MEMO

To: Shelburne Planning Commission
From: PlaceSense
Date: 25 August 2023
Re: Article 4. Site Design Standards

This memo is intended to assist in your review of the first draft of Article 4. Site Design Standards. The article consists largely of technical requirements that engineers, architects and other professionals will use to design projects. Unlike Article 2, very little of the content in Article 4 is mandated by statute. However, many of the requirements reflect recommended best practices and accepted engineering standards. Others are drafted to be consistent with codes, rules or regulations that also apply to proposed development such as life safety, stormwater and public works specifications.

Chapter 4800, the final chapter in this article, are the sign regulations. This chapter is different from the other site design standards. It must be responsive to the legal framework for regulating signs (or speech) under U.S. law. We are enclosing a separate memo that outlines the changes to sign law since Shelburne last revised its standards. This memo raises policy questions for the Planning Commission to consider. Following the 2015 US Supreme Court case, Reed v. Gilbert, municipalities have had to revise their sign regulations.

Our goal for your first review of this article is not to hammer out every technical standard. Rather, we want to focus your attention on:

1. The **overall approach**. Shelburne's adopted regulations typically do not incorporate the level of technical detail offered in this article. We want to get a sense from the Planning Commission that this approach is the direction you want to move in.
2. The **applicability thresholds** established in the chapters describe which provisions apply to particular types of development or to development in certain areas of town. Given that we have not yet discussed zoning districts, in many cases those thresholds refer to generic terms like 'residential', 'industrial', or 'village'. The intent is to provide a general sense of our initial thoughts on where/when the various provisions should apply, but recognizing that we will need to re-evaluate once the zoning districts have been crafted. What is your response to those thresholds?
3. The **general setting** of the various standards. Do some provisions seem too rigorous? Do others seem too lenient? What are the community expectations in Shelburne?
4. Feedback on identified **policy shifts**. There are several significant policy changes being proposed in this article that we will detail in the table below.

Recognizing that many commissioners have design and engineering expertise, we do anticipate that you will have more detailed comments on many of the technical elements. We would encourage you to share those with us in writing. We are in the process of reviewing the draft with the town staff, contractors and consultants who share responsibility for aspects of development addressed in this article. They are also providing more detailed feedback. We would plan for the next round of edits to this article to incorporate all that input and we would report out to you any points of conflict that need to be resolved by the Planning Commission.

We also anticipate adding illustrations of the technical standards throughout as indicated by the '*insert figure here' notations. We are waiting to complete initial reviews and discussions with staff and Planning Commission which will lead to further adjustments to the technical standards before we create illustrations.

NOTES

Chapter 4000. Streets Relates to the following sections of the adopted regulations: § 900 (subdivision regs), § 1900 (site plan review), § 2200 (street types in FBC)	
§ 4004	Draft incorporates a 'complete streets' approach common within form-based code that establishes a hierarchy of road classifications and types. This approach would be applied townwide instead of just being an option available to developers through the FBC overlay. We recommend asking the Bike and Pedestrian committee to review and comment on the street classes and related map (Figure 4-02). When we met with them, they expressed interested in more off-street shared use paths. We need policy input as to whether to include the 'bicycle street' class and show a mapped network of bicycle streets.
§ 4005 - 4011	We need policy input as to whether to require on-street parking for the listed street types or make it mandatory in some areas of town or districts. We would anticipate that most new development streets in Shelburne would be built as yield streets (§ 4006). We have had an initial meeting with the Fire Chief that included discussion of the street standards. The 'paved width' standard was a request from the Chief. We anticipate further discussion with him on the geometry standards that may lead to further refinement in the design vehicle for some street types. The Chief indicated a preference that fire access roads be designed for the region's largest fire apparatus, Burlington's Tower 1. The only street type he had broad concerns about was the loop lane (§ 4007) as it is a one-way street not wide enough for two emergency vehicles to pass one another.
Chapter 4100. Private Frontages Relates to the following sections of the adopted regulations: § 2200 (frontage types in FBC) We need policy input as to whether to retain this FBC technique to regulating the area between the street and the building, and if keeping this technique where it should be applied. The draft provisions are similar in concept to the provisions for public and private frontages in the adopted FBC.	
§ 4104.E	Note the 'buffer' frontage type. We are proposing this as an option for property with frontage on Shelburne Rd outside the village. What do you think about the idea of development that is either set back more deeply from the highway with landscaped greenspace or buildings oriented to an internal street system rather than to the highway?
Chapter 4200. Access and Movement Relates to the following sections of the adopted regulations: § 1900 (site plan review), § 1980 (miscellaneous provisions)	
§ 4204	Allows for development on interior lots (no street frontage). Prohibits access to development from Class 4 roads, legal trails or other unimproved public rights-of-way (Shelburne does not have many of these). These are not elements clearly addressed by the adopted regulations. We need policy input on whether/where to require shared and/or cross access.
§ 4205	We need policy input on whether to increase the number of homes that can be served by shared driveway from two to four. We discussed this section with the Fire Chief. We anticipate needing to further refine the turnaround standard for driveways longer than 300'.

