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**MINUTES** (Approved on 2-7-18)

**TIME:** Wednesday, January 17, 2018, 5:00 p.m.  
**PLACE:** Room 16, Tacoma Municipal Building North  
733 Market Street, Tacoma, WA 98402  
**PRESENT:** Stephen Wamback (Chair), Anna Petersen (Vice-Chair), Carolyn Edmonds, Brett Santhuff  
**ABSENT:** Jeff McInnis, Andrew Strobel, Dorian Waller

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

Chair Wamback called the meeting to order at 5:02 p.m. A quorum was declared.

**B. APPROVAL OF AGENDA AND MINUTES**

The agenda was approved. The minutes of the regular meeting and public hearing on January 3, 2018 were approved as submitted.

**C. PUBLIC COMMENTS**

Chair Wamback invited citizens to provide comments on items related to the agenda, except the subject of a recent public hearing, i.e., Proposed Correctional and Detention Facilities Permanent Regulations. The following citizens provided comments:

- 1) Lance Odermat, Brown Bear Car Wash:  
Mr. Odermat stated that Brown Bear had owned and operated sites within the City since the early 1970s. Their investment on 6<sup>th</sup> Avenue would bring a modern car washing facility to the dilapidated property in that part of the neighborhood that had not been thriving, provide economic and environmental benefits, provide additional tax revenue to the city, and offer higher paid jobs than many businesses in the neighborhood. He mentioned that their recent project in the City of Poulsbo that had received strong opposition initially, including from the Mayor, was now viewed as an asset to the community. Mr. Odermat urged the Planning Commission to consider supporting his application.
- 2) Damon Gulick:  
Mr. Gulick owned a property in Titlow area abutting the Crystal Springs. His past interactions with the City had mostly been assessing fees and penalties for violating wetland buffer related issues. Concerning the City's efforts in the Open Space Corridor evaluation, Mr. Gulick felt that the current document was not providing benefits or assistance to home owners in addressing such issues as people accessing the property for illegal reasons and coyotes killing pets; it was only adding burdens, requirements and restrictions to home owners.

**D. DISCUSSION ITEMS**

**1. Proposed Correctional and Detention Facilities Permanent Regulations**

Ian Munce, Planning and Development Services Department, reviewed the background of the Correctional Facilities Interim Regulations enacted by the City Council in March 2017 and subsequently modified in May 2017. He stated that the Planning Commission had been developing the corresponding permanent regulations for the City Council's consideration prior to the expiration of the interim regulations in March 2018. Upon completing the public hearing process in early January, the Commission was now

ready to consider finalizing the proposed Correctional and Detention Facilities Permanent Regulations, which would amend several sections of the Tacoma Municipal Code that would:

- Prohibit correctional and detention facilities in multi-family and light industrial zoning districts where they are currently allowed;
- Require a Conditional Use Permit (CUP) for new, or significant modifications to existing, correctional and detention facilities in zones where they are allowed;
- As part of the CUP process, require expanded public notice (to properties within 1,000 feet) and a pre-application community meeting; and
- Modify and expand the definition of “correctional facilities” to “correctional and detention facilities.”

Discussion ensued. Commissioners provided the following questions and comments:

