

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR OCTOBER 20, 2004

- A. OPENING BUSINESS**
- B. DISCUSSION/RECOMMENDATION TO BOCC ON 2004 COMPREHENSIVE PLAN
AMENDMENT FINAL DOCKET**
- C. ADJOURNMENT**

A. OPENING BUSINESS

The regular meeting was called to order at the WSU Learning Center at 6:30 p.m. by Chair Tom McNerney. Planning Commission members present were Phil Flynn, Dennis Schultz, Bud Schindler, Eileen Rogers, Jim Hagen, Jenny Davis, and Allen Panasuk. Edel Sokol was excused.

DCD staff present were Kevin Russell, Karen Driscoll, and Cheryl Halvorson, secretary.

There were about eight members of the public present. Those who signed the guest list were Linda Swisher, Marilyn Hoeft, Steve Goodwin, and Ande Grahn.

The minutes for October 6, 2004, were approved as submitted.

The Chair invited staff updates.

Kevin Russell reported that staff was still working to complete its response to MLA04-28, Part B. He reported on staff's progress with that review and possible staff recommendations. Staff was currently working on the Land Use and Rural Element, including doing some research on available lots in relation to population projections. They were also considering reformatting and reorganizing a portion of that element. Staff was also continuing to review policies concerning residential LAMIRDS, mixed use LAMIRDS, and policies to promote sewer service in areas with water quality concerns. He reported that staff was still working on the Environmental Element. He stated that staff was considering sticking with the original instead of deleting goals and policies. He stated that the Housing, Economic Development, and Open Space elements were more straightforward. He reported that staff was still awaiting the report from Dr. Sommers. He reported that staff would recommend that the Highway 19/20 rezone for the drive-in movie theater be tabled for review in 2005.

Jenny Davis asked if staff meant that they would recommend leaving the Environmental Element as the original instead of taking what the Comp Plan Review Committee recommended. Kevin Russell responded that staff was looking very carefully at the committee's proposal and staff was not comfortable, at this time, with deleting as much as was proposed. Ms. Davis asked, since the staff's final recommendation had not been made available to the public and the Planning Commission had held the public hearing, what that would mean to the process. Tom McNerney answered that the public saw the proposed document and made comments about it. He noted that one of the written comments was specific to the Environmental Element. He thought that what staff was doing was incorporating those public comments into a report back to the Planning Commission. The staff was really providing a response to the public comments received. The staff recommendation would be brought back to the Planning Commission. He would ask the committee to consider that response along with the public comments received. Then the Planning Commission would consider the staff's recommendation along with the committee's recommendation at its next meeting. The full commission's recommendation to the BOCC may include some, all, or none of the public comments.

Jim Hagen stated that, besides the public comments received from local citizens, the county also received comments from DCTED. Tom McNerney noted that the county also received comments from WDFW.

Tom McNerney stated that the public process issue was a good question to raise. He explained that the public could provide written comments to the BOCC on the Planning Commission's proposal and recommendation. Then the BOCC may or may not hold a public hearing. He stated that, if the BOCC wished to make changes substantially different from the Planning Commission's recommendation, they must hold a public hearing.

Bud Schindler asked when the Planning Commission would get the staff recommendation. Tom McNerney stated that it would be available before the next Comp Plan Review Committee meeting, which would occur before the next Planning Commission meeting.

The Chair invited public comments, noting that comments to the Planning Commission on the merits of the Comp Plan amendments had closed on October 13. No public comments were offered.

B. DISCUSSION/RECOMMENDATION TO BOCC ON 2004 COMPREHENSIVE PLAN AMENDMENT FINAL DOCKET

MLA04-27, Jefferson County (Agricultural Lands)

Tom McNerney stated that the Planning Commission had already agreed in principle with all of the Ag Lands Committee's recommendations with the exception of a few that had been requested for reconsideration.

