

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR FEBRUARY 1, 2006

- A. OPENING BUSINESS
- B. DISCUSSION ON SETTLEMENT AGREEMENT BETWEEN WASHINGTON ENVIRONMENTAL COUNCIL AND JEFFERSON COUNTY RE CRITICAL AREAS
- C. 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 Allen Panasuk, Bud Schindler, Bill Miller, Mike Whittaker, Edel Sokol, and Dennis Schultz. Phil Flynn and Peter Downey were excused.

DCD staff present were Kyle Alm, Brent Butler, and Cheryl Halvorson, secretary.

There were no members of the public present.

The minutes for January 18, 2006, were approved as amended.

Allen Panasuk stated that he would not be present at the next meeting.

The Chair invited staff updates.

Kyle Alm reported that the BOCC had adopted parts of the UDC Omnibus, one of which changed the Comp Plan amendment deadline to March 1. Another added a disclaimer to the UGA section.

Kyle Alm stated that he had received an inquiry into a Rural Residential site specific amendment. He stated that he was also working on an amendment for a Neighborhood-Visitor Crossroads designation for the old Irondale Store location.

Kyle Alm reported that the county had received one appeal on the 2005 Comp Plan amendment cycle. Pamela Pepper had filed on the denial of her application. He also reported that Kevin Widell had talked to him about an appeal of his application denial. The commissioners and staff discussed the reasoning for the Widell denial.

Jim Hagen offered the opinion that, if Pamela Pepper took her appeal on to Superior Court if she lost at the Hearings Board, she would have a good chance. He thought that "built environment" on an individual parcel was not a requirement of the law. It did not require the extension of urban services, which was one of the reasons why they wanted to discourage commercial development. Kyle Alm explained that the law did allow for infill. He stated that he thought the reason the law was written the way it was, was so you could take advantage of infrastructure that was there and recoup your investment. However, it was within the county's discretion to assign zoning. Edel Sokol commented that the transit bus facility would probably be put on hold pending the outcome of the appeal or the Transit Authority may look elsewhere.

Brent Butler reported that Neil Harrington had taken a job with Natural Resources in the Environmental Health division. He stated that Michelle McConnell had been hired in his place and would be working on the Shoreline Master Program. He provided a brief synopsis of her experience.

Kyle Alm reported that he had provided a presentation at the Tri Area Chamber of Commerce on the UGA. He stated that Public Works would provide a presentation to the Chamber on the sewer project on February 22. Mr. Alm stated that he had been soliciting input from the Tri Area business community about the problems they had encountered with our development regulations and their needs.

Brent Butler reported on the progress on the affordable housing issue. A consultant had been hired. He stated that he had been asked to provide a short list of citizens from certain business sectors, which he had done. The consultants were selecting people for focus groups. Bud Schindler asked how that tied in with the Housing Assessment group. Mr. Butler explained that it would complement it. He explained the expected outcomes: action strategies that were feasible.

Jim Hagen asked if there would be any connection with economic development and increasing wages, which affected housing affordability and was a policy in our Comp Plan. Brent Butler responded that his first thought was that it would be outside of the housing issue; it was more economic development. But, at the same time, they were inter-connected.

Bud Schindler asked if there would be implications on the Comp Plan. Kyle Alm imagined that there could be, but ultimately it would be up to the commission's recommendation. Hopefully, it would be more specific and more action oriented. He thought there were adequate goals and policies in the Comp Plan already. Brent Butler thought the consultants would consider that issue as part of their review.

Jim Hagen reported on the Planning Commission application to the WRIA 17 planning unit. He stated that, at the last planning unit meeting, the commission was assigned as a technical advisory position with no voting rights. Dennis Schultz pointed out that, of the forty-three points in the WRIA 17 plan, eleven involved the Comp Plan or the UDC. Eight involved conservation groups. Seven involved the Conservation District. He stated that three Conservation District representatives had seats on the planning unit, but they did not feel the Planning Commission should have a full, voting seat. Mr. Hagen stated that he found it interesting that three of the recommendations were considering a TDR program, updating the critical areas ordinance, and updating the Shoreline Master Program. All three of those issues involved the Planning Commission.

