



# CITY OF SNOHOMISH

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## NOTICE OF REGULAR MEETING

### PLANNING COMMISSION

In the  
George Gilbertson Boardroom  
Snohomish School District Resource Center  
1601 Avenue D

**WEDNESDAY**  
**March 2, 2016**  
**6:00 p.m.**

- 6:00 1. **CALL TO ORDER** – Roll Call
- 6:05 2. **APPROVE** the minutes of the February 3, 2016 regular meeting (*P. 1*)
- 6:10 3. **CITIZEN COMMENTS** on items not on the agenda
- 6:15 4. **DISCUSSION ITEM** – Various Potential Amendments to Title 14 SMC (*P.11*)
- 9:00 5. **ADJOURN**

**NEXT MEETING:** The next regular meeting is **Wednesday, April 6, 2016**, at 6:00 p.m. in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D.



## **AGENDA ITEM 2**

### **CITY OF SNOHOMISH REGULAR MEETING OF THE PLANNING COMMISSION MEETING MINUTES February 3, 2016**

**1. CALL TO ORDER:** The regular meeting of the Planning Commission was called to order by Chair Scott at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D. The assemblage joined in the flag salute and roll was taken.

#### **PLANNING COMMISSION**

##### **MEMBERS PRESENT:**

Christine Wakefield Nichols  
Gordon Cole  
Hank Eskridge  
Laura Scott, Chair  
Terry Lippincott

##### **STAFF:**

Owen Dennison, Planning Director  
Katie Hoole, Permit Coordinator

##### **OTHERS PRESENT:**

Tom Hamilton, Council Liaison  
8 audience members

##### **MEMBERS ABSENT:**

Steve Dana  
Van Tormohlen

**2. APPROVE** the minutes of the January 6, 2016 regular meeting

Mr. Cole moved to approve the January 6, 2016 minutes, and Ms. Lippincott seconded.

Mr. Eskridge asked about the removal of the prohibition on new monopoles in unopened rights of way. Mr. Dennison summarized the January discussion including Mr. Cole's suggestion that the City could include a one year notice to vacate clause in any lease for WCFs in unopened rights of way; the current draft reflects the removal of the prohibition. Mr. Eskridge thought a notice to vacate clause could discourage companies from making the big investment of putting a monopole there. Mr. Cole believed the issue was the City's need to preserve its right to use the right of way in the future.

The motion to approve the minutes passed unanimously (5-0).

**3. CITIZEN COMMENTS** on items not on the agenda

An audience member asked if the lease clause discussed under the approval of the minutes was added to the draft regulations or if it was just a suggestion. Mr. Dennison said the lease clause was a suggestion; the City would have sufficient latitude in granting use of the unopened rights of way and the City's rights could be preserved without an outright prohibition on the use. The audience member was concerned about the possibility the City could lose its rights to a road if the lease language wasn't strong enough and there wasn't protective language built into the code. Because the discussion had moved to the subject of tonight's public hearing, Mr. Dennison asked the audience member to bring the subject back up during the hearing.

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### **4. PUBLIC HEARING – Wireless Communications Facility Regulations**

Chair Scott explained that the purpose of tonight's hearing is to hear public comment on draft Ordinance 2301 amending the regulations for Wireless Communication Facilities (WCFs). The Planning Commission's role is advisory to the City Council; the Council will make the final decision on whether to adopt the amendments, as drafted or as revised, or Council may choose to take no action. Commissioners will consider comments made this evening as well as any written comments submitted for the record before making recommendations to the City Council; Council is currently scheduled to hold a second public hearing on February 16<sup>th</sup>. Speakers should state their name and address for the record, attempt to contain comments to around three minutes in length, and try to be specific about which language or standard they would like to see revised. As the purpose of the hearing is to gather citizen comments, the Planning Commission may or may not respond to questions asked by the speakers. Questions should be addressed to the Commission, rather than staff; the Chair will request staff clarification as appropriate. Ms. Scott opened the floor to public comment.

**John Kartak, 714 Fourth Street** was up until 2:30 in the morning one night having a hard time trying to read through the draft. He confirmed there had been a sentence in the draft prior to this that said a cell tower could not go in public parks; he asked why it was removed.

Mr. Cole explained that there was a lot of land designated "park" and it was conceivable a park property could contain some kind of WCF. It would still have to go through all of the criteria, but a WCF could be allowed as long as it didn't interfere with any current or proposed future park use.

Mr. Kartak asked if it was possible for any current or future park land to be viewed as a Tier 1 property, and Mr. Cole directed the question to Mr. Dennison who said a Tier 1 facility could be allowed if it was inside an existing building on the site.

Mr. Kartak said Rolf Rautenberg noted the proposal for Averill Field and was the only one who got a letter of dissent in before there was a cell tower in one of the City's parks. A deed restriction that even the Council didn't know about was apparently lifted because of existing structures, but he saw a letter from Mr. Dennison that said it was lifted in order to put a cell tower in, so it seemed there was possibly some active deceit. The City seems intent on putting a cell tower in one of the parks, and very few people in town want to see that happen. Can't it be put in a Tier 4—something that said a park was the last place anyone wants to see a cell tower?

Mr. Eskridge thought the Planning Commission did that, as they talked about this subject at multiple meetings. No one wanted to see a tower where they were going to put it, but at the same time, Commissioners reviewed the possibilities for towers in parks. The City has a lot of park area and Commissioners didn't want to prohibit it, so when they discussed the siting hierarchy, a monopole was put in the very last, least favorable/last resort category.

Mr. Kartak asked where that was in the draft regulations and Mr. Eskridge thought it might be a Type D; Mr. Dennison explained that it was actually a Type C, located in section 14.242.050(C)(1). Mr. Kartak confirmed that Type C was Tier 3.

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Mr. Kartak had two concerns about language. The first was section 14.242.050(A)(3); it appeared to contain a triple negative and he did not understand what it was saying. The second was section 14.242.070; it had a lot of language in it that he struggled with. It appears to say the City Council is not subject to the permit review timeframes in 14.242.080. Ms. Scott noted that Mr. Kartak's comment time was up; Mr. Kartak continued and said this was his most critical concern, as section 14.242.080 said that before you can put in a tower, you have to have a permit. To him, the language in 14.242.080 meant the City didn't have to get a permit to put a cell tower in; however, he wasn't certain that was what the section was actually saying. He was concerned that it meant the City could put in a tower, design a permit around it, and the public wouldn't know about it until construction began. He understood the Commissioners were volunteers and he thanked them for their time.