Karen Driscoll stated that she had written to all of the property owners who were recommended for denial. There was one who requested reconsideration of his residential property. Upon further review by staff of that parcel and based upon her understanding of the criteria, she thought it should be recommended for approval. However, after discussion with some Planning Commissioners, she was not sure she understood the criteria correctly and thought a meeting of the committee was warranted. Tom McNerney stated that at issue was compatibility with the neighborhood. Dennis Schultz explained that the committee utilized a number of criteria. He stated that the committee recommended denial of some parcels because of the neighborhood they were in. In one instance, there were CC&Rs that would prevent them from doing agriculture. Another was in a neighborhood of small parcels where agriculture would be incompatible. He particularly noted that they could still practice agriculture on those parcels, but they would not have the Ag Lands designation. Mr. Schultz stated that the one property owner who asked for reconsideration had a parcel in an area of very expensive homes with no other parcels doing any kind of agricultural use. However, if the person wanted the Ag Lands designation, he wondered why the county should deny it. Mr. McNerney stated that one of the criteria was incompatibility with the neighborhood. While the person could still do agriculture, it might be a conditional use. He stated that if you were given an agriculture redesignation, there would be a right to farm and there would be no requirement for approval of the neighborhood. He thought that some types of farming could be offensive to the neighbors if they were all small lots. He thought the three residential parcels that were recommended for denial all fit the incompatibility with the neighborhood criterion. Mr. Schultz explained that one parcel in Quilcene was a long, slender lot among other long, slender lots so that everyone could have shoreline frontage. He stated that because the lots were so slender, whatever agricultural activity you may do would be in very close proximity to the neighbors.

Eileen Rogers asked about the Donatas Kinderis parcel in Quilcene, which was discussed at the last meeting. Karen Driscoll explained that Mr. Kinderis had properly applied for two separate parcels, but she had mistakenly thought that both forms were for one parcel. She stated that she had reviewed the second parcel and thought it met the criteria for approval. It had not been included on the list previously due to the staff's clerical error.

Eileen Rogers moved that the second parcel owned by Donatas Kinderis be added to the list for approval. Phil Flynn seconded the motion which carried unanimously.

Tom McNerney stated that there were three parcels that were recommended for denial based upon residential reasons and incompatibility. Mr. McNerney stated that, while it was only three parcels out of a large number of parcels, for those three property owners it was a critical decision. He thought the committee should meet to consider the three parcels, and perhaps even do site visits, as well as look at the criteria again, and report back to the full Planning Commission at the next meeting.

Dennis Schultz stated that staff spent a lot of time researching parcels, noting that many applications were not complete as far as parcel numbers or addresses were concerned, which required extra effort and time on staff's part. He thought that it was quite an accomplishment to have only a few parcels that were still in question.

Dennis Schultz moved that the Joe Walden parcel be put on the list for approval. Allen Panasuk seconded the motion.

Dennis Schultz stated that the adjoining parcels, even though they were small, were owned by the same people. Therefore, the Walden parcel fit the pattern criteria. Tom McNerney stated the belief that the parcel was in an area of expensive homes where an agricultural use would be incompatible. He suggested that the committee should look at the parcel again and perhaps even do a site visit. Mr. Schultz admitted that the committee had not spent much time on the three residential parcels.

The motion was withdrawn.

Tom McNerney stated that the Ag Lands Committee should meet again to reconsider the three residential parcels recommended for denial, and perhaps even do a site visit of the parcels. It was agreed that the Ag Lands Committee should meet before the next Planning Commission meeting to reconsider the three parcels and to provide a report to the full Planning Commission. It was agreed that the commissioners would set committee meeting dates later in the meeting.

MLA03-232, Port of Port Townsend (Airport)

The Chair invited a report from the Airport Committee. Phil Flynn stated that the Airport Committee met on October 18. The committee agreed that the county must protect the long term viability of the airport as an essential public facility [EPF] and as an economic and transportation asset to the county. The committee recommended two zones. One would be the Port's suggested 55 DNL airport zone overlay. The second would be a larger safety zone. He stated that there was still some question about how to describe the two zones. There were also some other questions to answer. He stated that the committee should meet again as soon as possible in order to complete its

recommendation to the full Planning Commission. One task would be to propose a list of inappropriate land uses within the two proposed zones.

