



JEFFERSON COUNTY

PLANNING COMMISSION

621 Sheridan Street

Port Townsend, WA 98368

(360) 379-4450

Notes for the Critical Areas Committee Meeting
February 15, 2007
WSU Learning Center
Shold Business Park, Spruce Room
Port Hadlock, WA

Planning Commission members: Jim Hagen, Peter Downey, Henry Werch and Dennis Schultz (Bud Schindler, alternate)

Advisory Group members: Al Latham, Amy Hiatt, Bill Wheeler, Cathie Baker, Diane Johnson, Dianne Bonnavier-Holman, Dr. Kenneth Brooks, Dr. Robert Crittenden, George Yount, Jill Silver, Jim Tracy, John Richmond, John Boulton (alternate), Julie Jaman (alternate), Kathy Dickson (alternate), L. Katherine Baril, Nancy Stelow, Norman MacLeod, Roger Short, Ron Sikes, and Sandy Hershelman.

Staff: Brent Butler, Barbara Nightingale, and Cheryl Halvorson

The Planning Commission Critical Areas Committee meeting was called to order at the WSU Learning Center, Spruce Room, at 7:00 pm by Chair Jim Hagen. Planning Commission members present were Dennis Schultz, Jim Hagen, Henry Werch and Peter Downey. Advisory Group members present were Al Latham, Amy Hiatt, Diane Johnson, Dr. Kenneth Brooks, Dr. Robert Crittenden, George Yount, Jill Silver, Jim Tracy, John Richmond, Nancy Stelow, Norman MacLeod, Roger Short, Sandy Hershelman, and Bill Wheeler (for the later part of the meeting).

DCD staff present were Brent Butler, Barbara Nightingale, and Cheryl Halvorson.

There were about 15 members of the public present. Those who signed the guest list were: Lois Richmond, George R. Hansberry, Richard Hild, Jim Storey, Denver Shoop, James Fritz, Frank Hoffman, Brenda McMillan, John Coieser, Clark Crandall, and Nadine Hild.

Public Comment:

James Fritz said that he had worked for twenty years to get toxic substances out of our water bodies. He said that no one wanted to save the streams and salmon more than he did. But we all have to work together. To work together, we had to come up with a CAO that the property owners and everyone could buy into. He thought this committee had done a wonderful job. He was concerned that the minority reports would be accepted by the BOCC and all this work would fly apart. He discussed unintended consequences, using the spotted owl as an example where timber owners shot the owls when they found them. While that was totally unintended, it happened all the time. If someone had to choose between sending their children to college and shooting an owl, the owl came out the loser. If we made the salmon the scapegoats for an anti-growth policy, the salmon will become extinct. The only way to save the salmon and rehabilitate the streams is if everyone worked together and we had the cooperation of the landowners. We cannot use the salmon as a scapegoat to promote anti-growth policies.

Discussion/Recommendation on Foundational Principles:

The committee returned to a review of the remainder of the ten foundational principles that had initially been presented at the last meeting. A new letter from Jim Tracy was handed out containing revised editions for three of the principles [#4, 9 and 10]. Jim Tracy noted that #4 was tabled at the last meeting for a re-write and the committee had not discussed #9 and #10. Mr. Tracy said that he had re-written #9 and #10 based on some comments received.

Jim Hagen read each of the draft principles for the benefit of the public.

Kenn Brooks moved that the committee accept Principle #4 as re-written. Robert Crittenden seconded the motion. There being no further discussion, the motion carried with fifteen in favor and two abstentions (15-0-2).

The committee moved on to Principle #9. Jim Tracy explained his reason for proposing both #9 and #10. The CAO would be a major enactment for this county. He thought we would not fully comprehend the consequences until it was in effect and being administered. The purpose of Principle #9 was to address a mechanism for amendments to the ordinance without having to wait a long time when it was apparent that such amendments were needed. By the same token, he did not think any administrative decision should go without an appeal process.