- Vice-Chair Petersen objected to the proposed prohibition of correctional/detention facilities in residential and light industrial zones. She believed they should be allowed in R and M-1 zones, and not allowed in zones not appropriate for human living (i.e., PMI and M-2).
- Commissioner Santhuff was in favor of prohibiting correctional/detention facilities in residential zones. He believed maintaining a CUP is important. He noted that R-4L and R-4 are in random locations throughout the city, and are getting reduced in the process of creating other zones. He wondered what the potential was for any such facility to be located in those zones.
- Concerning the distinction between correctional and detention facilities being made in the proposed definition of “correctional facilities”, Vice-Chair Petersen commented that without court rulings indicating that they are different, they should not be lumped together. In response to the Commission’s request, Steve Victor, Deputy City Attorney commented that uses that are not specifically called out in the code are usually included in the most similar established category, such as the case of including detention facilities in the category of correctional facilities; that the City has not disputed that detention facilities could be essential public facilities, for which the ultimate decision has not been made by the court or state legislature; that even essential public facilities can be subject to the CUP process; that the City is not advancing the argument about whether it would be more precise to treat detention facilities as correctional facilities or to have two separate categories; and that the state law does define that correctional facilities are for “punishment, correction, or rehabilitation following conviction of a criminal offense”, which is not the primary purpose of detention facilities.
- Chair Wamback noted that Pierce County Jail and Remann Hall have already been nonconforming uses. He wondered if making a facility nonconforming could constitute taking. Mr. Victor responded “no.”
- Commissioner Edmonds wondered if the Federal government could use eminent domain when siting federal facilities. Mr. Victor responded, yes, but they would need to abide by local zoning rules.
- Chair Wamback pointed out that the public comments have reflected a strong desire to separate the definitions of correctional and detention facilities, and that the Commission has not been shy in pointing out the poor decisions made by the City in the past and should strive to recommend something to correct the course.
- Chair Wamback noted that as the City moves into the subarea planning process for the Tideflats area, more land uses, in addition to detention facilities, will be evaluated for their appropriateness for the M-1, M-2 and PMI industrial zoning districts, due to quality of life, safety and liability concerns. Commissioners Santhuff and Edmonds concurred with the notion. Commissioner Edmonds added that she was not comfortable with locating correctional facilities in residential areas. Vice-Chair Petersen further expressed concerns that locating correctional facilities and work release centers in the Tideflats area is not consistent with the Container Port Element (CPE) of the Comprehensive Plan; that such uses are entirely incompatible with the industrial related uses for the “Core Area” as defined in the CPE; that the Port of Tacoma and many citizens have argued that such uses are not industrial or maritime related uses; and that people should not be housed in these areas, because of health, safety, environmental and equity concerns.

Upon completing the discussion, Commissioners reviewed the “Draft Code Amendments” document, i.e., Exhibit 1 of the draft Findings of Fact and Recommendations Report as included in the meeting agenda, and took the following actions on the various components of the proposed code amendments:

- Concerning the definition of “correctional and detention facilities” (p. 7 of 8), Vice-Chair Petersen moved and Commissioner Santhuff seconded to request legal staff to draft separate definitions for “correctional facility” and “detention facility” based on the draft as presented in the document. The motion passed unanimously.
- Concerning the conditional use permit and pre-application meeting requirements applicable to correctional and detention facilities (p. 6 of 8), Vice-Chair Petersen moved and Commissioner Edmonds seconded to approve the draft as presented with a modification that would separate correctional and detention facilities. The motion passed unanimously.
- Concerning the use table for industrial districts (p. 5 of 8), Vice-Chair Petersen moved and Commissioner Edmonds seconded to make the following modifications to the draft as presented: (1) separate the listing for correctional and detention facilities; (2) correctional facilities would be allowed in M-1 with a CUP, and prohibited in M-2 and PMI; and (3) detention facilities would be prohibited in M-1, M-2 and PMI. With a vote of 2 to 2 (Vice-Chair Petersen and Commissioner Edmonds voting aye and Chair Wamback and Commissioner Santhuff voting nay), the motion failed.
- Continuing to address the use table for industrial districts (p. 5 of 8), Commissioner Santhuff moved and Commissioner Edmonds seconded to make the following modifications to the draft as presented: (1) separate the listing for correctional and detention facilities; (2) correctional facilities would be allowed in M-1 with a CUP, and prohibited in M-2 and PMI; and (3) detention facilities would be allowed in M-1 with a CUP, and prohibited in M-2 and PMI. With a vote of 3 to 1 (Vice-Chair Petersen voting nay), the motion passed.
- Concerning the use table for mixed-use districts (p. 4 of 8), Commissioner Edmonds moved and Commissioner Santhuff seconded to approve the draft as presented (i.e., prohibiting both correctional and detention facilities in all mixed-use zones) with a modification that would separate the listing for correctional and detention facilities. The motion passed unanimously.
- Concerning the use table for residential districts (p. 3 of 8), Commissioner Edmonds moved and Commissioner Santhuff seconded to approved the draft as presented (i.e., prohibiting both correctional and detention facilities in all residential zones) with a modification that would separate the listing for correctional and detention facilities. With a vote of 2 to 2 (Chair Wamback and Commissioner Edmonds voting aye and Vice-Chair Petersen and Commissioner Santhuff voting nay), the motion failed.
- Continuing to address the use table for residential districts (p. 3 of 8), Commissioner Santhuff moved and Vice-Chair Petersen seconded to make the following modifications to the draft as presented: (1) separate the listing for correctional and detention facilities; (2) correctional facilities would be prohibited in all residential zones, except R-4 and R-5 where they would be allowed with a CUP; (3) detention facilities would be prohibited in all residential zones, except R-4 and R-5 where they would be allowed with a CUP; and (4) the footnote of “Side yards shall be provided as specified in Section 13.06.602” would be reinstated. With a vote of 3 to 1 (Commissioner Edmonds voting nay), the motion passed.
- Vice-Chair Petersen moved and Commissioner Santhuff seconded to approve the Commission’s recommendation packet as amended and forward it to the City Council for consideration for adoption. The motion was supplemented with the following notes: (1) the listing for correctional and detention facilities in the use table for commercial districts (p. 3 of 8) would be separated and both correctional and detention facilities would continue to be prohibited in all commercial zones; (2) the listing for correctional and detention facilities in the table of “Notice, Comment and Expiration for Land Use Permits” (p. 2 of 8) would be separated; (3) staff would revise the draft Findings of Fact and Recommendations Report and Exhibit 1 “Draft Code Amendments” accordingly; and (4) Chair Wamback would revise the draft letter of recommendation. The motion passed unanimously.