Kevin Russell handed out the notes from the October 18 Airport Committee meeting. He displayed a map on an overhead depicting the 55 DNL overlay and a proposed additional safety zone representing the pilot's landing pattern at the airport. Mr. Russell displayed an overhead depicting the six DOT airport safety zones, listing incompatible land uses for each zone. He stated that the 55 DNL overlay picked up a majority of the DOT safety zones. However, it did not pick up Zone 6, the outer boundary. He noted that the DOT Zone 6 went to the north of the airport as well as to the south. The pilots indicated that they did not use the northern zone for their patterns. So the committee recommended only utilizing the southern portion of Zone 6 as the additional safety zone around the airport. Therefore, there would essentially be two overlay zones. He reported that the committee basically accepted the 55 DNL overlay, although they still had to decide upon a name for the overlay zone.

Kevin Russell discussed the DOT guidance for regulations for the Zone 6 list of uses that would be considered incompatible. They were uses that would congregate a lot of people.

Kevin Russell summarized that the Airport Committee had agreed to recommend two overlay zones, which would have different names. Zone 1 would essentially be the inner zone (the 55 DNL overlay). It would have more regulations and list of incompatible uses associated with it. He listed many uses that would be incompatible. He stated that most of the zoning in that overlay area was residential, so most of the listed incompatible uses would not be allowed anyway. However, there would be a list of incompatible uses associated with the new safety zone. The commissioners discussed existing uses that would be considered incompatible. It was pointed out that they would all be considered as legal, nonconforming uses. Mr. Russell explained what that meant to the owners of those uses.

Eileen Rogers asked about the nomenclature concerning Zone 1. Tom McNerney replied that the committee had not gotten that far. Kevin Russell stated that the committee was supportive of the current 55 DNL overlay. There was some discussion regarding the noise disclosure issue. Mr. McNerney stated that the discussion was about whether noise should be part of the description of the zone. Mr. McNerney stated that the committee had not reached a conclusion on the issue. The committee had invited public comment on the issue and had received opposing views. Mr. Russell suggested that, from a current planner's perspective and how the zones would be implemented into the code, Type I and Type II be utilized to regulate the two parts of the overlay zones.

Tom McNerney and Kevin Russell discussed the list of prohibited uses and the six DOT airport zones. Mr. Russell reiterated that the 55 DNL zone captured most of Zones 1 through 5.

Eileen Rogers asked at what point in purchasing a parcel in Zone 6 a person would find out they were under the airport traffic pattern. Kevin Russell responded that was a major concern of both the public and the committee. He stated that it would be addressed through an educational component. The map would be posted on the web site. The staff planners would be trained to disclose to people investigating parcels within the zone about the regulations affecting the zone. He described what typically happened when

someone came into DCD to investigate a parcel. It included staff disclosing information about the parcel, including any critical areas and now, under this proposal, that the parcel was under one of the airport overlays. He stated that his understanding of the committee's discussion was that it would be more in terms of alerting people that their parcels were in an area that had an FAA approved pattern and that there was airport activity. Tom McNerney stated that it would also state that there would be "routine aircraft overflights".

Tom McNerney stated that Ms. Davis was opposed to language about "noise". Jenny Davis stated that one of the things that happened at the airport was that people came to the area and were unaware that there was an airport there until they started to see planes fly over. She thought that if someone went into the county today, they would not be told that a particular parcel was under the flight pattern. Under this proposal, people could be informed about the airport when they were doing their parcel investigation. She stated that it seemed like a "no brainer" that if you were under the flight pattern that you would have noise. She thought there were people who were sensitive to having the word "noise" in the proposal. She did not think it was necessary to disclose it; she thought it was obvious. She thought it was important for anyone buying property to be able to go to the county, if they chose to, and have a map pulled up which showed the overlay.

Tom McNerney stated that the committee thought it was important to report to the full Planning Commission about its discussions so that the commission was informed about what the committee was considering.

Bud Schindler asked about the southern Zone 6 safety zone. Tom McNerney explained that the actual flight pattern was smaller than the Zone 6 boundary. He stated that the proposed boundary was the state recommendation for the Zone 6 safety zone. Jenny Davis explained that landings could occur from either end of the runway, depending upon the wind direction. She explained that pilots never used a pattern to the north of the airport; they always used the southern pattern.

Jim Hagen asked about the stricter provisions inside the 55 DNL in relation to the outer boundary. Kevin Russell replied that there would be two sets of regulations. The inner zone would be more restrictive and would include some disclosure. The outside boundary was more of an informational boundary so that people would know they were buying property near an airport. He stated that there would be notification for conditional use permits sent to the Port. The Port would have fourteen days to comment. A finding on the permit would be made that the county had looked at the use and found that it was not incompatible. That would apply to Type II and Type III conditional uses in both zones.