Ms. Scott noted the sections of Mr. Kartak's concern and Commissioners could discuss them after public comments.

**Rolf Rautenberg, 210 Sixth Street** said he had a lot to say, but he wanted to do so later.

Ms. Wakefield Nichols noted that the public hearing was open; Ms. Scott added that this was the time for citizen comments.

Mr. Rautenberg said he was less organized than he'd prefer to be as he had business obligations and there was traffic. He brought two summary reports from a nationally accredited radio frequency engineer and siting expert who has conducted over 500 municipal code reviews and spent thousands of hours looking at codes and regulations. These reports say the draft regulations are not ready for prime time. If Mr. Dennison took what he wrote to the City Council, he was putting the Council at risk. Mr. Rautenberg wondered if the Council and the Planning Commission knew what Mr. Dennison's credentials and qualifications were, and then told Mr. Dennison to state his qualifications for the public.

Mr. Dennison asked Mr. Rautenberg to direct his questions to the Chair; Mr. Rautenberg refused, and Mr. Cole stated to Mr. Rautenberg that he was out of line.

Mr. Rautenberg said the report included the draft code with annotated mistakes and he was concerned the City did not have the best possible expert writing this code. If you plan to invite a wireless company come to town, and they start asking questions and looking at documentation regarding a conditional use permit, they're going to know pretty quickly that they know more than you. If the City is sitting in a room with the wireless professionals who know these codes and you try to play a game with them to pretend you know what you're doing, they're laughing at you inside. The City residents lose on that, and we pay the Planning Department close to half a million dollars a year for salary and benefits and services.

Ms. Scott asked if Mr. Rautenberg had something he could submit to the Commission for review. He said he would provide a copy of the summaries, but he would not include the contact information for the RF [radio frequency] engineer, as the engineer works for him, not the Commissioners. The full report lists 86 corrections for the draft code. Siting experts are very expensive, and it cost him a lot of money to get their input. He asked if an RF engineer had been

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hired to work on the code; when Ms. Scott said no, he questioned why the City spent money on other discretionary committees and topics such as transparency but couldn't protect the City Council by hiring an RF engineer.

Ms. Scott noted that Mr. Rautenberg's point was taken, and he responded by telling her to not shush him; this was a hearing and they were going to hear him. He asked the audience members if they needed to speak right away, and no one answered.

Mr. Eskridge said Mr. Rautenberg's time was up and Ms. Scott asked if Mr. Rautenberg could tell the Commissioners how much more time he needed.

Mr. Rautenberg commented that he had a few more things to say and he'd have to do the short version. He began telling an anecdotal story and then accused Ms. Scott of bullying when she spoke his name.

Mr. Cole asked Mr. Rautenberg to step down.

Mr. Rautenberg declared the City does not listen and was not ready to listen tonight.

**Kelly Smotherman, 311 Cedar** asked if there was a plan, or if there had been a recent plan to erect a cell tower in Hill Park. Ms. Scott was not aware of any and asked staff to respond. Mr. Dennison said the City received no applications since Verizon, and he was not aware of any inquiries.

Mr. Smotherman wondered if an FCC attorney had assisted in the writing of the code. He became involved in this because the City was going to put a tower in the park without the citizens knowing. He questioned how the City could build or even think about building something like that without public input. He was new to this and still learning, but he thought he heard Mr. Kartak say that if it wasn't for a person or two knowing about it, there could have suddenly been a tower in the park.

Mr. Dennison said under the current codes, a cell tower is a Communication Facility-Major, which requires a conditional use permit. This means notification and a public hearing before the Hearing Examiner are required. When the application was submitted, the City issued a notice of application, which included publication in the newspaper, signage posted on the site, which has been argued to be undersized, and notification to property owners within 300 feet of the site boundaries. Those are consistent with City codes. Additionally, the City has a subscription service for notification of development applications. Mr. Rautenberg previously noted he receives those notices and that was how he became aware of the project and subsequently informed other people about it. There had been no short circuiting of process. The application was received, reviewed, a public hearing was held and well-attended, and a continued second public hearing was scheduled at the point when the applicant withdrew the application.

Ms. Scott thanked the audience for their comments. As there were no further comments, the public hearing was closed.

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Mr. Eskridge brought up Mr. Kartak's concern about section 14.242.070 and Council not being subject to permit review. He thought it was talking about the permit review time frame.

Mr. Kartak said the section specifically refers to the following section, 14.242.080, which says a permit is required.

Mr. Dennison thanked Mr. Kartak for catching this error; the reference should be section 14.242.100 and not 14.242.080. When use of City property is proposed, it is subject to the same zoning regulations applicable to private property. It has to go through the entire regulatory process, but then the City Council needs to make a decision whether to lease or allow use of the land. Section 14.242.070 would require the City Council to hold a public hearing and take public input before they make any decision; this hearing is in excess of all permit requirements and is an extra process not required of any other permit and is not found anywhere else in the zoning code.

Mr. Kartak asked if the Commissioners were ready to approve this draft, because he was not sure he knows what it's saying and he wasn't sure they did either.

Mr. Cole said the Commission has gone through this four times. He clarified that the Commission's role was to make a recommendation to Council. There were still things to go through tonight, which is the purpose of this meeting.

Ms. Scott re-opened the public hearing to ask for any additional citizen comments.

**Linda Rautenberg, 210 Sixth Street** was not sure how many people subscribed to the City's listserv, a notification from the server saying what the City is doing; because so few people get the notices, a lot of people in the City did not know about the application for the cell phone tower. If Mr. Rautenberg hadn't inadvertently looked, because he hadn't looked for a while, he wouldn't have known about the project. He went around asking people if they knew about it and they didn't. They didn't know about the hearing examination. Notice was sent to people within 300 feet, but everyone was sent notice for the MPD; equal attention was not paid. Mr. Dennison was correct: there was signage on the site, but the page was 8.5" x 11". She and Mr. Rautenberg with John and Colleen Dunlap asked Mr. Dennison to put out a larger sign so everyone driving by could see it. She took off work to attend the hearing; she did not think seven or eight people equaled "well-attended." She wanted it to be clear that one person's impression is not necessarily the same as another person's. She asked the Commissioners to recognize that Mr. Rautenberg and about ten other people worked hard to get the City to notice and hear the people, but they believe the City was not paying attention and that was a big problem, so Mr. Rautenberg had every reason to be angry right now. She thanked the Commissioners for listening.