Bud Schindler stated that he had been going to the WRIA 16 meetings. That planning group had been calling for representation from Jefferson County. He stated that David Sullivan or his alternate had only attended one of the first five meetings. The only other Jefferson County representative at the meetings was from the PUD #1. He stated that it frustrated him that the Planning Commission was not even considered an alternate for Jefferson County, because he had been attending those meetings and could represent the county.

Jim Hagen stated that, in fairness, the WRIA issue went back several years. The CTED suggestion was that someone from planning [DCD] attend the meetings in order to assess the impacts on land use planning. Kyle Alm explained how the county staff had been represented on the WRIA planning groups, pointing out the turnover in personnel. Brent Butler stated that Tami Pokorny from Natural Resources had been hired and would be working on the WRIA issue. Bud Schindler stated that Ms. Pokorny was the alternate on WRIA 16 but she had not been attending the meetings either. Mr. Schindler stated that he had been hearing feedback from WRIA 20, stating that it was getting contentious. He wondered how much Ms. Pokorny would be able to attend those meetings. Mr. Alm stated that all they could do was ask the DCD Director to talk to the Environmental Health Director.

The Chair invited committee reports.

Brent Butler provided a report on the TDR Committee meeting. Bud Schindler stated that one issue he had asked about was whether it was possible to transfer development rights to a LAMIRD. Mr. Butler stated that he was trying to contact someone at CTED about the question. Kyle Alm offered the opinion that each community would look at TDRs and determine what was in it for them. He offered the opinion that the Hearings Board would not look favorably on transferring development rights to a LAMIRD, especially not a commercial use type LAMIRD. Those designations were zoned based upon the built environment as it existed on July 1, 1990. That was not to say that we could not transfer density if we wanted to build multi-family housing in those zones or build an apartment above the store. But, it could not be used to expand commercial uses.

Brent Butler stated that there were lots of questions that should be answered before we went ahead on the TDR issue. One was that this county was one of the few in the state that had a Master Planned Resort. The question was whether the TDRs could be used to increase the density in a MPR. Kyle Alm stated that a TDR program sounded like it could be done simply enough. However, the devil was in the details. He cited the boundary line adjustment issue as an example of something that seemed simple, but in practice became very complicated. It would be easy to assign UGAs as receiving areas for TDRs. However, as an example, the Hadlock/Irondale UGA was sized for a certain amount of development and the capital facilities planning and impacts were based on that amount of development, and not based on a sudden influx of development rights from sending areas.

The commissioners and staff discussed scenarios under the TDR proposal. Jim Hagen stated that it was a good discussion but a lot of the questions needed to be researched as yet. He thought the whole discussion was in its embryonic stage.

Edel Sokol commented on how villages in Germany in-filled in order to protect the farming areas outside of the village. She stated that it seemed in this county that people did not want the rural area to develop, but they did not want the village to infill either.

Brent Butler reported that the compliance hearing on the UGA was scheduled for February 7 in Olympia.

The commissioners and staff discussed using the Conservation Futures funding in the TDR program. They also discussed the Land Trust and the role it may play. They also discussed mapping methods to determine sending areas.

Bud Schindler stated that he had begun talking to people in the South County about the proposed MPR near Black Point. He asked if it was appropriate for him to represent the Planning Commission in those discussions. Edel Sokol expressed a concern that Mr. Schindler may have to recuse himself if the issue came before the Planning Commission. The commissioners and staff discussed the concepts of conflict of interest and appearance of fairness. The concern with Mr. Schindler being involved in the MPR discussions prior to its coming before the Planning Commission was a possible perception that he would have already made his decision on the proposal. Kyle Alm explained his understanding of what had occurred with the MPR proponents to date. He stated that any MPR would require a Comp Plan amendment. He pointed out that the MPR section of the RCW required that an MPR be a resort with transient

accommodations such as timeshare condos; it could not have a residential component. He pointed out that Port Ludlow was a different type of MPR, specially accommodated in the RCW because it pre-existed the GMA.