Kevin Russell stated that there would be nothing for single family homes. The only way a single family home person would be apprised of the airport would be if they came into the DCD office and inquired about their parcel. He stated that a lot of realtors advised their clients to investigate a parcel they were interested in purchasing, or the realtor themselves would do the investigation.

Jim Hagen asked if current property owners would be notified that a proposed change would be happening if the Zone 6 went through. Kevin Russell replied that he thought it would be good public policy to notify those property owners individually by letter. Eileen Rogers asked if those property owners

would have the ability to comment on it. Tom McNerney replied that they would be able to comment to the BOCC.

Phil Flynn offered the suggestion that, when someone came in to investigate a property in the overlay zone, they be required to sign a paper that they recognized that the property was within the airport zone. He stated that would address the potential problem of someone saying they had not been informed. He thought that if they had to sign something, it would be proof positive that they were informed. Jenny Davis stated that if it was DCD's policy to pull up a parcel when someone came in with a question, she did not think it would be an issue. Kevin Russell stated that the whole issue of signing, verifying and recording was a very hot issue in the history of the airport. He stated that the county and the Port were in agreement with the original overlay, which did not have anything related to that. He did not think staff would support Mr. Flynn's suggestion. Tom McNerney stated that, while it was a legal question, he did not think it would protect the county. He thought it was a good issue to raise with the Planning Commission so that the committee members could get a feel for the commission's thinking. Mr. Flynn stated that it would definitely not be a notice to title or anything like that; it would merely be an assertion that the person had been informed. Mr. McNerney stated that his experience with lawyers was that such signed waivers were not worth anything.

Jim Hagen asked if the committee had talked about just going ahead with the 55 DNL overlay and not adopting the larger safety zone. Jenny Davis replied that one of the things they took away from the public hearing was the pilots' concern about the overlay not being representative of what was really happening at the airport, because the traffic pattern was outside of that area. She stated that the concern was that the people would think the 55 DNL overlay represented where the airplanes would fly, which was far from the facts. Tom McNerney stated that one of the things the Planning Commission heard at the hearing and which was contained in many of the comment letters was that the airport was an EPF. If that was so, then it behooved the county to not permit things to happen adjacent to the airport that later would give reason to get rid of the EPF.

Jim Hagen stated that there had been some changes to the proposal text and asked about that. Phil Flynn stated that the committee did not get into that because there were substantial changes that had not been reconciled yet. He stated that the committee needed to meet again to reconcile those. Tom McNerney clarified that the changes referred to were the editorial ones Mr. Schindler had drawn up. Kevin Russell stated that the committee had not taken them up because the pilots came to the meeting and the committee discussed the other issues (the safety zone). He stated that the committee did not want to do a line-in/line-out review when the proposal may change. Allen Panasuk suggested that staff could do such a review and provide a new draft including the proposed changes. It was agreed that the Airport Committee needed to meet again prior to the next Planning Commission meeting.

Jenny Davis asked for feedback from the rest of the Planning Commission about the comment letters the county had received. Almost all stated opposition to any language about a noise overlay. One comment said that the airport EPF should stand alone. Ms. Davis stated that she agreed with that. She stated that one of the biggest problems she had heard over the years was that people said "When I moved into the area, nobody told me about the airport". She stated that it seemed obvious to her that if people were told that their property, or their potential property, was in an airport overlay that they

would experience noise; it did not have to be spelled out in the regulations. She questioned why the EPF would not stand alone as being enough. Tom McNerney and Phil Flynn did not agree. Mr. Flynn stated that an EPF might be a city utility, for example, which would not have the same ramifications as airplanes flying overhead. Ms. Davis stated that if there would be regulations about incompatible uses, there would be an overlay, and the information would be available to people doing due diligence, she thought that would be enough. She stated that there were so many people upset by the noise language. Tom McNerney stated that the county had received about a dozen letters out of 28,000 people in the county. Ms. Davis stated that her experience on the Planning Commission was that anytime you had public input the commissioners took it very seriously. Mr. McNerney stated that he read all of the letters and highlighted the points made. He stated that one common point was that the airport was an EPF. He stated that in looking at the history of airports, when you allowed incompatible uses to build up around an airport, it would force the airport out of business. Ms. Davis stated that she was not against the incompatible uses regulations. She stated that she was just trying to reach a win-win situation. Mr. McNerney stated that the feeling of people seemed to be that if you did not mention the word "noise" then people could sue the airport.