As there were no more comments, Ms. Scott closed the public hearing and the Planning Commission moved on to deliberation.

Mr. Cole asked what the significance was of February 22, 2012, which was referenced twice in section 14.242.020. Mr. Dennison clarified that it was when certain federal requirements came into effect after the adoption of the Spectrum Act.

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Section 14.242.050(A)(3) was revised to read, “Designed with no antenna extending more than 12 feet above a utility pole or structure (other than a building) constructed for a non-WCF purpose upon which it is mounted.”

Mr. Cole confirmed that the intent of 14.242.050(A)(5) was to differentiate between high-voltage poles within a public right of way and those within a transmission corridor, because those within a public right of way were addressed elsewhere in the code.

Mr. Eskridge said it seemed the biggest concern over multiple discussions is that people want more notification. Perhaps there could be a stand-alone category for City-owned property requiring general notification. He was thinking of a City-wide notice, similar to when people were contacted about the Metropolitan Park District (MPD); people were very aware of the MPD issue, but hadn’t heard about the tower.

Ms. Wakefield Nichols noted that the MPD was an entirely different process from this. Ms. Lippincott asked how it was different, and Mr. Dennison explained that it was notification of a ballot measure, so it was an individual mailing sent to each address in the City.

Mr. Dennison said if the critical element of the process is the policy question regarding the lease of public land, and there is a desire to include a specific type of notification for that, a notification requirement could be added to section 14.242.070 regarding the City Council public hearing. He would look to the Planning Commission for input on how to define that requirement.

Commissioners agreed to City-wide notification for any Type D application at the beginning of the permit review process.

The last sentence of 14.242.090(A) was revised to read, “Except applications for any WCF Permit which are consistent with a siting preference ranking A WCF type, a justification for a lower ranking shall be provided.”

The third sentence of 14.242.100(A) was revised to read, “A notice of incompleteness shall be made within 30 days of submittal of the application.”

Mr. Cole reiterated his previous concern about the language in section 14.242.150(C) regarding a “radio engineer licensed by the State of Washington” because he wasn’t sure such a license existed. Mr. Dennison will double-check his research and either confirm the radio engineer license or modify the language to read “professional engineer.”

Mr. Dennison highlighted the comments from citizens and Commissioners regarding the complexity of this code; it is complicated because there are three different categories for the types of facilities: 1) We have to be consistent with the time frames in federal law; 2) Our siting preferences don’t directly correspond to the federal classifications; and 3) Our review processes are close to, but may not hold entirely to, the federal classifications. Provided there aren’t any internal inconsistencies within those categories, it is possible to implement and apply this code, and that should be the test rather than how easy it is to absorb. The other option is to simplify it, but in doing so, you reduce the sensitivity to what the code is supposed to be addressing.

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Mr. Cole asked what the timeframe was for the ordinance; Mr. Dennison explained that a public hearing is currently scheduled with the City Council, but it could be deferred until the Planning Commission is ready to make a recommendation.

Ms. Scott had a concern based on Mr. Rautenberg's consultation with the professional engineer; she would like to see the material. Ms. Lippincott and Ms. Wakefield Nichols would also like to review it.

Mr. Cole asked Mr. Rautenberg if he was willing to share his information with the Planning Commission. Mr. Rautenberg said he would share under certain conditions; since there seemed to be a lot of money to spend, he wanted to be reimbursed for what he paid. Mr. Cole said the Planning Commission was not in a position to do that. Mr. Rautenberg said he would possibly make it available to the City Council directly prior to or in the public hearing, to demonstrate that the possibility of learning how to improve the code was available but there were certain constraints that were impossible to breach. Mr. Cole reiterated that Mr. Rautenberg was not willing to share it with the Planning Commission without some sort of remuneration; Mr. Rautenberg said he would not put it exactly that way, but he would like to see some quid pro quo, cooperation, and listening before he started trying to fund the City in learning how to do their job when they already have a half a million dollar planning budget.

Ms. Lippincott said the Planning Commission was a group of volunteers trying to do a good job; if Mr. Rautenberg had something that would help them do a better job, it would be much appreciated if he would share that with them.

Mr. Rautenberg said he had been asking the Planning Department to pay attention to things since early 2015; right here in this moment, he had not yet seen a change. Mr. Eskridge and Ms. Wakefield Nichols had brought up important things like notifying people City-wide for a public park, and he thought that was the least they should do. Who owns City land? The City people own that land; therefore they should all be appraised.

Ms. Lippincott pointed out that the Commissioners have all agreed to that.

Mr. Rautenberg said they only agreed to it for Tier 3. He hadn't seen the level of embrace that he wants from the Planning Commission. He has been working for months trying to get the City to listen and do the right thing, and he keeps seeing the Planning Department continually skew their information in favor of the provider.

Ms. Rautenberg addressed her comments to Mr. Cole and said they had paid for the RF engineer out of pocket. It was something Mr. Rautenberg was compelled to do because he's been working really hard to get the City to pay attention. If they just hand over the information, why would they not be asked to fund the next study?

Mr. Cole said he was okay with them not sharing, and was not arguing at all. He was just asking the question because if it was going to come to the Planning Commission or if it was going to be available, then the Commissioners may want to defer or continue this hearing.

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On learning there were two summary reports at a half-page each, Ms. Wakefield Nichols, Ms. Scott, and Ms. Lippincott wanted to hear one. Ms. Wakefield Nichols wondered if the City Council would consider making some kind of reimbursement.

Mr. Rautenberg began speaking from the audience and Mr. Cole reminded him that he needed to be on record. Mr. Rautenberg said his summary reports are a very high level review explaining how the code was incorrect. He also has a complete report with 86 comments ranging from a few words to entire paragraphs on how to fix it. He was not handing over the report on how to fix the code because they already get half a million a year to do this job, and he paid out of pocket to do this so he could see if they were doing their job or not; he could see the job is a struggle for all of them.