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Chapter 4300. Parking Relates to the following sections of the adopted regulations: § 1960 (parking requirements)	
§ 4302	Drafted to require pre-existing parking to be brought into conformance if being expanded by 50% or more.
§ 4303	Adds a standard for the maximum number of vehicular parking spaces and for a minimum number of bike parking spaces.
§ 4304	Provides for adjustment of parking requirements including shared parking, remote parking and reduction in required number of spaces. Figure 4-05 is based on the Institute of Traffic Engineers Parking Generation Manual (2019). For many uses this will be a reduction in the required number of parking spaces. For example, a supermarket would currently need 1 space for every 200 sf of floor area, but under the proposed standard would only need 1 space for every 333 sf of floor area. That one-third reduction is fairly typical for many business uses between the requirement from older editions of the manual and more recent versions.
§ 4305	Setbacks for parking areas were set with consideration of the area needed for parking lot landscaping and screening.
§ 4306	Adds provision for compact vehicle parking spaces, which is a mechanism for reducing the amount of impervious surface.
§ 4307	Adds standards for parking structures. Note that the prohibition on electric vehicle charging within a structure relates to the fire hazard it poses.
§ 4308	Adds standards for bicycle parking.
Chapter 4400. Loading and Storage Relates to the following sections of the adopted regulations: § 1950 (performance standards), § 1960 (parking requirements)	
§ 4402	Reduces the amount of loading space required and raises the threshold for the size of business that needs to have loading space.
Chapter 4500. Stormwater Relates to the following sections of the adopted regulations: Article V (stormwater overlay district), § 1900 (site plan review), § 970 (subdivision regulations) This chapter would replace the current stormwater overlay district. Stormwater management would be required for most new impervious surface townwide. We have met with the South Burlington stormwater staff and the consulting engineers currently working on updating Shelburne's public works specifications. There is not consensus among all the involved parties on stormwater standards. We anticipate that this section will need further refinement as those discussions continue. We would like Planning Commission input on the policy questions outlined below.	
§ 4502	State stormwater permitting is required for ½ acre of impervious surface (±20,000 sf). The draft proposes that Shelburne would apply stormwater standards to sites with 10,000 sf of impervious surface or ≥30% lot coverage. The lot coverage standard would result in some house lots being subject to this chapter. We need policy input on what level of development should be subject to stormwater requirements.
§ 4503	We are suggesting a low impact development approach that would provide small property owners with a simplified option for meeting stormwater requirements. South Burlington staff raised concerns about the effectiveness of rain gardens and the ability of homeowners to properly construct and maintain them.

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§ 4504 - 4506	These sections incorporate much of the material drafted by South Burlington staff and presented to you last summer. They also align with the Vermont stormwater manual and permitting process. There are some specific differences highlighted below for your consideration.
§ 4505.A(3)	South Burlington use the 1-year, 24-hour storm standard for setting the peak discharge rate. This equates to a storm that produces about 2.5 inches of rain. Such a storm is now a fairly common occurrence. The state uses the 100-year, 24-hour storm standard. That storm equates to more than 5.5 inches of rain. Do you want to consider a more rigorous standard than suggested by South Burlington that would require a greater amount of run-off to be retained on-site and released at a controlled rate?
§ 4505.B	We are suggesting language that would require higher-density residential subdivisions to be served by a stormwater system capable of treating run-off from streets and at least 4,000 square feet of impervious surface on each house lot. This would eliminate the challenges posed by trying to treat stormwater on small house lots as those properties add small amounts of impervious surface over time. The 4,000 sf aligns roughly with the current calculation of typical impervious cover for residential properties that the stormwater utility rates are based on. What do you think about an approach like this?
§ 4505.F	This paragraph provides design standards drafted based on our prior conversation about recent developments under the FBC. Do these standards address the concerns raised?

