

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR OCTOBER 5, 2005

- A. OPENING BUSINESS
- B. PUBLIC HEARING - UNIFIED DEVELOPMENT CODE OMNIBUS
- C. REVIEW/APPROVE PLANNING COMMISSION REPORT TO BOCC ON 2005 COMP PLAN AMENDMENT DOCKET
- D. ADJOURNMENT

A. OPENING BUSINESS

The regular meeting was called to order at the WSU Learning Center at 6:30 p.m. by Chair Jim Hagen. Planning Commission members present were Bill Miller, Peter Downey, Phil Flynn, Edel Sokol, and Allen Panasuk. Mike Whittaker, Dennis Schultz, and Bud Schindler were excused.

DCD staff present were Josh Peters, Kyle Alm, and Cheryl Halvorson, secretary.

There were about six members of the public present. Those who signed the guest list were Barbara Fisk, James Thompson, Rae Belkin, Doug Peters, and Joe Goulartt.

The minutes for September 21, 2005, were reviewed. Two corrections were made on Page 18 of the minutes. The first related to the paragraph beginning "Jim Hagen stated that the Hearings Board decisions talked about the criteria for LAMIRDs." It should read "Jim Hagen stated that the GMA statute talked about the criteria for LAMIRDs." Edel Sokol stated that she had mis-spoken in her comment that the Latimore report had found that the county had downzoned too much commercial land. The reference should have been to the Trottier report. The minutes were approved as amended.

The Chair invited staff reports. There were none.

Jim Hagen asked about the status of the critical areas (environmentally sensitive areas) issue in terms of the Planning Commission schedule. Josh Peters reported on the status of negotiations with the Washington Environmental Council in trying to reach a settlement agreement, which would replace the first settlement agreement that resulted from the earlier appeal of the initial adoption of the UDC. He did not know how long it might take to reach a settlement. He stated that there was no due date per se but he thought we were getting closer to finalizing a settlement agreement. He stated that, typically, the county had six months after the effective date of a settlement agreement to do a code amendment process. He thought we were still a number of months out. Mr. Hagen asked if those settlement meetings were open to the public. Mr. Peters replied that they were not open public meetings. They were meetings between the attorneys in the case. He described the process after an agreement was reached between the parties. Mr. Hagen asked if the Planning Commission would be involved in the process at some point or if it was out of the Planning Commission's hands. Mr. Peters responded that the settlement agreement did not address specifics, such as buffer widths. It addressed topic areas, similar to the first settlement agreement. Mr. Peters stated that after the settlement agreement was reached, staff would bring forward specific code amendments to implement the agreement. The code amendments would then go through the normal public process.

In reply to Edel Sokol's question, Josh Peters explained that the language of the agreement was being negotiated between the parties, including the topic areas. He thought that a current issue was clear language in the agreement about when the agreement would be satisfied.

B. PUBLIC HEARING - UNIFIED DEVELOPMENT CODE OMNIBUS

Jim Hagen opened the public hearing by reading the public hearing procedure. The commissioners and staff discussed the closing date for written comments.

At the Chair's suggestion, the Planning Commission's written comment period was extended to the close of business on Wednesday, October 12, instead of at the end of the hearing.

Edel Sokol asked if the local business community had been contacted as requested by the commissioners. Kyle Alm reported that he had contacted the Tri Area Chamber of Commerce, but the county had received no response.

The Chair invited a staff report.

Dan Titterness asked for a copy of the proposed amendments. Josh Peters explained that the size of the Omnibus package precluded staff from providing copies at this hearing. He stated that the full document was available on the county web site. He stated that Mr. Titterness could get a full copy of the document at the DCD office. Jim Hagen noted that the written comment period would be open until October 12, which would provide Mr. Titterness with an opportunity to review the document and make comments. Mr. Titterness stated that he would get a copy of the draft and provide written comments.

Kyle Alm provided a summary of the proposed amendments. He reviewed the proposed amendments regarding signs, including election signs. He particularly noted a change regarding auto repair being allowed as a cottage industry with standards relating to that use. The use was not allowed under the current code.

The Chair invited public testimony.

Barbara Fisk referred to her complaint regarding an auto repair business in the Zion View Lane area. She stated that there were eight or nine parcels affected by the business. She expressed concerns about contamination from the business fouling neighboring wells. She asked whether the county would be liable for spills that might contaminate area wells since the county was proposing to allow the use in the rural residential areas. She stated that three other neighboring property owners had complained to the county as well. She described some of the activities of the auto repair business owner. She insisted on an answer to her question about who would be liable if the auto repair business contaminated neighboring property.