Mr. Rautenberg provided a copy of the summaries to Ms. Wakefield Nichols and read the first one. He had previously provided five focus questions to Mr. Dennison and forwarded the answers to the RF engineer; the second summary was in response to those answers. The end result of the summaries is that the code is not ready for adoption.

Ms. Lippincott asked what the cost of the RF engineer was and Mr. Rautenberg would not provide it; however he said they are very expensive and cost more than an attorney.

Mr. Cole moved to recommend the draft to City Council with the amendments made tonight, along with a comment from the Commission that they had testimony from a citizen who has what appears to be professional advice that there are some technical issues lacking in our proposed code, but this is the best we could do with the resources we had.

Ms. Wakefield Nichols asked to amend the motion to include that the Council may wish to review that technical information.

The Planning Commission discussed the motion and its amendment.

Mr. Cole restated the amended motion: that the Planning Commission send the latest draft with the corrections made tonight to the City Council with a recommendation that because the Commission received public testimony indicating there may be some technical issues not adequately addressed in the proposed plan, that the City Council seek professional engineering advice to clarify the accuracy of the information relative to FCC codes. Ms. Wakefield Nichols seconded the motion.

The amended motion passed unanimously, (5-0).

### **5. DISCUSSION ITEM – Planning Commission Work Plan for 2016**

Mr. Dennison explained that, going back to 2012, the Planning Commission has been primarily occupied with the Comprehensive Plan update and some significant code amendments. As a result, there hasn't been much time for other priorities and several more discretionary items that staff has wanted to get address. However, it was now appropriate to discuss a work plan for 2016.

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Comprehensive Plans can be amended once a year; the City has a March 31 application deadline. Staff is anticipating one application for 2016, as a citizen had inquired about rezoning a couple of properties from Single Family to a multifamily designation. Any applications would be brought to the Planning Commission as a briefing, then taken to the City Council for docket review to see if the Council wants to consider the proposals during the current year. Should Council determine they want to review the application(s), the next steps are SEPA review, a more detailed review by the Planning Commission and recommendation to the Council, and then back to the City Council for a public hearing. It is typically an eight month process.

The next big project is the Shoreline Master Program (SMP), a required statutory update that was supposed to be completed in 2011. An effort was started in 2009 to update what is approximately a 1976-era SMP that was copied from what Snohomish County had at the time. When the prior Planning Director left, Mr. Dennison received a package of regulation and policy amendments primarily drafted by a consultant that were reviewed by the Planning Commission and a citizen advisory body. He was concerned about inconsistencies; in some places, the draft shoreline policies and the draft shoreline code directly conflicted. There was also at least one significant section—critical areas—that was entirely omitted from the draft. The City’s Department of Ecology contact had reviewed some of it; that person retired, the position was left empty, and the City heard nothing from mid-2012 until last fall. The new contact at the DOE concurred there were conflicts with state requirements; it was not ready for prime time and required further drafting. Mr. Dennison believed this to be the highest priority. The Commissioners agreed.

Mr. Cole was on the advisory committee and they had serious issues with some of the state requirements. The intent of the Shoreline Management Act was to protect undeveloped shorelines from incompatible development. It never really addressed the development that had already occurred.

By the end of the year, the City is required to adopt the 2012 DOE Stormwater Manual. The major emphasis is on Low Impact Development (LID), which is a stormwater management technique for recharging the ground, intended to mimic natural conditions to the best extent possible. Public Works has hired a consulting firm to review our codes and identify areas that may impede implementation of LID. Many things can be done to facilitate LID, such as allowing clustered single family subdivisions to have more area to allow for dispersal of stormwater. The City currently has a minimum lot size of 7,200 square feet unless you have critical areas when you can do a Planned Residential Development, which is the only mechanism to allow for clustering. One possible proposal would be an amendment to Title 14 to allow clustered subdivisions—more flexibility in lot sizes for single family homes. Other techniques include permeable pavement, and rain gardens along roadways and within developments that detain and treat water naturally.

The prohibition on community based theatres in the Single Family land use designation still need to be addressed, and Ms. Eidem will likely be coming back with that discussion. When last discussed, Commissioners indicated they wanted to see an inventory of other sites that may be subject to it and how it can be contained. Staff expects that if there are zoning changes for

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Single Family in the Historic District, there may be some community concerns, so staff and the Planning Commission will need to be able to address where else it could be implemented.

Staff was still getting direction from the City Attorney regarding sign code amendments to see if case law provides more direction. The City doesn't have a lot in the way of content-based sign regulations, but there was a decision by the U.S. Supreme Court that prohibited any content-based sign regulations, so that will need to be addressed. Also, for legal protection, the sign code amendments should include a provision that says religious facilities may make a case for exemption from all or certain sign regulations if it's demonstrated to be a substantial impediment to their free exercise of religion.

Airport compatibility amendments are also on the list. There are several potential amendments, including a potential provision applicable to new residential development projects that would require notice to future property owners that they are in a flight path and there will be planes overhead.

By September 2016, the City needs to have a mechanism in place for deferral of impact fees for the first 20 units of a residential development; this came out of 2015 legislative session.

There are no code amendments currently directed by City Council, but staff maintains a placeholder just in case.

If there is time, other topics to discuss include: 1) future re-use of the former County Public Works yard—a prime redevelopment site; 2) how the remaining pieces of the old Mixed Use zone could transition to other zoning; 3) site plan approval, as right now much of the site plan review occurs at the time of building permit, but it would be best to identify site plan issues ahead of time, prior to design of the building; 4) evaluate whether there is purpose in maintaining the Neighborhood Commercial designation, which has been in the code for at least ten years and was never mapped; and 5) update/cleanup the Code regarding the life of a preliminary plat to be consistent with state law.

6. **ADJOURN** at 8:21 p.m.

Approved this 2<sup>nd</sup> day of March, 2016

By: \_\_\_\_\_  
Commissioner Laura Scott, Chair

## **DISCUSSION ITEM 4**

**Date:** March 2, 2016

**To:** Planning Commission

**From:** Owen Dennison, Planning Director

**Subject:** **Various Potential Amendments to Title 14 SMC**

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This agenda item provides for the Planning Commission's discussion of potential amendments to Title 14 SMC. The amendments primarily respond to changes in State, federal, or case law that have occurred since the subject provisions were adopted. An additional topic unrelated to an outside legal framework is amendments addressing a proposed new land use, community-based theaters.

