



# Kitsap County Department of Community Development

2018 Comprehensive Plan Amendments - Planning Commission Consideration - Comment Matrix			
#	Name, Org	Comment	Staff Response
<b>AMENDMENT: KITSAP COUNTY NON-MOTORIZED FACILITIES PLAN</b>			
2.	Keith Norbut	<p>Topics: Amendment #6, Kingston Community Map Reference: Attachment A, Exhibit A3, Kingston Map; Attachment C2, page 15, item #2 (N5)</p> <p>Summary of attached comment: ISSUE – Change all of East 4th Street to Recreational Use OPOSE – This issue changes legal liability and use inconsistent with prevailing use, historical fee simple plat dedication of ROW, and is not consistent with case law.</p> <ul style="list-style-type: none"> <li>• Staff Report Unsuitably Recommends Entire 4th Street Classification as Recreational</li> <li>• Prevailing use is Mixed mode route serving local residents</li> <li>• More appropriate classification would be a Shared-use or Mixed-use Path – Not Recreational</li> <li>• The current use is established and already supports the community and is presently congruent with a pedestrian environment</li> <li>• Exclusive non-motorized use is inconsistent with UVC zoning for current and future use.</li> <li>• Pedestrian connector use for commuters and local residential pathways is consistent use with the Pennsylvania/Illinois pathway segment.</li> <li>• Recreational classification is not appropriate since the area does not lend itself to recreational; use, but rather is appropriate as a connector for local residents.</li> <li>• Recreational classification may cause lingering, loitering, or result in a gathering place for activities. This would disrupt the quiet enjoyment of the abutting residents.</li> <li>• Recreational use is only well suited at the existing access trail to the PUD land trail entrance for hiking in the hills. The prior access point to the PUD trail system is land locked by the Bayview Condominiums the</li> </ul>	<p>Thank you for this comment regarding the proposed amendment #6 (Kingston Community Map). Identification of public right-of-way (ROW) as a “Trail” does not limit the use of the ROW to recreation. As a ROW, 4th Ave. in Kingston is open to public access and future development for all transportation purposes.</p> <p>The 2013 Kitsap County Non-Motorized Facilities Plan identifies 4th Ave. from Washington Ave. to Illinois Ave. as an “Existing Open Trail”. The proposed map change for 4th Ave. is limited to extending the trail identification approximately 200 feet from Illinois Ave. to Pennsylvania Avenue. The proposed change was recommended by the Kingston Citizens Advisory Committee and incorporated into the Kingston Trails Plan. Prior to adoption of the 2016 County Comprehensive Plan, the Kingston Trails Plan was incorporated by reference into the Kingston Subarea Plan. The proposal was reviewed by and is recommended by the Kitsap County Non-Motorized Facilities Citizens Advisory Committee.</p> <p>The 4th Ave. corridor is predominately undeveloped public (ROW). Identification of the ROW as a “Trail” on the Kingston Community Map notes the Kingston Community’s desire that this corridor be preserved for transportation purposes (ie. not vacated) and that future roadway designs support non-motorized transportation. This corridor was just outside of the Kingston Complete Streets Study (2016).</p>

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		<p>Pennsylvania/Illinois pathway provides no benefit for access to that recreation trail system.</p> <ul style="list-style-type: none"> <li>• RCW 47.14.020 defines "Right-of way" as "area of land designated for transportation purposes."</li> <li>• 79A.05.010 (4) defines "Recreation" means those activities of a voluntary and leisure time nature that aid in promoting entertainment, pleasure, play, relaxation, or instruction.</li> <li>• We strongly urge the recreational classification to only be applied to the PUD lands segment of East 4th Street.</li> </ul>	<p>Development within the ROW is subject to County approval and permitting. The public can access a ROW, but any development within a ROW must be permitted by the County.</p>
3.	Dora Norbut	<p>Same as comment #2.</p>	<p>See response #2.</p>
4.	Alice Norbut	<p>Topics: Amendment #6, Kingston Community Map Reference: Attachment A, Exhibit A3, Kingston Map; Attachment C2, page 15, item #2 (N5)</p> <p>I live on an abutting property of the 4th Ave ROW and I have already experienced considerable loitering - with concerning behavior at night and drug/alcohol paraphernalia left on the pathway. I have also experienced strangers trespassing onto the property from the ROW on multiple occasions. I am concerned about the recreational designation because it would reinforce the idea of the route as similar to a park or trail, and lead to increased night/drug use.</p> <p>Similarly, I am concerned about privacy in that the current trees and vegetation provide a privacy screen from the condos and apartments above. It also provides a living sound barrier and shade. I am concerned that the designation will encourage further unauthorized tree removal and private landscaping of the ROW as a recreational area.</p>	<p>Thank you for this comment regarding the proposed amendment #6 (Kingston Community Map). Laws regarding illegal behavior such as trespassing on public property, drug use, and "loitering" in an undeveloped ROW are the same as if it were a developed roadway and should be reported to the Kitsap County Sheriff. Minor vegetation management (trimming bushes, cutting grasses) does not typically require a County permit. Tree removal within a ROW does require a County Permit. Suspected tree removal or "excessive" vegetation management should be reported to Kitsap County Public Works. Future development of the ROW such as development/improvements of a "soft trail" (Category 5 ROW Permit) or development of the roadway will include notifications to adjacent property owners to assure that they can express concerns/support about proposed developments, design, and potential mitigation measures.</p> <p>Also see response #2.</p>