Chair Wamback expressed appreciation to Commissioners, city staff, citizens, and representatives from the Northwest Detention Center for their active participation in the Commission's review process for this issue.

Chair Wamback recessed the meeting at 6:30 p.m. The meeting resumed at 6:42 p.m.

## **2. 2018 Amendment Application #2018-10 Open Space Corridors**

Elliott Barnett, Planning Services Division, provided an overview of staff's proposed approach to a regulatory framework for Biodiversity Corridors/Areas Critical Areas Preservation Ordinance (CAPO) updates, as part of Phase 1 of the Open Space Corridors Project. Mr. Barnett introduced David Boe, architect, whose role at the meeting was to provide a hypothetical application of the code proposals, and Shannon Brenner, Environmental Specialist, whose role was to provide technical expertise.

Mr. Barnett stated the project is starting to gain public interest with lots of questions at the Annual Amendments Info Session, and presentations to Sustainable Tacoma Commission, discussions with Metro Parks Tacoma, scheduled updates with the Master Builders Association and others. Staff are developing a list of FAQ's for the project. Currently, there appears to be general support for protecting natural areas, with questions from property owners on how this will affect them.

Mr. Barnett stated the focus is major development within Biodiversity Corridors. This approach will not solve all problems, such as ongoing maintenance and undesirable uses in open space areas, but instead will address significant gaps in Tacoma's Critical Areas code for Biodiversity Corridors/Areas and Steep Slopes. The issue is that while local jurisdictions are responsible for protecting the functions and values of all critical areas, there is little specificity for Biodiversity Corridors/Areas, and consequently little certainty for property owners. The code gap regarding steep slopes is that they are approached from a hazard prevention perspective, not from a perspective of protecting functions and values.

Based on benchmarking and review of the Best Available Science, staff are proposing an approach to ensure no net loss to Biodiversity Corridors/Areas functions and values. The key concept is mitigation sequencing. The first option is to avoid, second is to minimize and mitigate impacts. If there are areas outside all critical areas, then put development there. This project will fill in how minimization and mitigation of impacts would be addressed for when impacts are proposed within Biodiversity Corridors/Areas.