### **MINOR AMENDMENTS FOR STATUTE AND CASE LAW COMPLIANCE**

Following a 2014 audit of the City's land use regulations, the Washington Cities Insurance Authority recommended amendment of certain areas of Title 14 SMC to increase consistency with current law.

Substantial burden on religious exercise. The federal Religious Land Use and Institutionalized Persons Act (RLUIPA) is a civil rights law that protects individuals and religious institutions from discriminatory and unduly burdensome land use regulations. In passing the RLUIPA, Congress found that zoning authorities frequently were placing excessive burdens on the ability of congregations and individuals to exercise their faiths without sufficient justification, in violation of the Constitution. Among its provisions, the RLUIPA prohibits the implementation of any land use regulation that imposes a "substantial burden" on religious exercise, except where justified by a "compelling governmental interest" that the government pursues in the least restrictive way possible. RLUIPA also provides that religious assemblies and institutions must be treated at least as well as nonreligious assemblies and institutions.

According to staff's analysis, several areas of the City's regulation may be challenged as representing a substantial burden. These include sign standards and design review requirements. Instead of addressing each area individually, staff proposes a new code provision addressing the exemption process in Chapter 14.55 SMC, *Provisions Applicable to All Permits*, as follows.

**14.55.135 Substantial Burden on Religious Exercise.** Religious institutions may request relief from specific standards of this title, subject to a demonstration that application of the standard represents a significant burden on religious exercise and does not further a compelling governmental interest. The applicant shall specify, in writing, the standard(s) or regulation(s) at issue, the minimum relief requested, and the justification for a full or partial exemption. All such requests shall be reviewed administratively by the City Planner, and may be appealed to the Hearing Examiner pursuant to Chapter 14.75 SMC.

Further, the SMC requires *church, synagogue, temple, mosque* uses in the Single Family designation to be located within 300 feet of a street designated as a collector or arterial (SMC 14.207.085(9)). The same requirement does not apply to schools in the Single Family zone.

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Since schools are likely to have similar or greater impacts than a religious facility, staff proposes to strike the location condition for *church, synagogue, temple, mosque* uses.

Homeless encampments. RCW 35A.21.360 states, in part:

(1) *A religious organization may host temporary encampments for the homeless on property owned or controlled by the religious organization whether within buildings located on the property or elsewhere on the property outside of buildings.*

(2) *A code city may not enact an ordinance or regulation or take any other action that:*

(a) *Imposes conditions other than those necessary to protect public health and safety and that do not substantially burden the decisions or actions of a religious organization regarding the location of housing or shelter for homeless persons on property owned by the religious organization;*

(b) *Requires a religious organization to obtain insurance pertaining to the liability of a municipality with respect to homeless persons housed on property owned by a religious organization or otherwise requires the religious organization to indemnify the municipality against such liability; or*

(c) *Imposes permit fees in excess of the actual costs associated with the review and approval of the required permit applications.*

The church, synagogue, temple, mosque definition in Chapter 14.100 SMC currently specifies that homeless encampments are not a recognized as a use accessory to religious facilities. Staff proposes to strike the reference to homeless encampments, as shown below.

***Church, synagogue, temple, or mosque** means a place where gathering for worship is the principal purpose of the use. Typical accessory uses associated with this use include private schools, reading rooms, assembly rooms, and residences for nuns and clergy, but excluding facilities for training of religious orders ~~and homeless encampments.~~*

Recreational vehicles in mobile/manufactured home parks. RCW 35A.21.312 states, in part:

3) Except as provided under subsection (4) of this section, a code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) *Subsection (3) of this section does not apply to any local ordinance or state law that:*

(a) *Imposes fire, safety, or other regulations related to recreational vehicles;*

(b) *Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities or recreational vehicle parks; or*

(c) *Includes both of the following provisions:*

(i) *A recreational vehicle must contain at least one internal toilet and at least one internal shower; and*

(ii) *If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers. (emphasis added)*

Due to the lack of reference to recreational vehicles in provisions related to mobile home parks, staff believes the SMC may be interpreted to prohibit their use as residences.

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*Mobile home park* is defined in Chapter 14.100 SMC as “ a development with two or more improved pads or spaces designed to accommodate mobile homes”. To address RCW 35A.21.312, staff proposes to amend the mobile home park definition as follows:

**Mobile home park** means a development with two or more improved pads or spaces designed to accommodate mobile homes and/or occupied recreational vehicles.

Further, the standards for mobile home parks in SMC 14.210.220 address mobile and manufactured homes. Recreational vehicles (“campers and travel trailers”) are only referred to with regard to accessory storage. To clarify that recreational vehicles are approved residential structures in the context of a mobile home park, staff proposes the following amendments.

**14.210.220 Mobile Home Park Requirements.** Requests for a conditional use permit for the construction of a mobile home park in the Multi-family designation shall comply with the following requirements. For the purposes of this section, requirements for mobile homes or manufactured homes shall apply to occupied recreational vehicles subject to

- A. A mobile home park shall obtain a recorded development plan permit (see Chapter 14.50 SMC).
- B. The minimum site for a mobile home park shall be one (1) acre.
- C. No more than ten (10) mobile homes and/or occupied recreational vehicles may be located on any one (1) acre of ground.
- D. Each space or lot upon which a mobile home and/or occupied recreational vehicle is to be located shall:
  1. Contain two thousand four hundred (2,400) square feet and have a minimum width of thirty (30) feet for single-wides or occupied recreational vehicle or three thousand two hundred (3,200) square feet of area with forty (40) foot minimum width for double-wides.
  2. Have access from an interior driveway only.
  3. Have a crushed rock or hard surface area upon which the mobile home or occupied recreational vehicle will be located.
- E. All drives within the park shall be paved and appropriate ingress and egress from each public street bordering the mobile home park shall be provided in accordance with the direction of the City Engineer consistent with standard traffic engineering practice.
- F. There shall be no less than twelve (12) feet clearance between manufactured homes and/or occupied recreational vehicles or any part thereof, and no less than five (5) feet between manufactured homes and/or occupied recreational vehicles and any building within the park or from the required fence, wall, or hedge.

