

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR NOVEMBER 1 and 2, 2006

- A. OPENING BUSINESS
- B. PUBLIC HEARING (Continued) - AMENDMENT TO JCC 17.05, MASTER PLANNED RESORT CODE, MLA06-185
- C. ADJOURNMENT (Continuation)
- D. BRINNON MPR SITE TOUR, MLA06-87 (Continued meeting on 11/2/06)

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 Dennis Schultz, Edel Sokol, Mike Whittaker, JD Gallant, Bud Schindler, Henry Werch, Bill Miller, and Peter Downey.

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

There were about eighteen (18) members of the public present. Those who signed the guest list were Tom McCay, Pat Pearson, Larry Nobles, Bill Hansen, Kathy and Sterling Couch, Bonnie Lambton, Jack Lambton, Fred Backer, Gail Paine, Mark Pearson, Bob Peden, John Paine, and Michael Holland.

The minutes for October 18, 2006, were approved as submitted.

The Chair invited staff updates.

Brent Butler updated the commissioners on the status of the Flood Damage Insurance program. Public outreach was scheduled beginning on December 9.

Brent Butler updated the commissioners on the Housing Action Plan, which was approved by both the Planning Commission and the BOCC. He stated that we were recruiting for the Housing Action Plan Network committee, which would be the steering body. He stated that, in order to implement the plan, the county would be applying for a Community Development Block Grant [CDBG]. There was a requirement for a public hearing to be conducted before the Planning Commission as part of the application process. Staff handed out copies of the legal notice for the hearing to be conducted on November 15. He stated that there were applications for the HAPN committee available at the front counter.

Barbara Nightingale reported that she had nothing to report except what was related to the public hearing. She stated that additional comments had been received and were handed out to the commissioners. She stated that staff would present the updated staff report during the continued hearing.

The Chair invited committee reports.

Henry Werch reported that the BOCC would hold a public hearing on the No Shooting Areas issue on November 6.

Bill Miller reported that the UGA Committee had not met because of the Public Works workshop on the sewer project. He stated that he had announced the UGA Committee meetings and invited public participation. The next committee meeting will be on November 8.

Peter Downey reported that the SPAC had not met since the charrette.

Bud Schindler stated that there would be a walk through of the proposed Brinnon MPR on November 2. The commissioners briefly discussed the quorum issue regarding the walk through. They agreed that the best course of action would be to continue this meeting and agreed to discuss the issue at the end of the meeting. Brent Butler stated that there would be two other opportunities for a walk through later in the process. The commissioners and staff discussed who would be present representing the Statesman Group. Mr.

Butler discussed the timeline for the draft EIS. Mr. Schindler stated that the WRIA 16 group was very interested in the water issues as it related to the MPR. Mr. Butler outlined other entities that were interested as well, including the Navy.

Jim Hagen reported on the Critical Areas Committee/Advisory Group activities. They had formed sub-groups for specific issues. He stated that there was a proposal that each group have reports ready for the full committee by December. Staff had also provided a draft white paper on the agriculture issue.

Bud Schindler reported that he had been in Chehalis this week, stating that a lot of people were watching this county and were very interested in what was going on here [regarding the critical areas issue]. Edel Sokol commented that this was a very important issue throughout the state.

Jim Hagen stated that he had invited WEC to participate on the Critical Areas Committee. He reported that we had received a letter from WEC declining participation due to other activities they were involved with.

The Chair invited general public comments. There were none received.

B. PUBLIC HEARING (Continued) - AMENDMENT TO JCC 17.05, MASTER PLANNED RESORT CODE, MLA06-185

Jim Hagen opened the continued hearing by reading the public hearing process. He then asked for a staff report.

Barbara Nightingale summarized the latest staff report. She stated that further staff analysis determined that 36 additional lots could be created instead of the ten (10) reported by the proponent's representative or the 26 reported by staff on October 18.

Using overhead projections, Barbara Nightingale provided a presentation on the Ludlow Beach Tracts lots inside the MPR boundary (14 tracts). She explained the lots that had been subdivided (short platted) or segregated via estates or agreements. She explained that an estate segregation did not carry the same weight as a subdivision under the RCWs; they were exempt under the state subdivision laws. She stated that the proponent's objective was to not allow any of the 14 tracts that had been altered to be further altered. That was the reason for their third alternative language. Tracts 1, 2, 5, 7, 8 and 10 were unaltered from the original plat. She explained how staff arrived at 36 potential lots. She explained that a strict reading of the state subdivision laws did not recognize a short plat as a subdivision. Also, the estate segregation and agreement segregation were exempt from the state subdivision law. Therefore, all of the tracts could be further subdivided under the current proposed wording. That was how the 36 additional lots could be derived. She stated that we needed to be careful about the wording of the code language so that we could arrive at the desired objective, especially in light of the RCW's effects.