The Commission discussed how Biodiversity Corridors/Areas would be defined and identified in Tacoma. Mr. Barnett stated they are defined and mapped by the Washington State Dept. of Fish and Wildlife (WDFW). Tacoma's current effort will further focus that definition and create methodology to determine if areas will be regulated as Biodiversity Corridors/Areas. Commissioner Edmonds asked if the determination for a specific site could change over time, and Mr. Barnett stated it could if restoration occurs. Ms. Brenner added the City has CAPO standards to determine how this would be evaluated, similar to other types of critical areas. The WDFW maps indicate a high likelihood that Biodiversity Corridors/Areas are present, however a site specific evaluation would determine whether an area is functioning as a Biodiversity Corridor/Area and therefore regulated as one. Commissioner Edmonds requested a map of the Biodiversity Corridors and ownership of land. Mr. Barnett stated staff is working to make the definition as clear as possible using WDFW language as the starting point.

Mr. Barnett continued, the proposal would address how impacts to Biodiversity Corridors/Areas would be minimized and mitigated. Under a Minor Development Permit review process, a maximum 35% vegetation disturbance would be permitted. Within that 35% maximum, development would be required to meet three requirements: Avoid other critical areas and buffers; maintain a functional habitat connection; and, protect significant trees. Mr. Barnett explained that these most sensitive areas, including steep slope areas, must be part of the minimum 65% left undisturbed. When impacts do occur, they would be required to be mitigated. Using this system the city can allow for some impact and still ensure no net loss to functions and values. Staff are integrating these concepts into the CAPO's existing review processes including exempt, allowed with staff review, Minor Development Permit, and Development Permits.

Commissioner Edmonds asked how the City would evaluate existing structures in areas that are now designated as Biodiversity Corridors/Areas. Mr. Barnett and Ms. Brenner responded that the presence of a house may be part of a determination that the property is not within a Biodiversity Corridor/Area since

developing the house was a disturbance. If the house is determined to be within a Biodiversity Corridor/Area, the City's provisions for continued maintenance for legally established uses, for maintaining existing landscaped areas, and for minor expansions would apply. Commissioner Edmonds emphasized the importance of being clear and sensitive to the potential concerns of property and home owners on these topics.

Chair Wamback asked whether the proposed 300 foot Biodiversity Corridor width is set in stone. Mr. Barnett and Ms. Brenner responded that the Best Available Science shows that 300 feet is a minimum functional wildlife corridor width for some common urban species. The City also needs to consider smaller and narrower sites, where the approach may be to prevent further reductions. Chair Wamback clarified that this relates to the species that are present on the particular site. Ms. Brenner stated that the City is reaching out to WDFW to develop a common urban species list which will further inform discussions of the minimum functional habitat corridor width.

Mr. Boe then presented three illustrations of a hypothetical site. He clarified we are looking at new development, especially on larger sites, though he recognized there is always a concern about structures that have never been permitted. The team started looking at real sites in Tacoma to get an idea of what some of the similarities are. Mr. Boe presented a simplified site plan of a 5 acre site with two developable areas, a designated wetland, stream and buffers, steep slopes, within a Biodiversity Corridor about 240 feet wide. The illustrations are to scale, to more realistically test these concepts. Each scenario shows different site access, since access is a variable that greatly affects development outcomes.

Scenario 1A assumes direct access to both of the developable areas. Development is located primarily outside of critical areas. Development also extends into the Biodiversity Corridors/Areas, then stops when a second type of critical area (such as steep slopes) is reached. The illustration shows 3000 sf lots, the minimum lot size allowed though Critical Areas density bonuses. The lots could also be larger, if desired. Impacts to Biodiversity Corridors are mitigated on site. Scenario 1B assumes access only to one side, and clustered development on only one of the two developable areas. Scenario 2 assumes access only from one side across the Biodiversity Corridor, with a roadway going through the corridor to reach the larger developable area. This scenario would require additional mitigation, minimization of impacts including low impact roadway design, and would be reviewed under a full Development Permit since it exceeds one of the limits (minimum corridor width) for the Minor Development Permit process.

Mr. Boe stated the City is legally required to allow access to landlocked properties. Remaining sites are already difficult to develop even without regulations, but we need to recognize some will need access through Biodiversity Corridors.