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- G. There shall be a sight-obscuring fence, wall, or hedge on all sides of the park, in conformance with Chapter 14.240 SMC.
- H. Access roadways, vehicle thoroughfares, and recreational areas shall be provided with adequate area lighting.
- I. Electrical distribution and telephone service systems to each space or lot shall be underground, except for outlets and risers at each space or lot.
- J. Every mobile home and/or occupied recreational vehicle site shall have provisions for electrical, plumbing, and sanitary sewer installation in accordance with all applicable City and state regulations. No mobile home which does not have sanitary facilities shall be allowed in the park. Recreational vehicles intended for occupancy shall have at least one internal toilet and at least one internal shower unless the mobile home park provides toilets and showers.
- K. All mobile home parks shall meet the health department regulations of the City, county and state.
- L. All mobile homes must be skirted with opaque paneling of wood, metal, plastic, or some other solid and sturdy material around the circumference of the mobile home so that the undercarriage and wheels are covered from view.
- M. All internal driveways, excluding parking, shall be paved and have a minimum width of twenty (20) feet, except for one-way roads which shall have a minimum width of fifteen (15) feet.
- N. Cul-de-sac turnarounds shall have a minimum pavement width of twenty (20) feet and a minimum turning area diameter of seventy (70) feet.
- O. In addition to the two-stall per mobile home and/or occupied recreational vehicle pad required in SMC 14.235.170, off-street parking shall be provided at the ratio of one parking space for each ~~((four))~~ three ~~((4))~~ 3 mobile home and/or occupied recreational vehicle pads and shall be distributed for convenient access to all pads. [*Note: amendment proposed for consistency with the mobile home park parking standard in SMC 14.235.170.*]
- P. A bulk storage and parking area for boats, ~~((campers, travel trailers))~~ unoccupied recreational vehicles, etc., shall be provided within the mobile home park. A minimum of three hundred (300) square feet of space, exclusive of driveways, shall be provided for every ten (10) mobile home pads. Bulk storage and parking areas shall be separated from all other parking facilities and shall be provided with some means of security. The requirements of this subsection may be waived by the City Planner, if the mobile home park developer/owner agrees to prohibit the storage of such items within the park.
- Q. All mobile home parks shall provide adequate fire protection as required by the Fire Marshall in accordance with the Uniform Fire Code.

## **DISCUSSION ITEM 4**

- R. A common recreational facility is suggested for mobile home parks in excess of fifty (50) units but is not required. If a recreational facility is provided, it should be centrally located along with the required open space.
- S. The mobile home park shall comply with all other requirements of the ((~~Multi-family 18 units per acre~~))Medium Density Residential land use designation as described in this title.
- T. A complete and detailed site plan shall be submitted to the Hearing Examiner for approval together with a separate grade and drainage plan, which shall be reviewed by the City Engineer and City Planner for recommendations to the Hearing Examiner. The site plan shall show the location and dimensions of all contemplated buildings, structures, open space, driveways and roads, recreational areas and other pertinent features which may be necessary to show compliance with the regulations of this section.
- U. The developer and/or owner of the mobile home park shall be responsible for ensuring that every mobile home and occupied recreational vehicle is installed in compliance with the provisions of this section. All improvements and connections shall be made at the time of installation and prior to occupancy.

### **Family childcare.**

RCW 35A.63.215 states,

*(1) Except as provided in subsections (2) and (3) of this section, no city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.*

*(2) A city may require that the facility: (a) Comply with all building, fire, safety, health code, and business licensing requirements; (b) conform to lot size, building size, setbacks, and lot coverage standards applicable to the zoning district except if the structure is a legal nonconforming structure; (c) is certified by the department of early learning licensor as providing a safe passenger loading area; (d) include signage, if any, that conforms to applicable regulations; and (e) limit hours of operations to facilitate neighborhood compatibility, while also providing appropriate opportunity for persons who use family day-care and who work a nonstandard work shift.*

*(3) A city may also require that the family day-care provider, before state licensing, require proof of written notification by the provider that the immediately adjoining property owners have been informed of the intent to locate and maintain such a facility. If a dispute arises between neighbors and the family day-care provider over licensing requirements, the licensor may provide a forum to resolve the dispute.*

*(4) Nothing in this section shall be construed to prohibit a city from imposing zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded. As used in this section, "family day-care provider" is as defined in RCW [43.215.010](#).*

The General Services Land Use Table in SMC 14.207.080 classifies childcare as three land uses.

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- *Childcare*: a licensed program other than an occupied dwelling unit for group care
- *Childcare, family – 6 children or less*: a full-time occupant of a dwelling unit provides daycare for children other than his/her own and the children of close relatives. The number stated in the title includes resident and related children
- *Childcare, family – 12 children or less*: The same as *Childcare, family – 6 children or less* but with an increased allowance for children.

The allowance by zone in the General Services Land Use Table is as follows:

Land Use	Open Space	Public Park	Urban Horticulture	Single Family Residential	Low Density Residential	Medium Density Residential	High Density Residential	Commercial	Neighborhood Business	Historic Business District	Business Park	Industrial	Airport Industry	Mixed Use
<b>Personal Services</b>														
Childcare		c			p2	p2	p2	p	p2		p			p2
Childcare, family – 12 children or less		c	c	c	c	c	c	c		c				c
Childcare, family – 6 children or less		c	p	p	p	p	p	p		p				p

Legal guidance received by staff is that a conditional use for family childcare is inconsistent with RCW 35A.63.215. Therefore, staff proposes collapsing the two family childcare categories into one with a maximum of 12 children. The use would be listed as permitted in all land use designations where residential uses are permitted. Staff would appreciate the Planning Commission’s direction on whether the use should be conditioned to address the local allowance in RCW 35A.63.215(3).

**COMMUNITY-BASED THEATERS**

Staff proposes the addition of a land use to the Land Use Tables in Chapter 14.207 SMC. Identifying *community-based theaters* as a separate land use may allow limited adaptive re-use of historic, non-residential structures in the Single Family zone. This issue was previously discussed by the Planning Commission in August 2015. At that time, the Commissioners requested additional information regarding potentially eligible locations in the City. The issue also relates to prior Planning Commission discussions of nonconforming uses in the Historic District more generally.