In answer to Henry Werch's question, Jim Tracy said that you needed to take #9 and #10 together. One addressed the individual application of the regulation as expeditiously as possible. The other addressed the reasonable economic use exception. In the current ordinance, there were provisions for the reasonable economic use exception and for variances. They were cumbersome and difficult to understand. His purpose was to make it less formalized than the variance process so that it would be more efficient and less of a burden for the applicant. Mr. Tracy said that part of his purpose was to make sure that the findings of the Hearing Examiner were clear and understandable to the parties.

Henry Werch asked if Mr. Tracy's intent was that these principles would apply only to the CAO and not to every ordinance in the county. Jim Tracy replied that was correct.

Amy Hiatt asked if this meant the CAO should have a demonstrated procedure within itself to address the reasonable economic use exception. Jim Tracy replied that the draft ordinance did currently have such provisions in Section 205 under General Exceptions. He said that he had criticized that section in his previous memo because it lacked standards and criteria. The current draft looked to him like an improper delegation of authority without standards. There needed to be something to address that defect. Ms. Hiatt asked if addressing that defect would satisfy the issue raised in #9. Mr. Tracy responded that #9 and #10 together contained a unifying theme. That was how the state could pass regulations that would hurt people. He stated a philosophical contention with doing so and then making people pay to prove the jurisdiction wrong.

Jill Silver asked for examples of where this affected people. Brent Butler responded that he would have to ask the DRD staff. An audience member described their property on the Toandos Peninsula with a stream running through the middle where the proposed 450-foot setback would prevent them from building a home anywhere on their 27 acres. The audience member knew of someone with five acres in the same scenario that had the same issue, even with a smaller buffer. Another audience member said that he was a builder and had experienced restrictions in being able to build or get permits with the current regulations. So he was concerned about what more strict regulations would do.

Robert Crittenden asked if #9 really talked about two different topics. One was for an individual site specific problem where the administrator could have authority to not implement a specific regulation. The other was a situation where the code itself should be modified through a planning process. Jim Tracy replied that was correct.

Kenn Brooks thought that if an ordinance section was inappropriate or inapplicable, it should be removed or adjusted in the ordinance so that it applied to the whole county, rather than to just an individual parcel. Dr. Brooks said that variances were very time consuming and expensive to pursue. He thought we needed a good ordinance that did not require variances. He suggested that #9 should be split into two

parts. One would address the variance issue and the other would address the code modification process.

Peter Downey was uneasy with the language in #9. He said that there was an existing process to follow if there were problems found with the code to modify it. However, he agreed with Dr. Brooks that we should have a code that worked for people, that provided certainty. He thought we should have the best code we could, but it should not be opened up so that anyone could challenge any part of the code and have it changed. We should use the existing process.

Roger Short agreed with Mr. Tracy's proposal. He provided information on his experiences with the county and state regulations. He did not think people should have to go through what he and others he could cite had had to go through. Nancy Stelow provided an example of her experience as a realtor with some properties. In one case, the people were told they could not build. Then two months later, they were told that they could build. She did not know what happened in that time to change the county's ruling.

Diane Johnson said that #9 was a concept that did not require code language; it was the concept that should be addressed.

The group discussed the fact that there may be a need for corrections to be made in an ordinance after adoption. But how to solve the issue was the question. Another related question was how DCD should address a problem in the interim.

Kenn Brooks moved that the committee approve Principle #9 with a modification in Line #4 stating "inapplicable to the management of critical areas in Jefferson County" to distinguish the principle from application to every county ordinance. Roger Short seconded the motion.

Jim Tracy said that there was already a process for making amendments to the code. His intent was to address problems found on individual properties and to provide an administrative process, subject to appeal, to address those specific circumstances without having to go through a cumbersome variance process.

Kenn Brooks amended the motion so that #9 would read "a Jefferson County citizen can petition for modification and/or relief from any portion of the regulation which can be demonstrated ..." Roger Short continued the second to the amended motion.

Jill Silver was worried that this layered another layer of burden at the county. They needed the ability to respond to the public quickly. She thought this would create more of a quagmire at the county level. The county needed more staff, better maps, etc. in order to respond more quickly.