## Public Comment on 2018 Annual Kitsap County Comprehensive Plan Amendments

### Amendment 1 – Non-Motorized Facilities Plan

#### Item #2 - Kingston 4<sup>th</sup> Street East Right-of-Way

*[Item #2 (N5) on page 15 of the C2 Staff Report]*

*Addition of Section between Illinois Ave and Pennsylvania Ave.*

#### ISSUE – Change all of East 4<sup>th</sup> Street to Recreational Use

**OPPOSE** – This issue changes legal liability and use inconsistent with prevailing use, historical fee simple plat dedication of ROW, and is not consistent with case law.

#### Issues

- Staff Report Unsuitably Recommends Entire 4<sup>th</sup> Street Classification as Recreational
- Prevailing use is Mixed mode route serving local residents
- More appropriate classification would be a Shared-use or Mixed-use Path – Not Recreational

This narrative formally request to deny the recreational designation of a segment of the East 4<sup>th</sup> Street that is mentioned in the Non-Motorized Pan (NMP) staff report. The report contains errors *[Note: considering the overall scope of the report, the errors and omissions are within industry standards.]* One specific error impacts our home and property abutting Kingston’s NE 4<sup>th</sup> Street Right-of-Way (ROW).

Item #2 on page 15 of the report states recreational designation of “*the remaining identified trail within the unimproved East 4<sup>th</sup> Ave ROW*”. Such designation would be inconsistent with the existing use in the area and is inappropriate to designate as recreational for abutting landowners’ right to quiet enjoyment, public safety and liability considerations. The community need for pedestrian or commuter transportation pathways is already fulfilled. Formal designation as recreational does not accomplish any benefit to the overall community since it is already a mixed use route.

#### Specific Area of Topic

The Kingston Non-motorized Facilities Plan (NMP) proposes a new designation for the East 4<sup>th</sup> Street Right-of way from Pennsylvania Ave. to Washington Ave. *[Item #2 (N5) on page 15 of the C2 Staff Report]*. The proposal includes the addition to include a segment between Illinois Ave and Pennsylvania Ave. Appended to this document are two (2) maps listed as Figure 1 – NMP Report Map (NMP Proposed Area Grouped as One Area) and Figure 2 - Actual Current Use of Diverse Segments Map. The segment from Illinois Ave to Pennsylvania Ave. segment is shown as flag note 2 on the Figure 2 map.

The NMP report recommendation features a new designation as an “*on-road trail type; with pedestrian, bicycle and horse users; and specifies the type of use as recreation.*”

#### Recreational Designation is Inappropriate

At issue is the classification of this segment as **recreational** *[Note: the original legal dedicated Right-of-way (ROW) was specified by plat as public highways or alleys in perpetuity which is a transportation use.]*

While the NMP report designation of recreational may be appropriate for just one segment of the 4<sup>th</sup> Street area (see flag note 5 on the attached figure 2 map - NE Iowa Ave. trailhead for the PUD trails), it is not appropriate for the other segments. All segments have been inaccurately grouped

together as one on the NMP plan despite the disparate use. The majority portions of the overall East 4<sup>th</sup> Street plan are currently used as roads and driveways serving residential homes and lots.

Classification of the County ROW as “recreational” alters the legal responsibility of the County as per Washington State case law. [*Camicia v. Howard S. Wright Constr. Co.*, 179 Wn.2d 684, 317 P.3d 987, 2014 Wash. LEXIS 70]

Recreational classification would impede the right of quiet enjoyment for the abutting landowners. The term “recreational” is misleading from the popular use of the term which can create (and has created) confusion and misinterpretation by some of the less sophisticated element of the nearby population. Recreation has been defined by the State to imply that the public may gather, spend leisure time, or loiter at the location. The essence of the ROW is defined a public easement, and is not defined for recreational loitering

Loitering at the location has been recurring problem in the area which is very close proximity to residential homes. A significant concern is that there is a registered sexual offender living in condominiums adjacent to the route who has been seen loitering near a residential hot tub/spa. Additionally, there have been several incidents of noise and litter including beer cans and drug paraphernalia found on the 4<sup>th</sup> Street ROW paths.