Bud Schindler reported on his proposal concerning the side-by-side comparison he had done so far. He supported doing the review piecemeal and getting a few changes done this year. He thought it was something the Planning Commission could do every year for several years. Jim Hagen suggested putting Mr. Schindler's suggestion on the agenda for the next meeting at which time the Planning Commission could decide whether it could support it as a Comp Plan amendment for this year.

Dennis Schultz reported on his review of the amendments needed to take Rural Residential zoning density changes out of the Comp Plan and put them strictly under the UDC. A handout was provided of the proposed changes he would suggest. He stated that there were only a couple of goals and policies in the Comp Plan that would need to be amended. Mr. Schultz stated that the question was how appeals of density changes would be handled. He suggested that the issue be put on the agenda for the next meeting. He asked that staff discuss the proposal with the Director and come back with comments. Mr. Schultz stated that the impact of the proposal was that it would take changes in density out of the Comp Plan amendment cycle; Rural Residential density rezones would be done under the UDC. Brent Butler stated that a question related to cumulative impacts and how they could be assessed. Concerning the issue of how an appeal would work, Kyle Alm stated that there was a court case in Kittitas County that found that a change in rural residential density was not petition-able to the Hearings Board; it would go through a LUPA process and to Superior Court. It was agreed that the proposal would be put on the agenda for the next meeting.

The commissioners discussed whether there was the political will to take on the two suggested amendments the commission had discussed. Jim Hagen stated that the Planning Commission could prepare the suggested amendments and then see how the docketing process went.

The commissioners and staff discussed how fully developed a Comp Plan amendment must be for docketing. Staff advocated that an amendment application must contain the line-in, line-out proposal in order to be a complete application. Some commissioners advocated that a good description of the proposal, without actual line-in, line-out, should be adequate for docketing purposes. Then the line-in, line-out would be developed after the suggested amendment was docketed. Kyle Alm thought there was time to do line-in, line-out for the Rural Residential zoning issue given the review work Mr. Schultz had done.

B. DISCUSSION ON SETTLEMENT AGREEMENT BETWEEN WASHINGTON ENVIRONMENTAL COUNCIL AND JEFFERSON COUNTY RE CRITICAL AREAS

Brent Butler stated that the Planning Commission had received a copy of the Settlement Agreement. He stated that a copy of the Chimacum Watershed Agriculture and Fish and Wildlife Protection Plan was being handed out at this meeting. He stated that this basin plan would act as a template for the other basin plans.

Brent Butler stated that he had spoken with Al Latham of the Conservation District. Mr. Latham had said that the Conservation District was beginning to work on the next basin plan. He stated that the program was voluntary.

Jim Hagen stated that WEC reserved the right to intercede if they determined that the conservation program was not working. He asked about the monitoring program and what "voluntary" really meant. Brent Butler reported on the water quality monitoring program that was ongoing. He stated that the monitoring was showing a continuing problem with bacteria levels. Therefore, the Conservation District was working on a fencing program with the farmers. A problem that resulted from that program was the growth of Reed Canary Grass in the creek, an invasive species which blocked fish passage. Mr. Butler stated that the fencing program was showing improvements in fecal coliform readings.

Jim Hagen stated that the Settlement Agreement indicated that WEC could conclude whether the voluntary compliance had met the objective or failed to meet the objective. He offered the opinion that WEC had its talons into the administration of our critical areas regulations in the county. Bud Schindler stated that it sounded like WEC was holding us hostage. Brent Butler responded that the agreement indicated that we must follow an outline of best management practices, and they saw that our existing policies did not meet the best available science. He thought the Settlement Agreement allowed us some leeway by creating a voluntary program. He stated that the farmers themselves were not being asked to fund all of this work by themselves. He stated that we were looking at other methods of funding. Also, the invasive species issue had to be dealt with. Mr. Hagen stated that Susan Tomasi of DOE had addressed the issue of invasive species at a workshop on critical areas. He stated that her work was cited in the Settlement Agreement for use as part of the best management practices and best available science. Mr. Butler stated that it was important to understand that it was a balancing act. He stated that the farmers had to be able to complete their ongoing farm practices.