Eileen Rogers stated that if she owned property under the flight pattern and wanted to sell it and there was a noise overlay zone, she questioned how common sense would not tell you that there would be noise. If she was going to buy property and did not do due diligence, it would not be anyone's fault but her own. Tom McNerney stated that if noise was inherent with the airport, he wondered what was wrong with the word "noise". Ms. Rogers stated that it was because it had our community at loggerheads.

Tom McNerney stated that he thought the committee members had heard most of the issues and comments about the airport from the other commissioners. He suggested that the Airport Committee meet again to discuss the airport issues.

Jim Hagen stated that this county had other lands, such as resource lands, that were mandated to be protected. There were nuisance provisions to protect those lands. He thought the airport fell into the same category as such resource lands, although he acknowledged that the airport did not fall under the same section of the RCWs. Concerning comments that nuisance provisions would take away the Port's incentive to control noise, he stated the belief that the record clearly showed that the Port had been a very good neighbor and had been more than willing to compromise on the concerns of the community.

Bud Schindler stated that he had read all of the comment letters. He thought some indicated a fear factor about what kind of uses might occur at the airport, including larger aircraft. He thought there was some education that could go on to try to address peoples' concerns. Allen Panasuk stated that the comment had been made that jets would be landing at the airport. He stated that small jets landed there now. He stated the belief that the airport should be a viable, money making facility that was an asset to the county. Mr. Schindler stated that the airport had noise restrictions and weight restrictions that had to be adhered to. He thought that was part of the education. We would not have 747's or even 737's landing at the airport because the runway could not take it. Mr. Schindler thought the county should try to educate the people and try to alleviate their concerns.

The commissioners agreed to turn the issue back to the Airport Committee for further work.

MLA03-244, People for a Rural Quimper (Airport)

Tom McNerney stated that the county had received a suggested revision to the original PRQ proposal. He asked staff to review it. Kevin Russell stated that the PRQ letter basically did an analysis of the Port's proposal and contained some suggestions. He particularly noted a proposal about the noise issue.

Tom McNerney suggested that, rather than act on the PRQ proposal, the commission review it and their suggested changes. He noted that the staff recommendation was for denial of the PRQ application. However, he proposed that it be discussed at the Airport Committee meeting and be considered with the Port's proposal.

Bud Schindler stated that after the last Planning Commission meeting, he had wondered whether the two proposals were all that far apart, but he had been assured that there were big differences. He stated that he was interested in seeing a side-by-side comparison of the two proposals. Tom McNerney suggested that the Planning Commission could, as it had in the past, ask the PRQ and Port people to provide a matrix explaining their differences so that the committee could review it. It would not be a comment; it would be a reply to a Planning Commission request. The other commissioners were supportive of making such a request. It would be important for the documents to be available to the Airport Committee prior to their next meeting. It was agreed that the Airport Committee meeting would occur on October 28 at 6:30 p.m. at the DCD conference room.

MLA04-28, Jefferson County (Comp Plan Update)

Tom McNerney reported on the Comp Plan Review Committee meeting. He stated that staff had not completed its review of the Planning Commission's suggested update (Part B). He reported that staff had completed most of the review except for the Land Use Element. Staff thought the element was written before passage of HB 6094. Staff thought the Land Use Element required some revisions, but they thought it should be reorganized as well. He stated that the committee thought there should be some additional changes as well. One was a suggestion that the county should have a policy that wastewater treatment plants should be encouraged for properties on septic tanks close to salt water, mainly Hood Canal. That was contrary to the GMA. However, it appeared that it would be necessary. He stated that Mason County had a big problem along Hood Canal and they were talking about a similar policy. There was some thought that the legislature may make some changes to the GMA to address that problem in order to save Hood Canal. The suggestion was to express a county policy that, if and when it would be allowed, this county should consider it. Also there was a policy that was taken out of the Comp Plan saying that the LAMIRDs should be revisited after completion of the Glen Cove/Tri Area Special Study. That had never occurred. Also there was a policy about the Brinnon Subarea Plan and a Quilcene water system. The suggestion was to put those policies back into the plan so that the county could revisit the LAMIRDs now that the Special Study was complete and since a Quilcene water system was coming about. He stated that there was also a policy concerning residential LAMIRDs. The issue related to some larger lots within such subdivisions that were not yet subdivided. The suggestion would allow such lots to be subdivided similar to the already existing lots. He