Furthermore, individuals from neighboring condominiums have admitted to willfully clearing vegetation and trees stating that their goal was to gain views. The Illinois/Pennsylvania property segment along with adjacent private property utilizes the natural vegetation to create a visual and acoustic barrier from the bordering condominiums. This willful clearing and tree cutting activity has even encroached across the ROW onto abutting private property. There is concern that these certain individuals may use the new “recreational” classification as a misdirected means to achieve their admitted ends to obtain a view where there are no covenants for view or easements for light and air. Such clearing would open up the privacy barrier whereas the condominiums may easily peer into the neighboring home and property. This violates the right to quiet enjoyment and creates a potential for intrusion of another person's reasonable expectation of privacy. [*Sept. 2000 PETERS v. VINATIERI* 657 102 Wn. App. 641 ... upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.] Furthermore, such loss of privacy would adversely affect the property values.

Designation as a “recreation” area may allow loitering as per RCW79A.05.010(4) rather than simple use as a pathway route. Recreational use inconsistent with the prevailing use for transportation as defined by the original town plat and the current established use as a pathway for transportation to and from local residential areas to commercial areas.

Recreational use as defined by RCW is contrary to a right-of-way being used as a connector route. Disallowing recreational classification for the Illinois to Pennsylvania segment would preserve the prescribed use for the abutting land as per the original plat. [*RCW 79A.05.010 Definitions. (4)* “Recreation” means those activities of a voluntary and leisure time nature that aid in promoting entertainment, pleasure, play, relaxation, or instruction.]

### **Primary use of the ROW is for Transportation**

The existing prescribed use of the County ROWs have been clearly defined for transportation by dedication in the original plat of the Town of Kingston. A more appropriate classification would be as a Shared-use or Mixed-use paths/Connectors classified as Trail Class 5 in the Kitsap Non-Motorized Facilities’ funding report. Mixed-use paths are different than trails from a regulatory, user, and developmental perspective.

Popular semantical use of the term “non-motorized” is misleading which can potentially lead to misinterpretation by some as excluding motorized use. The report does not make clear that the very nature of Right-of-Ways are for transportation as defined by RCW. If defined to exclude all motorized use, the designation appears to be inconsistent with the prevailing and planned use considering the

abutting land is zoned UVC. Limiting future access to only non-motorized use may also conflict with requirements for access due to legal necessity.

Designation should be a Route rather than Trail, and not listed as recreation. The County staff acknowledges the mix use, yet the recommended designation as "Existing Open Trail" is inconsistent with the current prevailing use since the majority of that section of 4<sup>th</sup> Street is used as a connector path to and from primary residential areas. Only one section of 4<sup>th</sup> Street at the PUD land is correctly documented for use as recreational trails (see Figure 2- flag note 5).

The specific 4<sup>th</sup> Street pathway has been used exclusively as a connector route to and from local residential areas, local businesses, and the Kingston ferry transportation center. The predominant use has not and should not be recreational. Recreational classification causes numerous issues with liability, and potential for permissive loitering.

It is important to note there are differences in the definitions of the terminologies of *right-of-ways*, *routes*, *trails*, *mixed-use*, *non-motorized*, and *recreational* uses. Each specific term carries its own unique technical definition that is often different from commonly understood popular semantical definitions. These differences can significantly alter the formal status of developmental use associated with the community.

## Summary

- The current use is established and already supports the community and is presently congruent with a pedestrian environment
- Exclusive non-motorized use is inconsistent with UVC zoning for current and future use.
- Pedestrian connector use for commuters and local residential pathways is consistent use with the Pennsylvania/Illinois pathway segment.
- Recreational classification is not appropriate since the area does not lend itself to recreational; use, but rather is appropriate as a connector for local residents. Recreational classification may cause lingering, loitering, or result in a gathering place for activities. This would disrupt the quiet enjoyment of the abutting residents.
- Recreational use is only well suited at the existing access trail to the PUD land trail entrance for hiking in the hills. The prior access point to the PUD trail system is land locked by the Bayview Condominiums the Pennsylvania/Illinois pathway provides no benefit for access to that recreation trail system.
- RCW 47.14.020 defines "Right-of way" as "area of land designated for transportation purposes."
- 79A.05.010 (4) defines "Recreation" means those activities of a voluntary and leisure time nature that aid in promoting entertainment, pleasure, play, relaxation, or instruction.