Edel Sokol asked what the setback would be if this program did not work. Brent Butler stated that the specified buffer was 150 feet from the stream, and the buffer must meet certain specified conditions. Allen Panasuk asked who paid for the land within that 150 feet. Mr. Butler stated that farmers could graze livestock to within 50 feet of the stream. Within that 150-foot zone, there was to be preferred vegetation so that the question of stream temperature could be addressed. He stated that shade producing plants, such as willow trees, lowered the stream temperature and also retarded the growth of the Reed Canary Grass. He stated that, at the same time, there was a concern that too much shade would encroach upon the agricultural land, which would decrease the agricultural productivity. Again, it was a balancing act. Mr. Butler offered the opinion that the Chimacum basin plan was well written by the Conservation District and addressed the balance of value and functions of fish while also making sure the farms could remain viable.

Edel Sokol asked if the county would be addressing runoff through their culverts, which had been cited as one of the biggest culprits for stream degradation. Brent Butler stated that the current transportation plan included that issue. He stated that Public Works had a list of culverts for replacement as barriers to fish. Ms. Sokol stated that she raised the issue because it had been a loud public comment. Mr. Butler stated that part of the plan was that farmers would not be required to replace culverts on their property because it would be costly.

Allen Panasuk stated that the question remained who paid the farmer for the loss of that 50 feet of land. The reality was that no one did. Edel Sokol

stated that this voluntary plan allowed the farmer choices. If he wanted to comply with the plan and follow the best management practices, he could use more of his land. If he chose to not use BMPs, then the 150-foot buffer would apply. This plan provided for monitoring of the water and vegetation and education for the landowner to voluntarily protect the fish. She pointed out that the streams were waters of the state. Kyle Alm agreed that the streams were waters of the state. He thought that was how the state was able to put regulations into effect without there being a regulatory takings.

Jim Hagen stated that the Chimacum plan had already been paid for. He stated that the other basin plans still had to be done. He asked how those would be funded. Brent Butler stated that the Conservation District was working on what the costs would be to produce the plans. Then the information would be given to the county to determine how to fund it.

Jim Hagen stated that the Settlement Agreement with WEC stipulated that the county would do these basin plans. He offered the opinion that the county had put itself in a bad place. He referred to the expression "they allow us wiggle room", meaning WEC. He questioned why they were even in that position; they were just one entity who participated with other interest groups in the critical areas topic. He thought any one of those other people could be in this same position. He did not think WEC had any preferred status. He thought a much more preferable course would have been to go before the Hearings Board. The Hearings Board would have told us to come into compliance, but it would not have told us how to do that. Under the Settlement Agreement, we now had someone telling us exactly how to accomplish the objective. Mr. Hagen read a portion of the Settlement Agreement that said "The parties will work in good faith during the implementation of this agreement to consider mutually agreeable positions on matters that may arise in the implementation and amendment process". He asked if all amendments to the critical areas ordinance would be reviewed by WEC for their approval as part of the Settlement Agreement. Brent Butler responded that his understanding was that WEC would review our science. Kyle Alm stated that the legal system was adversarial by nature. He stated that the reality was that we did not know how the Hearings Board would have interpreted it. In some respects, he thought we were pretty lucky to get a voluntary program; it could have been worse. He stated that this was a performance based plan. He stated that WEC was looking for improvements or, at least, no further degradation of the watershed. As long as we had the support of the people involved, we were not getting appealed to the Hearings Board. The fact was that, if we could build consensus, we did not get appealed.

Jim Hagen asked, since this would come before the Planning Commission, if the commission would only be asked to "rubber stamp" what was proposed, if it would just be to satisfy the public process provisions of the law. Mr. Hagen stated that the public process had stopped after the critical areas workshop with the state folks. He stated that people were asking questions of the state staff and they were having trouble answering them. Kyle Alm responded that the county should have had this done two years ago, but that was the reality of the department staffing. He stated that WEC appealed on the county's failure to act.

Bud Schindler asked how many other counties were being administered by a private entity such as WEC. Kyle Alm reiterated that the county had the opportunity to do it but failed to act, which was why WEC sued us. Brent Butler stated that WEC reviewed other jurisdictions plans as well. When they found the counties had not done something they should have, WEC would file a

petition for review, just as they had done with this county. Mr. Alm agreed that WEC was a very active interest group.