Henry Werch asked if staff had made a suggestion for alternative language that would address the problem. Barbara Nightingale replied that the Deputy Prosecutor had suggested alternative language. That e-mail message had been provided to the Planning Commissioners in the handouts.

In answer to Bud Schindler's question, Barbara Nightingale explained estate segregations as opposed to short platting and subdividing. She stated that "estate segregation" was a separate term from "subdivisions" and was not recognized under the state subdivision law. She stated that the JCC needed to be consistent with the state law. She explained the differences between a long plat (long subdivision) and a short plat under the JCC, stating that only long subdivisions were addressed in the RCWs. They were important differences. Because we were talking about changing the JCC, we had to be careful about the effects on the MPR. Mr. Schindler asked what it would take to limit the effects to 18 potential lots. Ms. Nightingale responded that Mr. Goldsmith had made assumptions to arrive at his 10 potential lots based upon certain critical areas. She stated that staff could not accept those assumptions based upon experience. The critical areas could be addressed through the configuration of the lots in a plat in order to arrive at the maximum number of lots allowed.

Barbara Nightingale stated that another issue had to do with a comment about a salmon bearing stream. She stated that staff's analysis indicated that there was a Type 5 stream running across Ludlow Beach Tracts. It would not be a salmon bearing (spawning) stream.

Dennis Schultz commented that, if we used the Deputy Prosecutor's suggested language, it would take the number of potential lots down to 18. Barbara Nightingale agreed that would be the effect.

Bud Schindler discussed the wetland issue in the area, which was identified as a critical area on the county maps. He stated that, in actuality, there was not that much wetland present. He described a stream running under Ludlow Bay Road onto Tracts 7 and 8, into a pond, and then on out of the pond through some culverts. Barbara Nightingale stated that the county would require a wetland delineation since the county maps would merely "red flag" the area as needing further analysis.

Bill Miller stated that the minimum lot size was 5,000 square feet but with zoning of four residences per acre (4:1). He asked if it would be possible to have two 5,000 square foot lots and then one large lot on each of the eligible tracts. Barbara Nightingale agreed it would be possible, stating that staff had seen such configurations in the past. Peter Downey stated that the constraining factor was the language limiting it to three houses, not the 5,000 square foot minimum lot size.

Bud Schindler stated that his personal observation was that the 5,000 square foot rule would be out of character with the neighborhood. He stated that he would suggest limiting it such that you could have no more than two lots per tract instead of three. That would mean six additional lots instead of 18.

Barbara Nightingale handed out copies of the pertinent RCWs for the commissioner's information.

Henry Werch asked if the current language would allow three 5,000 square foot lots clustered together with a larger portion of the tract left intact. Barbara Nightingale responded that it was possible. Mr. Werch stated that may be an issue the Planning Commission should respond to.

The secretary listed the written comments received and handed out to the commissioners.

Jim Hagen opened the hearing to public testimony.