According to the Comprehensive Plan Goal LU4, the Single Family designation is intended to provide "suitable living environments for individuals and families, which have the following characteristics: quietness, privacy, safety, and land use stability and compatibility". Implementation of this policy direction generally limits the range of allowed land uses to residential uses and certain limited, low-intensity commercial, social, utility, and civic uses. Non-residential uses include bed and breakfast uses, family childcare, religious facilities, commercial kennels, nursing/convalescent homes, congregate care/assisted living facilities,

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schools, fire stations, public parks, trails, libraries, and museums. This list includes both permitted and conditional uses.

The Thumbnail Theater at 1211 Fourth Street is one of a number of nonconforming uses in the Single Family designated portion of the Historic District. The current theater use of the site was initially established as accessory to the prior church use. Churches require a conditional use permit in the Single Family zone, and theaters are prohibited. It has existed as a nonconforming use with no vesting protections since the theater became the principal use of the structure in 2007. Preservation of historic structures is a priority of the City Council. The subject building is 86 years old, and not particularly adaptable for use as a single family home or other conforming use in the Single Family zone. Further, it is staff's perception that the Thumbnail Theater is largely viewed as a community asset. However, the nonconforming use status is a significant issue.

To accommodate this use, as well as providing one use option for other structures, particularly churches, in Single Family zones, staff proposes to establish a new land use for *community-based theaters*. Consistent with the intent to encourage preservation of historic structures, the current proposal would limit the use to the Historic District, although the Planning Commission's direction is requested on whether the allowance should be opened to all Single Family designations. The proposed definition would require such facilities to be owned and operated by a non-profit organization. The use would be listed as a conditional use only for the Single Family designation. In addition to the conditional use criteria of SMC 14.65.020, proposed conditions would restrict the use to a maximum floor area of 4,000 square feet to maintain a single family scale, and location within the Historic District and on a collector arterial or minor arterial.

Historic District sites eligible for the use will be limited, in large part, to properties where adequate parking exists or where the prior use had an equal or larger parking requirement than the community-based theater use. Parking standards will be the same as the current requirement of one stall per every four seats listed for *Theater, Plays* in SMC 14.235.230. Staff proposes to revise this Land Use type to *Theaters* to encompass all theater uses.

The Recreational/Cultural Land Use Table in SMC 14.207.130 currently has two theater listings: *Plays/theatrical production* and *Theater*. Neither use is defined in the code, although staff interprets the *Theater* use to mean movie houses. Unless there is a reason to maintain a distinction between the two existing uses, staff proposes to collapse *Plays/theatrical production* and *Theater* into one *Theater* listing, and add a definition for *Theater* to Chapter 14.100 SMC.

To start the discussion, staff has identified the following questions.

- Is this an appropriate use for the Single Family designation?
- Should eligible sites be limited to the Historic District?
- Is a floor area limitation 4,000 square feet appropriate, or should the use be allowed in larger buildings?
- Should a distinction be maintained for *Plays/theatrical production* and *Theater*?

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**RECOMMENDATION: That the Planning Commission DISCUSS the issue and DIRECT staff on a preferred approach for all proposed amendments.**