Jim Hagen responded that this public hearing was to take public testimony on the Omnibus. He stated that the hearing was not a meeting for an exchange. He suggested that the commission may have time to enter into a dialog during the general public comment period near the end of the meeting, after the public hearing. Josh Peters stated that, in terms of Ms. Fisk's question, he thought the fact that the question was being raised on the record meant it would be part of the commission's deliberations. He stated that he did not know that anyone present could answer her legal question. He stated that the question about liability would likely be addressed by the county's legal counsel to the BOCC during their review of the Omnibus. He could not answer the question about whether the cited case was a legal nonconforming use. He thought it was more of an enforcement issue at this point.

Barbara Fisk stated that she strongly felt that an auto repair business should not be allowed as a cottage industry in the rural residential area because of potential contamination issues and the effects on neighboring properties. If such a business was located on a large parcel where it did not impact neighboring parcels, it may be okay, but this particular business did adversely impact the neighborhood. She stated that the area had been

established 25 to 30 years ago as a residential area. She stated that the subject person had come into the neighborhood in about 2001 and started this business without any permits. She stated that her son-in-law had wanted to start a welding business from his home, but the county had shut him down when the first protest came in. She stated that there had been several complaints about this auto repair business. She stated that it should have been addressed by the DCD, but nothing had happened. She stated that there was a light industrial area in Quilcene with available space that was more appropriate for such a business. She stated that there had also been a business space available in Chimacum that he could have used. She stated that the person had made excuses to the county about not being able to find a place and had, in her opinion, lied to the county in order to keep on with his business. She stated that the business was interfering with the rural residential uses. She stated that she had submitted pictures and information to the county about the business and had been ignored. She stated that, if the county was going to allow auto repair or any cottage industry in the rural residential areas, the county should look at each case individually and consider the whole neighborhood area. She stated that she would submit written comments and would re-submit the material she had provided before.

Jim Thompson, Chimacum, stated that he had 22 acres with five dwellings on it that had been legally permitted since 1985, with the last one permitted in 2000 to replace the old, original home. He stated that he wanted to be able to divide the property in order to give it to his children. He asked if that would be possible under the proposed amendments.

Jim Hagen reiterated that this public hearing was to take oral public testimony and not for purposes of a dialog. Jim Thompson stated that he was only interested to know if such a circumstance was being addressed. Kyle Alm stated that staff was working on a density exemption based upon installed, permitted septic. So, it was something that would be addressed in the code. Mr. Hagen stated that there were details the Planning Commission did not know, such as how the property was zoned. Also, there may be other considerations that would involve a Comp Plan amendment. He suggested that the topic may be addressed during the general public comment period.

Rae Belkin, Port Ludlow, stated a concern that the draft said that outright uses would be exempt from permitting and zoning review. She asked that "outright" be explained. She asked if grandfathered, nonconforming uses would be covered under "outright". She thought the county was opening a "can of worms" by using that language. She thought an attorney could say it was an "outright" use and no permit or review would be required.

In answer to Phil Flynn's question, Rae Belkin stated that she was referring to Section 18.15 JCC, Land Use Districts. She reiterated that her question was whether it would include grandfathered uses. She could see it being a problem for the county in the future.

Josh Peters stated that staff had found the pertinent sections to the last two questions and could address them if the Chair wished to allow it. Jim Hagen stated that, if it was appropriate, he would allow staff to answer the questions while they were still fresh in everyone's minds.

Josh Peters referred to Mr. Thompson's question about dividing his property. He stated that Section 18.30.050(4) proposed a density exemption based upon installed legally permitted septic and dwellings. The language was proposed to address situations like Mr. Thompson's where there were multiple dwellings

on one tax parcel. In those exceptional cases, the code would allow those lots to be divided. He stated that, currently, the code would allow one additional lot. Now the proposal was to allow a division for each septic and house combination, provided the septic and houses were legally permitted in the past.

Kyle Alm referred to Ms. Belkin's question about "outright use". He stated that the Definitions were amended to add "Outright use". The affected definitions were "Allowable use" and "Allowable outright use". He stated that an "allowable outright use" would be a small shed, a fence under six feet tall, etc. An "Allowable use" would be a "Yes" use. The question appeared to be whether there was inconsistency between the definitions. Josh Peters stated that the intent was to clarify what "Allowed" meant. He thought some people might construe "allowed" to mean they did not need a permit. He stated that there were basically two kinds of "allowed" uses. One was "allowed outright" which meant no permit was required. The other was "allowed", meaning it was a "Yes" use on the Use Table, but you still needed to conform to the regulations in place, and a permit may be required. He thought that was the intent of differentiating between the definitions.