David Goldsmith, representing Michael Holland, stated that they only wanted the same opportunity that others in the neighborhood had had. He stated that the original language said that "existing subdivisions shall not be further subdivided". If he heard Ms. Nightingale correctly, a short plat did not constitute a subdivision. If that was truly the case, they could withdraw their application because they could do a short plat. He did not think that was what we were talking about, however. He stated the opinion that we wanted to be sure that we did not have a bunch of short plats going on all over those tracts because each of those properties could be divided. He did not think we should use that as a basis. Given that you would not use that as a basis, the proposal was to limit any future subdivision to those lots that had never been subdivided or altered in any way; that was the difference. So, none of the previous short plats would count, nor would Lots 9A and 9B and 4A and 4B because they had been altered. He stated that Lot 1 would not count either because it, in fact, had been altered by a long plat. Therefore, we were really only talking about Lots 2, 5, 7, 8 and 10. He stated that there had to be a way to craft the language so that it was limited to the unaltered lots that had been unaltered since 1950 so that they would have the same opportunity as their neighbors and keep it in character with the neighborhood. Concerning the 5,000 square foot lot size issue, he stated that would certainly not be within the character of what existed there now. He stated that had never been the intention of anyone who was involved in this project to do something that was different. He stated that the Planning Commission had heard from Diana Smeland of PLA that they would have bought those lots if they had known they could subdivide them. He called attention to the division of Lot 1 which had 10,000 square foot lots on a cul-de-sac with paved roads and water and sewer. That was not what they were talking about. They were talking about a simple subdivision that was like the neighborhood. He stated that they were willing to accept whatever language would achieve the intention. He suggested alternate language: "Existing subdivisions shall not be further subdivided, platted, short platted, or otherwise altered in any form except for any unaltered lots, tracts or parcels of record established on or before January 1, 1950; provided said lots, tracts or parcels shall not be further subdivided into a total of more than three lots, tracts or parcels." He thought there must be a way to craft the language to limit the amount of subdivision. He stated that the commissioners were correct that the language was only pertinent to the MPR Single Family zone. It only applied to those lots within the MPR-SF zone that were platted prior to January 1, 1950, which limited it to the Ludlow Beach Tracts. He stated that the 5,000 square foot minimum lot size was still in the JCC that existed. That would allow smaller lots if there was a critical area present or if you wanted to leave a larger open space. He stated that it was never their intention to do such small lots in that neighborhood. He stated that he would have to leave shortly and asked if the commissioners had any questions.

Bud Schindler asked for an explanation on Tract 1. David Goldsmith explained how that tract was altered. Peter Downey stated that, under their definition, Lot #1 would have been altered, so it would not be eligible.

Jim Hagen asked about the intention of the applicant and what he could actually do under the proposal. David Goldsmith responded that the intention would be to limit any future divisions to those five lots and to limit the division of those five lots to a total of three lots each. The other parts of the code that controlled were that no single parcel could be less than

5,000 square feet and you could have no more than four to an acre. That would not apply in this case because any future division would be limited to three parcels each (instead of four) because each of the intended lots were over one acre in size. He stated that the 5,000 square foot minimum could be problematic because you could have two 5,000 square foot lots and the residual in one large lot. He stated that, if the world was flat and there were no critical areas issues, you would have the potential for three lots from each of the five unaltered tracts for a total of ten additional lots. However, he was not certain you could get three lots from each of the Holland tracts due to land constraints.

JD Gallant asked if it was possible to limit it to two lots instead of three. David Goldsmith responded that they just wanted it to stay within the character of the neighborhood and community. Mr. Gallant stated that the commissioners could discuss the idea later.

Tom McCay, Mariner Place, stated that one thing that concerned him was that, if we accepted the 18-lot scenario, you would be looking at 36 buildings. In order to join the South Bay Community Association, there was a fee of \$2500 per residence. If you multiply 36 times \$2500 you get \$90,000. The current dues per homeowner were \$720 per year. Using the 36 homes figure, it came to an additional \$25,920 per year that the South Bay Community Association would not realize if we used the proposed MERUs in this area [Ludlow Beach Tracts]. If you used Mr. Goldsmith's numbers, there would be a total of 15 lots, so the initial loss to the South Bay Community Association would be \$37,500 and the dues lost per year would be \$10,800, both still significant figures. His point was that there was a potential monetary loss to the South Bay Community Association because the Ludlow Beach Tracts would not be part of that association. Another thing that concerned him as well as others in the community was that there would be no CC&Rs covering the subject area. There would be no oversight on the part of the community associations or the other oversight bodies in Port Ludlow. While he knew the county regulations would apply, he was concerned about what kind of buildings could be put in there.

Pat Pearson, Ludlow Bay Road, provided some overhead photos depicting the character of the neighborhood and the estuary. An audience member pointed out that one waterfront home in one picture just sold for \$2,250,000. Ms. Pearson stated that, as a resident, she was concerned about using the word "relief" for the applicant. She stated that the rules were in place since the MPR Code was adopted. She stated that he bought the property in the last year knowing that he could not subdivide. She did not understand how he should have "relief" through a change in the regulations that came about because the community did not want further subdivisions. She stated that she hoped the Planning Commission would realize that there were a lot of residents that were also asking for "relief" that the code not be changed. She offered the opinion that the character of the community was planned in a certain way and the residents did not want to change that character. The secretary asked for copies of the overhead photos for the record.

