Thanked the public for their attendance.

Board member Schmidt appreciated comments; Encouraged staff to give complete picture as much as possible. Is a citizen and is very puzzled on the process and what was to be included and the timeframe. First form of communication to us, as public, and appreciated comments and encourage that type of presentation to start with.

Board member Cofer moved to adjourn, seconded by Board member Van Pelt. All in favor.

Planning Board meeting ended at 8:00 p.m.