Vice-Chair Petersen asked if the illustrations were showing in-kind mitigation and what criteria would guide this. Ms. Brenner stated the CAPO puts preference on in-kind and onsite mitigation, but offsite locations can be proposed. This guidance exists in Tacoma's general mitigation standards. Vice-Chair Petersen stated that the low impact design for the access road would not be mitigation but a requirement. She stated if conditions are non-negotiable they need to be very clearly stated. Ms. Brenner concurred the code includes proscriptive requirements along those lines.

Mr. Boe discussed that the process of seeking the least impactful area of the site for development could result in selecting an area that already has development along one side which likely would be the more compromised in terms of Biodiversity Corridors/Areas functions and values. Mr. Barnett stated through a full Development Permit, applicants would need to demonstrate they were developing the least impactful area which could potentially reach a similar conclusion.

Vice-Chair Petersen asked how the City would address impacts resulting from ongoing use of developed areas, such as fences, dumping yard clippings, and invasive species. Ms. Brenner stated the CAPO has standards for ongoing management, such as wildlife passable fences along buffers, and that these get recorded through a Notice on Title requirement.

Commissioner Santhuff asked what the requirements or options would be for the Biodiversity Corridor/Area set aside through a permit. Do owners have a stake in the remaining open space? Mr. Barnett responded that the critical areas would be put into permanent conservation status through methods such as a conservation easement, a separate tract, and/or Home Owner Association rules. Ms. Brenner stated the City is on a complaint basis in terms of enforcement.

Mr. Barnett stated some of the Commission's questions pertain to CAPO guidance that already exists. This project essentially would fill in one section, and plug into existing general standards. Commissioners asked staff to show in future how other sections apply that address likely questions.

Chair Wamback stated that the type of questions Commissioner Edmonds asked about maintenance and alterations to existing development will be significant and a consultative process is needed for property owners to ask questions. Chair Wamback stated the proposed approach is great for larger parcels, but what about the smaller ones?

Commissioner Santhuff asked what review would be done for subdivisions. Mr. Barnett stated that they would trigger review under the CAPO's Biodiversity Corridors/Areas.

The Commission provided concurrence to develop these concepts into code, to return to the second meeting in February for release as a public review draft. Chair Wamback reiterated the need to clarify how new proposals fit with existing standards, and to clarify how avoidance, minimization and mitigation would apply. Mr. Boe mentioned that in the future the city could consider upzones as a way of clustering development. Chair Wamback confirmed that should be a future discussion, while this project will get the framework in place.

### **3. 2018 Amendment Application #2018-01 Car Washes in NCX Districts**

Lihuang Wung, Planning Services Division, presented the staff analysis report concerning the "Car Wash Rezone" application for the 2018 Annual Amendment.

Mr. Wung provided the following background. The original request from the Brown Bear Car Wash was to rezone the redevelopment site at 6<sup>th</sup> Ave. and S. Howard St. from NCX Neighborhood Commercial Mixed-use to UCX Urban Center Mixed-use, in order to allow for the development of a car washing facility (which was a part of "vehicle service and repair" by definition of the code). The Planning Commission conducted an assessment of the application in April 2017 and determined to accept it for technical analysis purposes, but requested that, since the proposed rezone was not supported by the Comprehensive Plan policies, the scope of work be modified and alternative approaches to the proposed rezone be explored. In December 2017, upon reviewing some alternative approaches, the Commission directed staff to study the approach of "allowing 'vehicle service and repair' in NCX districts, with a conditional use permit (CUP), but prohibited along frontage of designated core pedestrian streets."