Larry Nobles, Harms Lane, asked, if there would be ten additional lots in that area, where the additional ten MERUs would come from. He stated that there was a limit of 2250 MERUs. His understanding was that when PLA bought the remainder of the MPR development, they were buying approximately 400 remaining MERUs. This ten would presumably come out of their allotment. That would certainly represent a significant financial loss to PLA. He thought it would be on the order of a \$1,000,000 loss in profit. Another issue the Planning Commission should be aware of was that this area was kind

of an orphan area. Those lots were not part of the MPR. Therefore, they were not constrained by the CC&Rs, and they did not belong to the Beach Club or the Bay Club or to any of the community associations. They did not fall under the Development Agreement. Therefore, they were not constrained by the development standards or the design guidelines that were part of the Development Agreement. They were, of course, constrained by the MPR Code. He stated that his main concern was where those ten additional MERUs would come from because they would have to come out of the total pool of 2250. Presumably, those ten could be used elsewhere by PLA in the South Bay area.

Stirling Couch, Attitude Lane, stated that they lived along Ludlow Bay Road. He stated that he was conflicted because he thought a person's property was theirs and they should be able to do what they wanted with it, within certain guidelines, as long as it did not adversely impact the neighboring area. The problem was that it did not just affect his own property; it affected a lot of other properties in the neighborhood which could greatly change the course of the neighborhood. He stated that this would affect more than just his [Mr. Holland's] property. It would affect the financial resources of the people who invested in the community and continued to invest in the community. He stated that he thoroughly enjoyed the neighborhood he lived in. He thought that any future development should be kept within the scope of the current community. He hoped that Mr. Holland would do something that would be within the constraints of his own property and that would not affect the neighboring properties.

Fred Backer stated that he owned property on Ludlow Bay Road although he lived in Seattle. He stated that Mr. Holland bought what he bought. He stated that he had owned his property for a long time. He stated that Mr. Holland was the first person to buy along Ludlow Bay Road who wanted to develop. All the others bought there to build and live there. He stated that he did not know Mr. Holland's intentions, whether he intended to live there or to develop it and make money. He thought Mr. Holland made a good buy. He stated that Mr. Goldsmith had said that they wanted it to be equitable like their neighbor had, but that was done via a mistake. He stated that those were Pope and Talbot people that developed those four lots where the mistake was made. He thought it was made under Mr. Goldsmith's regime when he worked for Jefferson County. Mr. Backer stated that Mr. Holland was in the audience and asked him what his intentions were. Michael Holland replied that he just wanted to make two lots out of each of his tracts. Mr. Backer stated that what Mr. Holland's intention was did not matter because he could die and the lots could be sold again to someone else. Mr. Backer stated that all the numbers being talked about were confusing. Mr. Backer stated that what they worried about was that Mr. Holland was a real estate agent and a developer. Mr. Holland denied that he was a developer. Mr. Backer invited Mr. Holland to build a house and join their neighborhood.

Michael Holland stated that he lived on Churchill Lane and was a real estate agent. He stated that he was really lucky in that Mrs. Morrison sold him the two tracts before she died. He stated that when he met Mrs. Morrison, she was working with Mr. Goldsmith on the issue of dividing her property. He stated that he honestly did not know that it could not be subdivided because Mr. Goldsmith had told him he thought it could be and he had started a process to do so. He stated that he bought the property because he liked it. He stated the belief that the code language was very restrictive. He stated that the property was a beautiful property and it lent itself to two building sites down by the water. He thought what he proposed to do was in keeping

with the neighborhood. He stated that the current houses on the property were old; they were the first to be built. He reiterated that he just wanted to divide each lot one time. He stated that four units per acre, which was in the code, were ridiculous for that area. If he was a developer, he would want to maximize the use of the land, but he did not want to do that.

Jack Lambton, Ludlow Bay Road, stated that he liked the part of the law that said ignorance of the law was no excuse. He thought ignorance of the code was no excuse either. He stated that there was a precedent and it was currently in place. He did not think there was anything that was inequitable. There were the community and MPR plans and the code that were done with community involvement. In terms of the character of the neighborhood, all the numbers were confusing. He suggested making the code language clear. He stated that the 5,000 square foot minimum was ridiculous and not in the character of the neighborhood. The character of the neighborhood was larger lots. He requested that the Planning Commission start with the language and make it very clear because that was critical. He thought the minimum lot sizes should be larger and equal the language.

Pat Pearson asked that the Planning Commission notify the public depending on what happened tonight, because there were other people who could not attend.