Phil Flynn asked how many acres Mr. Thompson was talking about. Josh Peters replied that it was 22 acres. Jim Thompson stated that it would work out to about 3 to 3.5 acres each. He reiterated that each house and septic had been permitted over the years. Mr. Peters stated that Mr. Thompson was essentially testifying in favor of the proposal in the Omnibus, which the Planning Commission would be making a recommendation upon. He explained that the section was to address unusual existing circumstances; it was an exception based policy.

An audience member asked about the timing for approval of the Omnibus package. Josh Peters described the process from this point on, with timing for possible adoption by the BOCC. He explained that the Omnibus draft represented a joint proposal of a Planning Commission committee and staff. He explained that, generally, when the Planning Commission and staff recommendations were in agreement, the BOCC accepted those recommendations.

Rae Belkin asked for further clarification about "outright uses" and that it would not be substituted for "grandfathered" uses. Josh Peters stated that it may be necessary for staff to get back to Ms. Belkin in time for the written comment deadline. However, he thought what she was asking about was, while we tried to clarify the definitions, she wondered where else in the code we discussed "outright uses". He did not think there was an equivalency of legal nonconforming uses (i.e., grandfathered) with outright uses. He did not think that was elsewhere in the code, but staff would have to research the question. Ms. Belkin stated that it would be a fabulous loophole. Mr. Peters assured her that was not the intent and staff would look into it and get back to Ms. Belkin in time for her to provide written comments.

Regarding Ms. Fisk's concern about auto repair businesses, Josh Peters stated that Ms. Sokol had asked about the relationship between changing the code and this particular case. Mr. Peters stated that he had talked about the regulations being for future development implications. He stated that there was one potential nexus in that, should the owner of that particular business come in to get a permit for the activity after the code was changed, the rules would apply to that application. He stated that there were state regulations that such a business would have to adhere to as well. Kyle Alm explained the limitations the committee recommended for auto repair

businesses as cottage industries. It limited the size of the building, number of employees, and required best management practices for disposal of hazardous waste. Mr. Alm stated that this type of operation did spring up and we did not want to just say "No" to them and just have them go out on their own. We wanted them to come in and get a permit to assure they were doing things right and make sure they were getting rid of their waste in an appropriate way.

Jim Hagen offered the opinion that what was going on with that business would not conform to the proposed code. He did not know that the proposed amendment was the culprit. He thought there were always people who would abuse it. He thought it was really an enforcement issue. He stated that he had served on the committee that drafted the proposal. He thought there were some really good things in the code, especially for uses that had the potential for spills, etc. Phil Flynn stated that, certainly, stormwater was something that was an issue and proper disposal of their waste was important. He thought it would be helpful for a complainant to submit specific violations of the code to the county.

Barbara Fisk stated that, in the past, this use was not allowed in the rural areas. So this business was an illegal use. If the proposed amendments were passed, she asked if the person would have to come in and get a permit in order to continue the business. Josh Peters responded that he would, as long as the business was established in 2001, or after the UDC was adopted. He thought the code prior to the UDC also did not allow such businesses in the rural area. He stated that it would not be a case of a legal, nonconforming use because the use was never legal. From that standpoint, it was an enforcement issue. He stated the understanding that the person could not come in for a permit right now because the use was not allowed. Should there be an opportunity in the future to have a limited scale auto repair business in certain residential districts under certain conditions and he applied for a permit, the environmental and traffic concerns would be addressed as conditions. Mr. Peters stated that he was not involved in enforcement cases and could only say that the county had other cases like this one. He stated that enforcement cases took a lot of resources.

Allen Panasuk stated that the Planning Commission could not do something about Ms. Fisk's particular issue. He asked who Ms. Fisk should talk to if this was an enforcement issue. Josh Peters replied that Ms. Fisk had taken the proper steps in talking to the enforcement officer, the DCD director, and the BOCC. He stated that Ms. Fisk was doing the proper thing in bringing the issue to the Planning Commission's attention because the commission was considering the code amendments. Staff and the commissioners discussed Ms. Fisk's options, with Mr. Peters describing other big enforcement issues, both current and past, facing the county.

Orville Fisk stated that two neighboring lot owners had also complained about the auto repair business. Barbara Fisk asked if she should again provide copies of the material she had provided before. Jim Hagen stated that anything the Planning Commission could use in its deliberations of the draft code would be helpful. Mr. Hagen stated that one of the chapters proposed for amendment was the Enforcement chapter. He suggested that Ms. Fisk review that chapter as well.

There being no further public testimony offered, the Chair closed the public hearing. He reiterated that written comments would be accepted until the close of business on October 12.