Mr. Wung reported that staff had reviewed seven Neighborhood Mixed-use Centers to gauge the potential development opportunity for "vehicle service and repair" projects within the NCX districts located in the respective centers. He noted that the review was cursory and did not factor in the market, the availability of land, the "highest and best use" of any potential redevelopment site, or any impacts at the project level. The cursory review did not cover the South Tacoma Neighborhood Mixed-use Center where "vehicle service and repair" uses were currently allowed. The cursory review concluded that (1) in 6<sup>th</sup> Avenue, Narrows and McKinley centers, most parcels were fronting designated pedestrian streets where the development opportunity for "vehicle service and repair" projects would be fairly limited; (2) in Proctor, Hilltop and Lincoln centers, there were many parcels that were not fronting pedestrian streets where the development opportunity for "vehicle service and repair" would be less limited; and (3) the Stadium center was in close proximity to historic districts, where "vehicle service and repair" uses would not be as compatible. Mr. Wung added that the CUP process would help address certain impacts and community concerns at the project level and that parcels fronting pedestrian streets would encourage mixed-use development.

Mr. Wung indicated that, in response to the suggestion from the Commission in December 2017, staff had also conducted a limited-scope benchmarking research for other jurisdictions' land use regulations in terms of the definitions for "car washes" and/or "vehicle service and repair" and any associated special requirements. The research suggested that there were no compelling reasons for Tacoma to separate the definition of "car washes" from the category of "vehicle service and repair" and that CUPs, special requirements or supplemental development standards were commonly applied to diminish potential impacts of car washing facility projects.

Mr. Wung concluded that the "Project Proposal" as presented by staff was to amend TMC 13.06.300.D.3 (Use Table for Mixed-use Districts) to allow "vehicle service and repair" in NCX districts, with a CUP, but

prohibited along frontage of designated core pedestrian streets. With this proposal, Brown Bear could proceed with their project on the subject site, but would need to incorporate other development fronting 6<sup>th</sup> Avenue. He suggested that the Commission authorize the release of the proposal along with other applications in the 2018 Annual Amendment package for public review, in preparation for the public hearing on the amendment package tentatively scheduled for early April 2018. Chair Wamback expressed the concern that the original request of the applicant represented a “spot zoning” that was not consistent with the Comprehensive Plan and should have been rejected at the assessment stage. However, he would not object to moving forwarding the proposal for public review purposes. Vice-Chair Petersen made a motion to that effect, Commissioner Santhuff seconded, and the motion passed unanimously.

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

Brian Boudet, Planning Division Manager, provided the following reports:

- The City Council adopted Resolution No. 39886 in December 2017, requesting the Planning Commission to consider modifications to the residential infill pilot program to increase its effectiveness. This item would come before the Commission later this year.
- In response to the City Manager’s request for all citizens’ Committees, Boards and Commissions (CBCs) to provide a briefing of their operation status and work program to their corresponding City Council standing committees, the Planning Commission would meet with the Infrastructure, Planning and Sustainability Committee (IPS) on January 24<sup>th</sup>, with Chair Wamback presenting along with staff.
- On January 24<sup>th</sup>, the IPS would also review the Tacoma Mall Neighborhood Subarea Plan, as recommended by the Planning Commission in September 2017.
- The 2018 Annual Amendment Open House held by planning staff on January 10<sup>th</sup> was well attended, with citizens showing strong interests in growth and development issues around the city. Among the popular topics of the 2018 Amendment package at the open house were the Open Space Corridor Project, Height Measurement in View Sensitive Overlay Districts, and South 80<sup>th</sup> Street Rezone.
- Staff’s on-going outreach recently included a meeting with the North End Neighborhood Council last week, focusing on urban design and proactive rezone issues, and a meeting with the South Tacoma Neighborhood Council tonight (January 17<sup>th</sup>), focusing on the South 80<sup>th</sup> Street Rezone issue.

Chair Wamback acknowledged that city staff was currently organizing a joint meeting among chairs, co-chairs, vice-chairs, and primary supporting staff of the Planning, Transportation, and Sustainable Tacoma commissions; he was looking forward to the meeting. Chair Wamback also disclosed that he had planned to meet with the chair of the Transportation Commission to talk about the Transit Oriented Development (TOD) regulations in general; he anticipated that the Commissions might submit a citizen-initiated application for proposed changes to TOD regulations in 2019 for the 2020 Annual Amendment.

## **F. ADJOURNMENT**

The meeting adjourned at 8:15 p.m.