stated that the committee wanted to be sure there was something about that in the Land Use Element. He stated that the county had not made reference to mixed use or industrial LAMIRDs. The committee suggested that those also be included in the element so that when the county had the time, staff and money, it could revisit those areas. He stated that a mixed use LAMIRD might be similar to Chimacum where there were residential uses near and mixed into the commercial areas. Mr. McNerney thought those were issues staff was going to try to incorporate into the Land Use Element.

Jim Hagen stated that Mr. McNerney had pretty much addressed the Land Use and Rural Element suggestions, especially since a lot of the section had been written pre-HB 6094. He stated that staff was also proposing to restructure the element much more than the committee had proposed. On the other hand, staff was suggesting putting some things back into the element that the committee was proposing for deletion, although it would be greatly condensed.

Tom McNerney stated that staff also, based upon some public comments, would suggest changing the Environment Element back the way it was originally. Jim Hagen stated that staff would pretty much take over the revision of the Environment Element. He stated that an example was the wording about "protecting" and "promoting" and "enhancing" wetlands, streams, etc. He stated that the committee had discussed the public comments in depth. Mr. McNerney stated that there was a court case that said that the counties did not have to "enhance" streams and wetlands, but they had to "protect" them. Therefore, the GMA did not require you to improve them, but you could not allow them to further degrade from their present condition. It would be similar to a legal nonconforming use.

Jim Hagen stated that another public comment had to do with geologically hazardous areas and some of the policies about seismic impacts and a question about why the committee proposed revisions to those policies. He reported that the committee's discussion of those policies centered around potential liability issues for the county. Tom McNerney stated that there were also some state recommendations regarding the shorelines.

Kevin Russell stated that Josh Peters had mentioned in his notes that he had been asked to research certain goals and policies and whether they presented a liability concern for the county. He stated that the answer to that question was "No." He reported that staff had checked with the Deputy Prosecutor who said that the Public Trust Doctrine did not apply to goals and policies.

Jim Hagen stated that the consensus of the committee was that staff should do whatever needed to be done to address the state recommendations.

Kevin Russell stated that the county had recently adopted a Natural Hazards Mitigation Plan. Staff wanted to make sure the Comp Plan amendments were consistent with that plan.

Tom McNerney stated that the staff recommendation would need to be provided to the committee so that they could review it before the next Planning Commission meeting. Kevin Russell stated that Josh Peters had indicated that staff would have those changes available prior to the November 3 Planning Commission meeting.

The commissioners discussed revisions to the Open Space, Parks and Recreation Element relating to a Parks Plan. Kevin Russell stated that there appeared

to be a discrepancy between the current Open Space chapter and a reference to the Parks Plan being in the chapter with the actual Parks Plan being a separate document, which could be revised at any time without having to amend the Comp Plan.

The commissioners discussed committee meeting dates. It was agreed that the October 26 UDC Committee meeting would be cancelled. It was agreed that the Ag Lands Committee would meet at 2:00 p.m. on October 26 at the DCD conference room instead. Also the Comp Plan Review Committee would meet at 3:00 p.m. on the same date at DCD to review whatever material staff could provide. It was agreed that the Comp Plan Review Committee could continue its meeting as necessary.

Allen Panasuk stated that the goal for the next Airport Committee meeting would be to make a recommendation to the full Planning Commission. Staff would provide a revised proposal. Also, the committee would review a matrix comparing the two airport proposals.

The commissioners agreed to tentatively schedule an extra meeting for November 10 in case it became necessary.

C. ADJOURNMENT

The meeting was adjourned at 8:40 p.m.

D. APPROVAL OF MINUTES

These minutes were approved this _____ day of November, 2004.

Thomas McNerney, Chair

Cheryl Halvorson, Secretary