Norm MacLeod thought the intent of #9 would put the burden on the applicant to show that the regulation was ineffective, etc. The only burden on the county would be for the administrator to decide whether that person should be granted the relief requested. He did not think it required much of the county except in terms of asking the administrator to make a decision.

The motion carried with eleven in favor, four opposed, and two abstentions (11-4-2).

The committee moved on to Principle #10. Jim Tracy said that this proposal was a fairly revolutionary approach. He did not know of any other jurisdiction in the state that had something similar. But it addressed what he thought was one of the fundamental grievances that people in general had about regulations. They could not seek redress or remedy unless they had deep pockets. He thought it was fundamentally unfair to put the burden on the people. He thought the fundamental philosophy of this committee was that it was the government's burden of proof to show that a regulation was necessary and that reasonable use could be preserved on a property. He thought every zone should have a definition of what constitutes a reasonable use.

Kenn Brooks supported the proposal. He did not think the BOCC would adopt such a principle because of the possible financial burden to the county. However, the citizens, as represented by this committee, had a responsibility to state what we felt was reasonable economic use. Dr. Brooks said that the state's approach to dealing with citizens litigation was to drag out the process and make it so expensive that the

citizens would give up. While that may be a reasonable course of action for the state from their point of view, you had to ask whether it was a fair, reasonable course from the citizen's point of view.

Henry Werch was concerned about defining "reasonable economic use" because there were so many that a property owner could have that could change every day. The concern was that defining "reasonable economic use" would be limiting rather than enabling. He hoped the goal would be to enable and not limit.

Jill Silver was supportive of the principle although she thought the last sentence was editorial. She wondered how we would define "reasonable economic use". Jim Tracy responded with how one jurisdiction defined "reasonable economic use" for a residential zone. Ms. Silver suggested that the committee table the proposal until we could research what other jurisdictions had done, reiterating that she was not opposed to the idea.

Kenn Brooks moved that the committee accept Principle #10. Diane Johnson seconded the motion.

Kenn Brooks said that the committee was looking at foundational principles or concepts. What the committee was voting on was the concept. If we accepted the concept, it supplied the basis for expending the time and energy to develop it into something more concrete.

Robert Crittenden suggested a friendly amendment to the motion to delete the last sentence because it was editorial in nature. Kenn Brooks thought that, from a citizen's point of view, it was important to leave the sentence in. He acknowledged that it would not likely survive into any kind of code, but it illustrated the intent of the committee. Therefore, he did not accept the friendly amendment.

The committee discussed the intent of a reasonable economic use, which was a substantive ability to use the land to produce revenue or to live there.

The motion carried with fifteen in favor and two abstentions (15-0-2).

Jim Hagen said that the committee had talked at the last meeting about other additional principles. He asked the committee's pleasure on that topic. Henry Werch suggested a principle that the county apply for all funding sources that would allow the county to adequately fund and staff its Planning Department.

Kenn Brooks agreed with Mr. Werch but provided information on his conversation with the head of conservation at NRCS who had reviewed his work. He reported that he liked the best available science, but he differed with the buffers. He was adamantly opposed to any prescriptive buffers; they did not work or serve the intended purpose. He thought we should have site specific buffers and plans everywhere. That raised the issue of who paid for those site specific plans. The upshot of the conversation was that NRCS no longer provided the technical support that it used to because of lower funding. His point was that none of it was free. He thought if you took a regulatory approach, it would require more staff and money. While that was the most expensive option, any option required funding. So he supported applying for any kind of funding that might be available.

Henry Werch was asked to write a proposal for consideration at the next meeting. Dr. Brooks said that he had several principles that he wanted to present as well.

Roger Short said that the county should have to live within its means just as the citizens did.

Norm MacLeod discussed the fine line between compliance and defiance. We needed to consider that in this county because we did not have the resources of larger counties to do enforcement. It was important for the county to write regulations that would not push the citizens over the line into defiance; we should strive for willing compliance that would protect the eco-system. That meant the county working with people on the problems that came up.