Jim Hagen stated that once this hearing was closed, it was closed and the Planning Commission would not take additional public testimony, either written or oral. Henry Werch asked if it was possible to continue the hearing again, whether the commission was under any restraint to do that again if the commission wished. He stated that his reason for asking was that what he was hearing from the community were questions and concerns that were out of sync with the apparent intent of the applicant. Therefore, he did not think the Planning Commission had gotten a real sense of the community's response to what Mr. Holland actually wished to propose. Because of that, his first choice would be to continue the hearing pending a further submission by the applicant that would more accurately reflect what Mr. Holland was actually asking for. He did not think the Planning Commission should be forced to deal with a lot of consequences if the consequences were not what Mr. Holland intended.

Fred Backer stated that he thought what they were saying was that it was not just Mr. Holland; it was the five tracts that could be affected. It started out just being for the Holland tracts, but the code language would affect other lots as well. He stated that he had two acres and asked if he could subdivide. He thought it was a Pandora's Box.

Tom McCay asked what effect subdividing Mr. Holland's two lots into two additional lots would have on the other lots. He asked if they would be limited to two lots or three lots. He asked just what effect that would have.

Michael Holland reiterated that what he wanted to do was to create four lots out of the two he owned.

Bob Peden, Ludlow Bay Road, stated that it seemed to him that the planning process established precedent that you looked at when you deliberated what happened in the past. He stated that there would surely be an effect in the future. He thought that was an important point to consider. He wondered if those tracts would be required to be annexed to the South Bay Association. He commented on the figures quoted earlier about the monetary loss to the

association, stating that it was interesting that the association could go from zero to minus dollars.

Stirling Couch asked, if the Planning Commission ended public comment and went on to deliberation, whether it would be on the proposal that was made or whether it would be on some other proposal. Edel Sokol responded that the Planning Commission could recommend anything to the BOCC, which would act on that recommendation. Jim Hagen explained the BOCC's process after it received the Planning Commission's recommendation.

Pat Pearson stated that, hopefully, the Planning Commission was getting a sense from the public that Port Ludlow was not an obstructionist community. She stated that Mr. Holland had the same opportunity as the others in that area. She did not believe dividing up those lots into four pieces was in keeping with the neighborhood character and that we should not change the MPR code to allow it. She stated that it was too bad because we were now in this big, huge thing. She stated that changing the regulations and code would set a precedent. She stated that their concern was that there were impacts. She stated that everyone else abided by the regulations.

Henry Werch moved that the public hearing be extended to allow for the proponent to present a plan for subdivision that more appropriately reflected the proponent's intent and what the community seemed willing to support. JD Gallant seconded the motion.

Henry Werch stated that he would be willing to set a time but it was the concept he was trying to support.

Dennis Schultz stated that the Planning Commission had had situations like this in the past. He stated that it was important that the public know, and more important that the commissioners understand, what the situation was. He did not think extending the public hearing would gain the Planning Commission much more knowledge. While the commission may hear more public opinion, that was all that would be accomplished. Bud Schindler agreed with Mr. Schultz, stating that he thought the Planning Commission could come up with a recommendation that would be a benefit to the character of the community. He thought the commission could go forward right now. Peter Downey thought he had enough information now to move forward. He did not think extending the public hearing would add that much additional information.

JD Gallant asked how the commission could go forward without new code language, wording that would absolutely limit any further division to those five tracts that had never been altered before. Bud Schindler stated that staff could be asked to draft such language to accomplish that end. While he agreed with that idea, Mr. Gallant stated the belief that the input from the community would be very important in this case. He stated that the changes the commission was considering would not impact the greater community so much as it would the Ludlow Bay Road community. Therefore, the commission would not know if a new proposal that may limit any subdivision to one time to those five lots would be acceptable to the community. He thought it was important in this case to keep the hearing open so the commission could hear from the community.

Bud Schindler stated that when he and another Planning Commissioner visited the site, they talked to one property owner [Lot 6] on Ludlow Bay Road. That person said she had no problem with what was proposed for the Holland property. When they asked her if she would want to subdivide, she said she

probably would not, although that tract had already been partitioned in the past. She said that if she owned those lots, she would probably do it the same way. He stated that he saw it as keeping with the character of the community. He thought making each lot into two lots would be in keeping with the neighborhood character whereas making each lot into three lots would not. He thought some of the eligible lot owners would probably not want to divide their land. Also, the critical areas present would affect the ability to divide.