C. REVIEW/APPROVE PLANNING COMMISSION REPORT TO BOCC ON 2005 COMP PLAN AMENDMENT DOCKET

Jim Hagen stated that staff had provided a template for the Planning Commission report on the Comp Plan amendment docket. He stated that Bud Schindler had submitted some input. He stated that he had also drafted part of the report.

The commissioners discussed how to proceed with the report. Jim Hagen stated that he had incorporated much of Mr. Schindler's submission into the report. However, staff had not received the draft report. Therefore, the draft report was not available to the commissioners for review at this meeting.

Josh Peters stated that the Chair's requested target date for presentation of the Planning Commission's report to the BOCC was October 24. That would allow the Planning Commission to finalize its report at the next meeting (on October 19). He suggested that the Chair and/or Vice Chair attend the BOCC presentation in order to explain and expand upon the Planning Commission's recommendations. He stated that any minority reports should be submitted to the BOCC at the same time. He asked that the minority reports be submitted to staff in time for inclusion in the BOCC's packet on the Comp Plan amendments. Mr. Peters stated that staff would probably proactively schedule a BOCC public hearing on the amendments for early to mid-November. Then the BOCC would deliberate and make final decisions.

Josh Peters handed out copies of the report template that included Bud Schindler's input. It was agreed that staff would forward Mr. Hagen's draft Comp Plan amendment report to the Planning Commission for review before the next meeting. It was agreed that the Planning Commission would finalize its report to the BOCC at the October 19 meeting, along with any minority reports.

Phil Flynn referred to a section of the UDC Omnibus (18.15.030) draft which addressed the airport. He referred to a subsection that said "the preservation of rural character". He stated that he did not remember that language being in the airport section. He asked if the classification of the airport by the federal government relating to the characterization of this class of airport was in the document somewhere. Kyle Alm replied that he did not know. Mr. Alm stated that it was rural under the county's GMA land use designation. Josh Peters stated that the airport language adopted in 2004 was never integrated into the code from a document management standpoint. He suspected that the language may have already been adopted. It was in the Omnibus draft as a means of integrating the 2004 language. He stated that staff would verify that. Mr. Peters felt certain the UDC Committee never discussed the airport; it had been handled by the Airport Committee in 2004. He stated that, if Mr. Flynn was going to suggest a change to the airport language, it would be a new change on top of what was adopted through that relatively contentious procedure that involved negotiations with the Port. Edel Sokol and Jim Hagen questioned whether "the preservation of rural character" was appropriate for development regulations.

Edel Sokol asked about the handout headed by "18.40 - Permits". Kyle Alm responded that it was part of the staff handout. He stated that a DRD staff member suggested additional language for expanding an established conditional use. Ms. Sokol expressed concern about "j.", "the conditional use has merit and value for the community as a whole." She cited a current enforcement

case in the county concerning a shooting range. She stated that public opinion was split about the value of that use. She questioned whether the clause should be in the code. Mr. Alm explained that the language was what was currently in the code. What staff suggested adding was a way to expand a conditional use through a Type I process. Josh Peters stated that it should be clear that what Ms. Sokol was suggesting, if she was suggesting a change in that language, was a new change to the current code to be included in the Omnibus package. It was not something that had been proposed for a change. He stated that staff would check the provision to see if there was Comp Plan language that corresponded.

Josh Peters described the process for the UDC Omnibus. He stated that the UDC Committee had continued to meet and had several ideas they would like to present. Staff also had several ideas to present to the Planning Commission. He suggested that staff would draft a memo to the Planning Commission for the next meeting summarizing all of those issues for discussion and possible inclusion into the Omnibus package.

D. ADJOURNMENT

The Chair invited general public comments.

Barbara Fisk suggested that the Planning Commission look into the liability issue addressed earlier with regard to issuing permits for businesses in residential areas. She thought the county could be liable unless it was very careful about protecting the county residents from such cottage industries. She expressed appreciation for all the hard work the Planning Commission did. She stated that she would provide more information on their particular complaint, including information from other neighbors.

The commissioners discussed the topics for the October 19 agenda: (1) finalize the Comp Plan amendment docket report to the BOCC and (2) deliberations on the UDC Omnibus package.

Edel Sokol referred to the written comment regarding political signs. She stated that there was a state Supreme Court decision on the issue. She thought the county would have to follow that decision. Kyle Alm stated that the advice from the attorney was that you could have a content neutral sign restriction. That meant you could limit the size but you could not limit when they could go up, although you could specify when they had to come down after an election. Josh Peters stated that it was an issue staff would bring to the Courthouse for advice one more time.

The meeting was adjourned at 8:00 p.m.

E. APPROVAL OF MINUTES

These minutes were approved this _____ day of October, 2005.

Jim Hagen, Chair

Cheryl Halvorson, Secretary