Diane Johnson thought she might suggest a principle for consideration concerning a method for addressing voluntary compliance. It might take the form of mediation or arbitration, although there were other methods that could be employed as well.

Discussion of Work Plan:

Jim Hagen asked if staff had talked further with DOE. Brent Butler responded that he had communicated the committee's desire for feedback from them. He said that he had played telephone tag with their representatives. He wanted to send them the final reports of the sub-groups and the minority for review. Barbara Nightingale reported that she had called the tribes that had interests in this area. They wanted to review our work as well. Mr. Butler pointed out the website address for the critical areas web page. He said that the web site will be updated early next week.

Brent Butler clarified that the committee requested that DOE provide feedback, although he thought there were still reports that needed to be finalized. Jim Hagen responded that he thought most of the reports were done. It was pointed out that the agriculture report was last updated about February 1. The Brooks report was complete. The F&WLHCA report was not quite complete. Dennis Schultz will provide an updated version. The CMZ report likely required some additions of "Whereas's" to support the recommendation to not regulate CMZs.

Jill Silver reported on some science relating to headwaters. She suggested that the F&WL group look at that material before making further changes.

Jim Hagen said that the committee would like to have the feedback from DOE as soon as possible.

Brent Butler asked whether the committee authorized the minority reports being presented to DOE along with the majority reports. The committee indicated their support for doing so.

The committee discussed reviewing the minority recommendations. It was suggested that the committee take them up at the next meeting. Two reports had been provided and another two would be available by the next meeting. It was suggested that the minority reports be provided electronically.

Jim Hagen suggested that the committee consider whether it wanted to appoint a subcommittee to work with the code writer.

Kenn Brooks moved that the committee appoint a sub-group to work with the code writer to ensure a clean code representing the committee's viewpoint. Dennis Schultz seconded the motion.

Brent Butler reported that the code writer consultant would not be available until about the middle of March. Several committee members thought that timeframe was unacceptable. They wondered whether someone else could be found more quickly. Mr. Butler referred to the timeline, which indicated that the Critical Area Committee would provide reports and draft code to the full Planning Commission by April 1. Another significant date was that the process was to be completed by October.

The committee and staff discussed the deliverables for April 1. There was frustration expressed by some committee members that DCD was unable to support the committee with code writing in a timely way.

Kenn Brooks withdrew his motion in order to make a different motion.

Kenn Brooks moved that the committee form a code writing sub-group to do the county's work and write the code drafts. Nancy Stelow seconded the motion.

Roger Short expressed his frustration, stating the opinion that the delay was becoming a political issue.

Henry Werch suggested there may be two ways this process could be made easier. One was to follow Whatcom County's format. Second, the format that Amy Hiatt had followed might be feasible for a format. He suggested the other committee members look at those formats only, not considering the content.

Norm MacLeod issued a caution about the Whatcom County ordinance. He acknowledged that this delay in getting the code written was not the fault of the present staff. He reported on a conversation at the BOCC meeting where they had discussed the opinion that they did not see a need to have a code writer at this time. The County Administrator had provided this alternative solution. He thought it was important for the BOCC to understand that this was not a game. It was about protecting the eco-systems and also looking out for the needs of the county's people. He offered the opinion that if you compressed it down to two weeks before it was due, the work would not be done or it would not be good enough.

It was suggested that another alternative was to ask for another extension because the county was at fault, thus gaining additional time to do a complete job.

Robert Crittenden did not support the motion, stating that he thought the county should have a consultant write the code and it should be someone from outside this group. Jim Hagen thought the committee was limited in what it could do. Norm MacLeod countered Dr. Crittenden's comments, stating that the committee needed to make a statement to the BOCC that this delay was not acceptable. The code writer, when one was hired, could catch up to whatever the committee does towards writing code language in the interim.

The motion carried with thirteen in favor, one opposed, and four abstentions (13-1-4).

Jim Hagen read a memo from the four minority members suggesting the committee use the Whatcom County format. Amy Hiatt explained that she had followed the Whatcom code format in the minority's draft for a stand alone CAO. She explained that you could ignore the content of their draft and just look at the format. She explained the virtues of the format. She thought the structure was more useful than our current code.