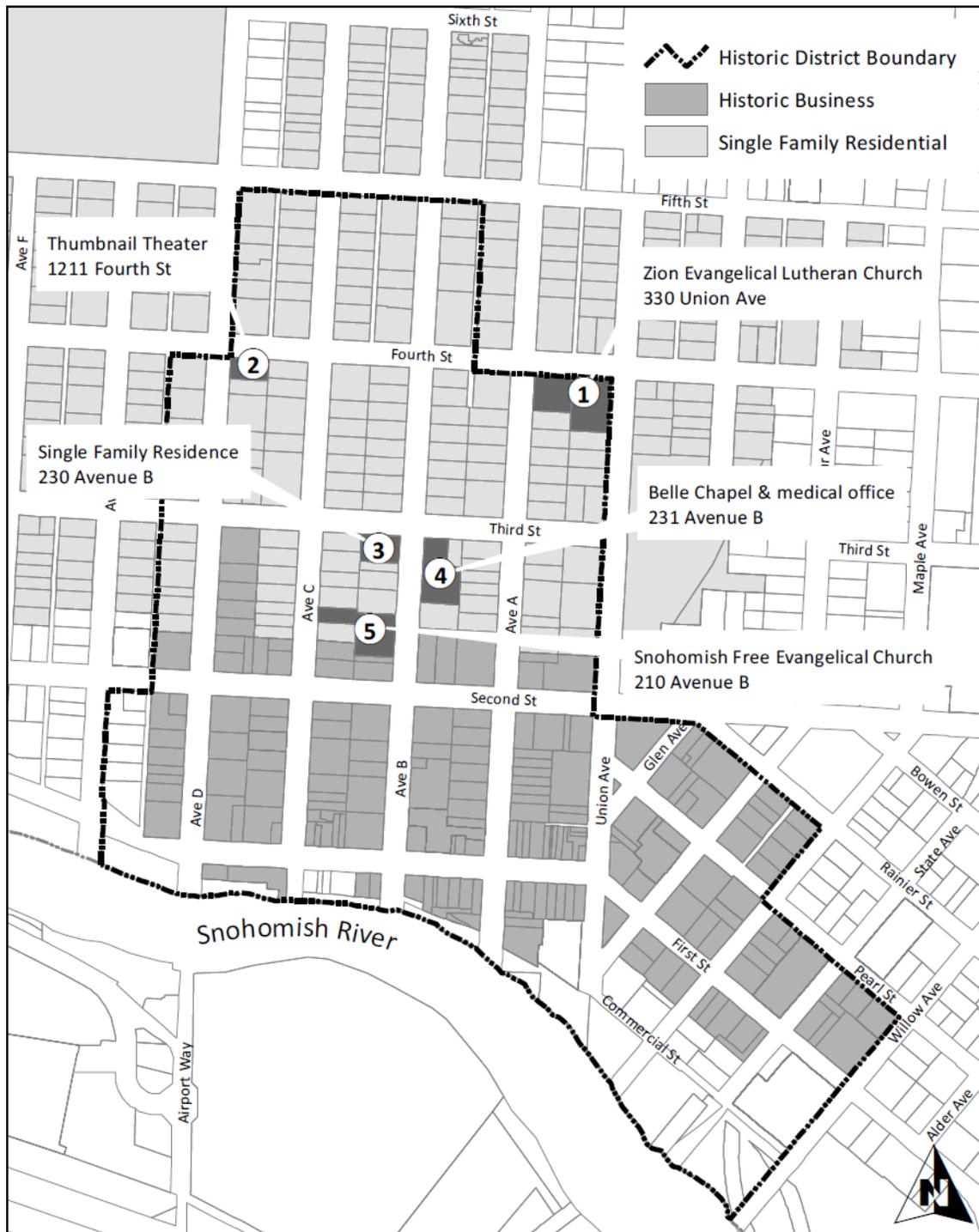
**ATTACHMENTS:**

- A. Map of potential locations for community-based theaters
- B. Analysis of site characteristics for eligible locations
- C. Meeting minutes

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ATTACHMENT A

Map of potential locations for community-based theaters



Potential Sites for Community-Based Theaters

ATTACHMENT B

Analysis of site characteristics for eligible locations

Map #	Address	Size (acres)	Former use	Present use	Parking	Floor Area	Year built	Arterial location
1	330 Union Ave	0.88	church	Zion Lutheran Church	32	12,562 (chapel); 14,900 (annex)	1922; 1960	no
2	1211 Fourth St	0.21	church	Thumbnail Theater	1	3,698	1930	yes
3	230 Avenue B	0.26	church	Single Family Residence	3	4,368 (chapel) 3,212 (rectory)	1890 1900;	no
4	231 Avenue B	0.53	church	Belle Chapel; Compass Health	30	2,752 (Chapel); 4,856 (office)	1967	no
5	210 Avenue B	0.56	church	Snohomish Evangelical Free Church	30	5,700 (chapel); 2,912 (annex)	1956	no

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### ATTACHMENT C

#### **Planning Commission Meeting Minutes Excerpt August 5, 2015**

In 2010, the Planning Commission discussed options to legitimize certain nonconforming uses in the Single Family zone and the Historic District that occupy structures for which there is no reasonable adaptive reuse due to zoning constraints. Having these historical resources with no new potential conforming use poses the risk of loss due to deferred or no maintenance or to the risk of demolition and replacement with structures designed to accommodate conforming uses.

An example is the Thumbnail Theatre, which was built as a church in 1930s and operated as such until 2007 when the theatre became the principal use of the site. The theater has remained nonconforming since 2007. As such, it has no vested rights to exist. If a code violation complaint is filed, the City will be required to take enforcement action to halt the use.

During a recent appraisal inquiry, it was necessary for staff to disclose that the use was nonconforming and without vested rights. The suggestion was made to see if there was some way, consistent with the values and vision of the community, to reconcile the use with the zoning code. It is staff's impression that the theater is valued by the community and, in general, fairly compatible with the immediate neighborhood. Section 14.207 SMC includes a table for Recreational/Cultural Land Uses. *Theaters* and *Plays and theatrical productions* are two uses listed in the Amusement/Entertainment section of the Land Use Tables. Neither use is permitted in a Single Family designation or defined in the code. Without definitions, the uses are interpreted to encompass both commercial and nonprofit or community-based theatres and may address any scale of use and impact. Staff requests the Commissioners' thoughts on potential amendments to create a third theater use listing for *community-based theater*, which would be allowed in Single Family designations. No definition is currently proposed but it could be used to distinguish this use from a movie theatre, multiplex, or a large-scale playhouse. A definition could be added that could limit the use to nonprofit ownership and management, to a maximum floor area, to some occupancy capacity, to certain hours, or other conditions to make it compatible with a residential context. Further, it could be listed as a conditional use and it could also be limited in application to the Historic District.

Mr. Cole suggested expanding beyond Single Family in the Historic District; Ms. Wakefield Nichols agreed.

Mr. Scott recommended limiting it to adaptive reuse only in the Single Family zone to eliminate the possibility of tearing down houses to build theatres.

Mr. Cole then added that it should be a conditional use permit.

Mr. Dennison noted the introduction to the parking code, which states that if there is an increase in technical parking demand according to the parking standards due to a change of use, the new use must meet the parking standard in the parking code. However, if a new use does not increase the parking requirement in the parking code over that required for the prior use, there is no requirement to show compliance with any parking standard. In the case of the Thumbnail

#### **DISCUSSION ITEM 4**

Theater, a church requires one space for every four seats, plus one space per every 200 feet of non-seating area, and a theatre requires one space for every four seats. Because the parking standard does not increase with the transition from church to theater, the theater is not required to comply with parking standards.

Mr. Scott confirmed that this would only apply to a building in existence and could not be used in the case of a change of footprint or a tear-down and rebuild situation.

Mr. Dana noted that if the old code said the requirement was one space per four seats, it never met the parking code. Mr. Dennison said the church was legally nonconforming because it preceded the parking code. The demand did not change when the use changed to a theatre, so the theatre was legally nonconforming to the parking code. In other words, it has a vested right to the same parking supply that the church had.

Ms. Scott asked how many churches were located in the single family zone, and wondered about the consequences down the road if the other locations changed from churches to theaters.

Ms. Wakefield Nichols suggested staff come back to the Commissioners with some drafts and the Commission concurred.

Mr. Dennison said the definition could restrict the scale and noted that this wouldn't resolve all the nonconforming use problems in the Historic District and other solutions may need to be addressed on a use-by-use basis. It was difficult to come up with general standards that could apply to all the disparate uses. Another discussion would be whether such a use could expand, change the footprint, or change the floor area.

Mr. Dana would like to see a map specifying which properties might be subject to this and a statement that says part of the definition or the goal is to preserve old church buildings from being subject to demolition because there's no use for them.

Mr. Dennison said the EDC considered issues related to the Thumbnail Theater and suggested a rezone as an alternative. However, a rezone could be challenged if there is no rational nexus to achieving a legitimate public interest. Also, if it is kept to adaptive reuse, which will primarily be limited to church structures, the parking issue is off the table. There is not significant likelihood that existing single-family structures will be demolished to create parking for nonprofit theaters.