Chapter 4600. Landscaping and Screening

Relates to the following sections of the adopted regulations: § 1900 (site plan review), § 810 (subdivision regulations)

This chapter proposes a new approach to landscaping requirements with much more specificity about the quantity and location of plantings.

We discussed streetscaping and frontage landscaping during our initial meeting with the Fire Chief. He is looking for consideration of how plantings impact the ability to access a building from aerial apparatus, which is now the typical method of fighting a structure fire. This language includes flexibility to adjust the spacing, height and form of trees and other plantings directly between the street and building to ensure adequate access while still providing the benefits of street trees and other landscaping in front yards. Fire access concerns increase with larger, multi-story residential buildings. We anticipate refinement of the language as we move forward. We are hoping to provide more specific guidance on tree height and placement in relation to building height and placement.

§ 4606	The requirements for parking lot landscaping is based on a shading standard. Rather than requiring many small planting islands within parking lots, we are recommending a wider greenbelt to break up larger, multi-row parking lots into sub-units with 'perimeter' landscaping. This provides a larger planting area that can support tree growth and also facilitates winter maintenance and stormwater treatment practices.
§ 4609	This section requires major residential subdivisions to retain or plant trees on lots. This is not a common requirement, but does align with a number of town plan policies. We need policy input on this section.
§ 4610.F(4)(d)	Note the allowance for new front parking if it is screened with a change in elevation between the street and the parking. We are proposing this as an option for property with frontage on Shelburne Rd outside the village. What do you think about the idea? If this is something the PC wants to pursue we would need to make revisions to the private frontage language to fully align the interrelated elements.

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Chapter 4700. Site Lighting Relates to the following sections of the adopted regulations: § 1975 (outdoor lighting), § 960 (subdivision regulations)	
§ 4702	We need policy input on the extent to which Shelburne wants to regulate residential lighting.
§ 4703	The standard for minor projects is based on a model lighting ordinance jointly produced by the International Dark Sky Association and the Illuminating Engineers Society of North America. We are aware of a number of Vermont communities implementing this approach.
§ 4704 - 4712	The general requirements that apply to major projects and the specific standards for certain lighting applications are based on best practices gleaned from a number of technical guides, model lighting ordinances and regulations enacted by other municipalities.
§ 4705	Need policy input on whether/where Shelburne wants to require pedestrian lighting and street lighting.
Chapter 4800. Signs Relates to the following sections of the adopted regulations: § 1970 (sign regulation), § 2200 (sign standards in FBC) See separate memo enclosed on legal framework for sign regulation.	
§ 4803	Note recommended change to simply exempt event signage the town permits to be displayed on town property (ex., signs for the farmers' market) and the sponsorship signage the town permits to be displayed at the rec fields from zoning. Town has other mechanisms to control those signs as it owns the property they will be located on. Note recommended change to provide an umbrella exemption for up to 12 square feet of non-commercial signage on any lot. This replaces language related to political and campaign signs in a manner compliant with federal law.
§ 4813	We need policy input on the issue of changeable copy signs, and electronic changeable copy signs in particular. The current regulations do not provide for electronic changeable copy signs. Given the ubiquity of flat screens and the low cost and simplicity of turning a flat screen into a sign, we are recommending Shelburne consider whether/where such signage would be allowed, and if allowed what standards would be appropriate.

MEMO

To: Shelburne Planning Commission
From: PlaceSense
Date: 25 August 2023
Re: Regulation of Signs

The legal framework for regulating signs in the United States establishes two broad categories – 'commercial speech' and 'protected speech'. Commercial speech is advertising. The US Supreme Court has defined commercial speech as speech that proposes a transaction (Central Hudson Gas and Electric v. Public Service Commission,1980). The US Court of Appeals Ninth Circuit provided more detail when it defined commercial speech as expression related solely to the economic interests of the speaker and its audience (Coastal Abstract Service Inc v First American Title Insurance Company). Noncommercial speech is protected speech.