We strongly urge the recreational classification to only be applied to the PUD lands segment of East 4<sup>th</sup> Street.

**Figure 1 – NMP Proposed Area Grouped as One Area**

The NMP item #2(N5) on page 15 of the Staff Report proposes to extend a small area between Pennsylvania Avenue and Illinois Ave. and identify trail as a “Existing Open Trail” (see Figure 1 below) .

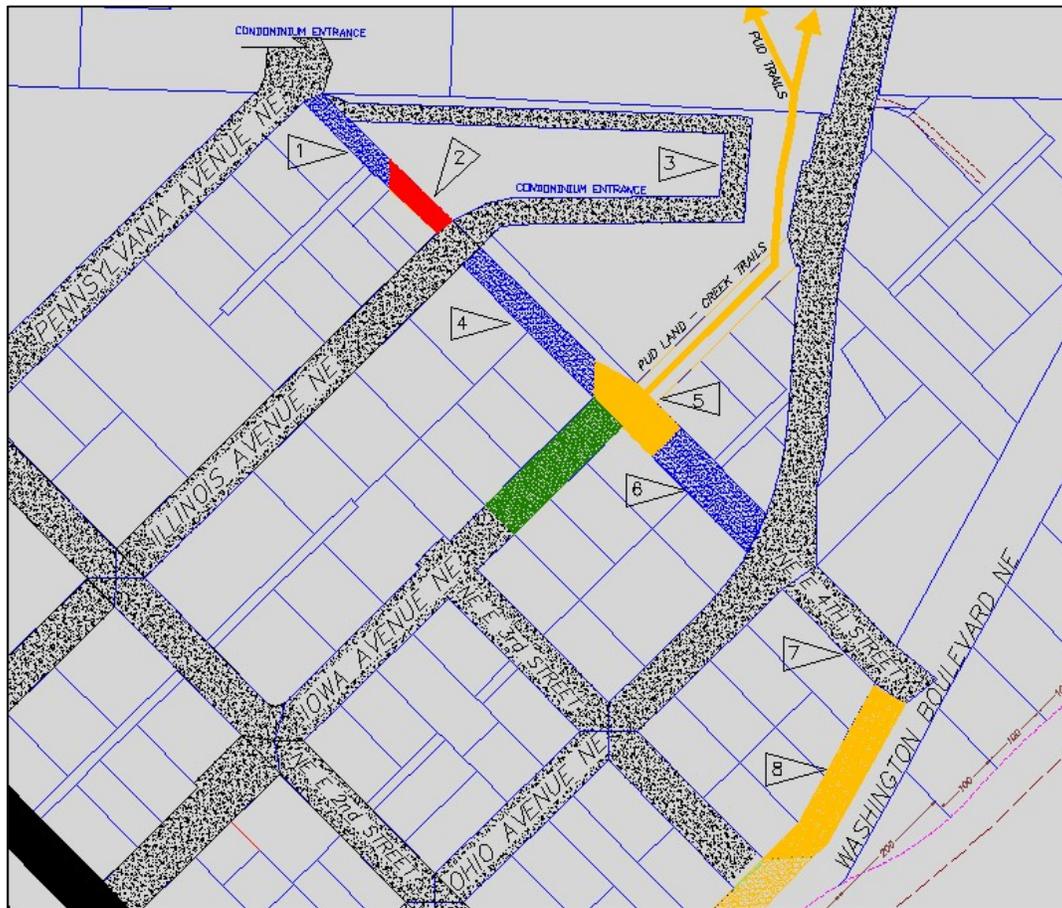


**Figure 1 - NMP Report Map**

The maps included in the NMP do not detail the complete prevailing use of the various segments of East 4<sup>th</sup> Street. The NMP proposal groups the complex area into one locale yet omits detailing the patchwork of diverse areas with each being distinctive from the other.

**Figure 2 – Actual Current Use of Diverse Segments**

The following Figure 2 details the current characteristic use at different and various segments of the East 4<sup>th</sup> Street ROW.



**Figure 2 – Actual Current Use**

**LEGEND**

Yellow - Existing Pedestrian Path    Black - Paved Road    Blue - Gravel Road  
 Green - unopened area    Red - Area of Discussion

**FLAGNOTES**

- 1      Multi-unit Driveway - Gravel
- 2      Pedestrian Connector Path
- 3      Private Condominium Roadway
- 4      Multi-unit Driveway - Gravel
- Iowa Ave. Trailhead to PUD
- 5      Trails
- 6      Multi-unit Driveway - Gravel
- 7      Paved Street
- 8      Pedestrian Connector Path