Cheryl Halvorson explained the genesis of the Settlement Agreement, which was the result of an appeal to the Hearings Board by WEC and the parties choosing to try to reach a settlement rather than going through the full Hearings Board process. Jim Hagen stated that his point was that the county may have been better off to have gone through the Hearings Board process, even if we had been found noncompliant, because the county would have been in a position of self-determination. Ms. Halvorson stated that if the county had gone through the Hearings Board process and had amended the UDC as a result, WEC as the appellant, if they were not satisfied with that result, could appeal that. She stated that whatever UDC amendment proposal came forward would still go through a public process before adoption. Mr. Hagen stated that if the county was responding to the noncompliance, WEC could still appeal, but they might not win because the county would be in a stronger position of having met the conditions the Hearings Board required. That was what he meant by self-determination. Kyle Alm stated that if the county showed that we were making progress through the critical areas ordinance, it would be pretty tough to say we were not considering the best available science and facts as to how we practiced agriculture and maintained water quality. He stated that the Settlement Agreement was a contract between two parties, and like any contract, there were ways to break it. He thought there were choices to be made, even though there may be a price to pay. Ms. Halvorson explained that whatever product resulted from the settlement and public process would go to the Hearings Board for a final determination about compliance. WEC would have the opportunity to tell the Hearings Board whether it was satisfied or not. Mr. Hagen asked if, at that point we were found compliant, that severed the petition. Ms. Halvorson replied that it would complete and close that particular appeal. Mr. Hagen asked if WEC could appeal every time we amended our critical areas ordinance. Brent Butler replied that they would have to file a new petition for review.

Dennis Schultz stated that the Conservation District was currently discussing the Settlement Agreement at its meeting. Bud Schindler stated that he could not help feeling that this county was being held hostage by an interest group. Mr. Schultz stated that was the way the GMA was set up. Allen Panasuk stated that the reality was that it prevented people from developing or using their land, which in turn raised the price on other land, which adversely affected housing affordability. He stated that no one on the Planning Commission could do anything about it.

The commissioners and staff discussed the costs of litigation and the effects in time and money on county residents. Some commissioners questioned the real net effect or benefit in the end after all of those costs and time.

The commissioners and staff discussed the process for the UDC amendments under the Settlement Agreement. They discussed at what point WEC would review the proposed amendments.

The commissioners and staff discussed best available science, what it meant, and whose opinion should be accepted.

Jim Hagen asked about the time table for the WEC settlement amendments. Staff explained that we had six months from the date the Settlement Agreement was signed. Mr. Hagen asked about the drafting process. Brent Butler

replied that staff would draft the initial material and present it to the Planning Commission for the public process.

The commissioners and staff returned to the affordable housing issue. They discussed the grant funding amount. Edel Sokol stated that she hoped the city of Port Townsend would shoulder their responsibility as a UGA with regard to the affordable housing issue.

Jim Hagen returned to the WEC settlement. He stated that the organization itself was of little importance to him. His issue was the way the GMA was written. It was supposed to be a bottom up, locally oriented planning process. Whether it was WEC or some other entity that appealed was immaterial. In a perfect world, the planning should come from the local people.

Regarding the UGA, Edel Sokol referred to the mobile home park near the library. She wondered how their sewage was handled. She stated that some people said we must protect the watershed and that there should not be any density there. She questioned how you could reconcile the two.

C. ADJOURNMENT

Jim Hagen stated that the commission had two proposed Comp Plan amendments to consider at the next meeting. He asked when the commission would see the draft on the WEC amendments to the UDC. Kyle Alm thought it would be in about two months.

Bud Schindler asked for a copy of the city's Comp Plan. Staff noted that it was available on the city's web site. Kyle Alm stated that the Municipal Research Services Center web site was a good information resource.

The meeting was adjourned at 9:04 p.m.

D. APPROVAL OF MINUTES

These minutes were approved this _____ day of February, 2006.

Jim Hagen, Chair

Cheryl Halvorson, Secretary