Protected Speech and Signs

Local governments must respect these two categories of speech when crafting sign regulations and must take care not to infringe upon constitutionally protected, noncommercial speech. Any local government regulation of protected speech must be 'narrowly tailored' to achieve a 'compelling governmental interest'. Signs are a form of speech and thus noncommercial signs enjoy the protections of the First Amendment. This standard imposed by the US Supreme Court requires governments to demonstrate they have written laws precisely to use the least restrictive method to achieve their purpose. In land use law, a 'compelling interest' is one directly linked to protecting public health and safety.

US Supreme Court decisions affirm the ability of local governments to impose reasonable 'time, place and manner' restrictions on signs. Rules controlling size, illumination, location and manner of postings (size) can meet constitutional tests, irrespective of whether the sign is commercial or protected speech. The US Supreme Court has held that time, place and manner restrictions of First Amendment protected free speech will be upheld if the regulations:

- Are justified without reference to the content of the signs subject to the law (i.e., content neutral);
- Are narrowly tailored to serve a significant governmental interest; and
- Leave open ample alternative channels for communication of the information.

Sign regulations may not define the content of a noncommercial sign. Content-based restrictions are ones where the sign law is triggered by the message conveyed, by the identity of the speaker or by the particular point of view. The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others. First Amendment protections encompass not only content-based *prohibitions* on speech, but also content-based *restrictions* on speech.

Typical sign regulations which have been found to interfere with free speech are those which allow only commercial signs on business premises; those which distinguish between political and other temporary signs; and those which create exemptions or differing requirements (i.e., permits or fees) for certain content-based categories of signs.

Commercial Speech

Commercial speech (advertising) is afforded less protection under the First Amendment. Central Hudson Gas and Electric v. Public Service Commission established a less demanding test (substantial governmental interest) for local regulations as they apply to commercial speech. Communities can justify some restrictions such as banning commercial signs off premise, operation of vehicles solely for displaying commercial advertisements, controlling visual clutter and ensuring road safety standards.

However, anywhere a municipality restricts commercial speech it must allow for noncommercial (protected) speech. A local government cannot favor commercial speech over noncommercial speech. To address this legal requirement, we are proposing Shelburne include a 'substitution clause' within the sign regulations (see Paragraph 4802.A(1)).

Shelburne Sign Controls

Shelburne's adopted signs standards do not pass the current legal test for applying 'content neutral' standards as it applies different standards to different types of noncommercial signs. Shelburne's adopted regulations allow signs or bulletin boards incidental to places of worship, schools, libraries, or public buildings (§ 1970.2 D., page XIX-72). The regulations contain provisions that permit the Community Farmers Market to place signs on public property for a certain number of days between June 1 and October 31. There are also standards specific to political campaign signs.

The Community Farmers Market signs are a form of protected (noncommercial) speech and are the only recognized form of communication permitted on the Parade Ground or other town properties (except for the ball fields, which allow for sponsorship signs under other provisions of the regulations).

To better meet the constitutional tests outlined above the town has two choices:

1. Prohibit signs on the Parade Ground and/or other municipal properties of any kind or;
2. Allow for all noncommercial signs to the same extent (the proposed draft recommends this approach as provided for in Paragraph 4803.A(4) to allow public event signs to be posted on town property).

The town can impose reasonable time, place and manner limitations (using the strict scrutiny standard) to permit noncommercial signs on town property In making this choice however, adherence to a content neutral standard means that any speech protected by the First Amendment must be permitted. This could include viewpoints that Shelburne residents find offensive. In a series of cases through the 1990s the US Supreme Court reasserted a very narrow definition of hate speech.

The discussion above makes clear that signs with protected speech messages can be held to narrowly tailored time, place and manner limitations. As a property owner, the town needs to make an administrative policy decision as to whether it will allow noncommercial speech signs on its property. If the town elects to permit noncommercial signs on town property such signs should be subject to the general provisions of this chapter.

Currently the town receives income for commercial speech (advertising) signs at two ball fields. Any additional specifications for those signs that are not applied outside the recreational sponsorship program should be dealt with as an administrative policy where advertisers agree to the specifications for signs they are paying to place at the ball fields or other town properties. Here the town is selling advertising rights and as the facility owner can impose additional requirements through contract..