Dennis Schultz thought there may be some things in the Whatcom format that the committee would want to consider. Norm MacLeod asked if there were administrative barriers with revising the format of the code. The committee discussed the format and whether it could fit within the current JCC. There was some discussion about using the Island County ordinance rather than the Whatcom ordinance.

Kenn Brooks suggested that the code writing sub-group be appointed and they be charged with looking at the Island and Whatcom County formats and the current Jefferson County code format and decide what worked best. There was some agreement among the committee members that a sub-group could make that review and consideration.

The committee discussed appointments to a code writing sub-group. Robert Crittenden suggested that it would be appropriate to have someone from the minority group on the code writing sub-group. George Yount stated that they were already writing code for their viewpoints.

The committee agreed to take the issue of appointing a code sub-group up again at the next meeting. Also agreed upon for the next agenda was a discussion of the minority reports as well as the Bill Wheeler suggestion.

Norm MacLeod referred to a letter in the Leader this week that discussed the committee's work. He said that he was looking at a future for the county where his child could come here to live. He had worked on environmental issues for years in different capacities. He thought everyone on the committee was interested in the environment. He knew that some people who were not often perceived as being environmentalists were probably the ones who spent the most time and money protecting the environment, citing Roger Short as one example. He was not comfortable leaving people out of the equation because that was where any regulations would be applied. He said that people were here in Jefferson County because they liked the way it is and don't want to destroy it.

Jim Hagen announced the special meeting on February 17 for a field trip to look at wetlands.

Public Comment:

Denver Shoop discussed the effects of the critical areas regulations on his son's property. With 21.5 acres, his son could only use one small area for a house and septic. The new regulations would likely take more land, making it impossible to do anything. He said that two properties right next to each other could be totally different. He thought that if the county could not show that building a house on a property would hurt the land environmentally, they should not put any regulations on the land. The burden of proof should be on the county. There was no scientific information that showed what he wanted to do would hurt anything. He knew there were certain things he should not do on that land. He believed that the county should be trying to make regulations that were fair to the people.

Cathy Barrsoff, Quilcene, referred to the county Critical Areas website, stating that the last minutes listed were dated November 2, 2006. The site had not been updated since then. She thought the committee members put in a lot of time on this subject for no compensation, but still there was no help from the civil servants.

George Hansberry said that he had read the minority's report from last week. He referred to one section that talked about a poultry farmer only being allowed to butcher 1,000 chickens in a year. That was not enough to make a living. He referred to the permitting process for his septic. He thought the county should have stock septic design plans that could be available to the public that would be based on the soils on the specific site, but the county made people hire a septic designer at great expense. He spoke about his work ethic. He said that his observation of county employees indicated a lot of waste of his taxpayer money.

James Fritz said that this was a small depressed county. Regulations and enforcement cost money. He thought what would happen was that we would spend all the money on regulations and enforcement and there would not be money left over to enhance streams or anything else.

Kenn Brooks said that he had spent time on Roger Short's farm and then they had gone to Mr. Shoop's land. He thought Mr. Shoop's place was one where you could create a win-win solution. It confounded him that we talked about conservation but what we did was contrary to actually getting conservation put on the ground.

Robert Crittenden suggested that Ms. Barrsoff get on the email list to get the committee's minutes.

Brent Butler said that he did volunteer work himself and expressed his gratitude to the committee members for their hard work.

Jill Silver said that one reason the wetlands classifications had changed was because DOE responded to public input that the classifications were too restrictive. They also responded to the fact that endangered species were not a state issue; they were a federal issue. The new rating system was very flexible and it actually reduces protections. It separates out habitat values and endangered species, and it focused on those wetlands that are only responsible for water quality and hydrology. She hoped that when the committee went on the field trip that we would be able to show the differences between the new rating system and what was done before. She thought people would be happier with the new system.

Adjournment:

The agenda for the next meeting will be the minority reports, the code writing sub-group, and the Bill Wheeler suggestion.

The meeting was adjourned at 9:55 p.m.