Henry Werch stated that the purpose of his suggesting an extension was not to get further public opinion. He agreed with the idea that the commission had a good cross section of opinion. He stated that, in his experience elsewhere, the municipal attorney had advised that it was not the commission's responsibility to write ordinances; that was the petitioner's job. If the petitioner's request did not achieve what we wanted, the commission should reject it and request they submit a new proposal. That was what he was trained as a Planning Commissioner to do; not to try to second guess the proponent, but to respond to what the proponent wanted. He stated that the commission had heard what the proponent wanted and what the consequences of that were. That was the disconnect he wanted to deal with. He stated that the motion was really not about continuing the hearing; it was about dealing with that disconnect.

Jim Hagen referred back to the Comp Plan amendment cycle, as an example, where the Planning Commission discussed whether to add conditions. In one case, what the applicant asked for in the beginning and what actually happened at the end was very much different, and was very much different from when the Planning Commission recommended it until the BOCC approved it. He stated that the Planning Commission made a recommendation to the BOCC. That was not necessarily the end product that was adopted by the BOCC. He stated that his question was that, if that was the applicant's intention all the time, it would have been helpful to have received that initially. On the other hand, there were still avenues for that to be expressed.

The motion to continue the hearing failed with three in favor and six opposed (3-6-0).

Edel Sokol stated that before the hearing was closed, if Mr. Holland wanted to make a proposal, she would like to hear if any of the public present objected. Michael Holland stated that he only wanted to get two lots out of each of his tracts instead of one each.

Larry Nobles stated that, regardless of whether you ended up with two additional lots or ten additional lots, the question was where the additional MERUs would come from. Dennis Schultz stated that the available MERUs were on a first come, first served basis.

The Chair closed the public hearing to testimony and written comments. He then opened the floor to discussion.

Dennis Schultz stated that he would like to see the commission hold discussion tonight but to hold off on a recommendation until the next meeting, which was in keeping with the commission's usual process. Jim Hagen stated that the commission had received additional written comments that the commissioners should review.

Dennis Schultz suggested that staff prepare revised language that would limit further division to two lots instead of three and would limit it to the five tracts discussed. Peter Downey stated that the Deputy Prosecutor's suggested language should be incorporated as well.

Jim Hagen stated that the public hearing was closed. However, after the commission's discussion, some members of the public may want to comment on the discussion during the next public comment period.

Henry Werch listed some issues that were important to him on the board. He stated that Mr. Holland had claimed some hardship for the fact that when he purchased the property he had a reasonable expectation of allowing some sort of subdivision based on what occurred in the neighborhood. He thought that was a reasonable circumstance, stating that there was some precedent that occurred in the neighborhood, albeit inappropriate precedent. Given that then, the question was whether some form of subdivision consistent with the neighborhood should be allowed and whether it would be considered fair. He tended to believe that some sort of subdivision, to the extent of one additional lot per tract, would be consistent with the neighborhood and would be fair. He stated that he was persuaded that some further subdivision could be supported by what had happened in the neighborhood, but it should be very restricted. Although he realized the practice here was somewhat different, he thought it appropriate that the responsibility was Mr. Holland's or Mr. Goldsmith's to submit something the commission could respond to. If the Planning Department could work with them on the language, he could support it. Therefore, he thought Mr. Schultz's suggestion was appropriate.

Dennis Schultz stated that, when we had zoning density change requests in the past, the Planning Commission looked at what the neighboring properties were like. This was a similar situation. He thought the neighboring properties had been divided in the past into two or three lots.

JD Gallant stated that the commissioners should not only think about what the commission thought was fair or what was fair for Mr. Holland but should also think about what the neighborhood members would think. He stated that nearly all of the comments received were opposed to any change. He thought the commission should consider what the consensus of the neighborhood would be with whatever proposal the Planning Commission arrived at. Bud Schindler stated that most of the opposing comments were directed at the original proposal, which was not very restrictive at all. He stated that the more restrictive proposal the Planning Commission was now considering would probably be more acceptable to most of the people. Mr. Gallant stated that he tended to agree but added that it would be nice if the Planning Commission could hear that from the people.

Jim Hagen stated that, as he was preparing for the meeting by reviewing the comments, he noted one from R. G. Timmerman. It made the point that he could understand that someone had an existing expectation when they owned a property and that was changed after they owned the property because the rules changed. That would be a reasonable expectation. However, that was not the case in this instance. He stated that he would have to agree with the assessment that it was not necessarily "relief" because there was nothing to be relieved from, because those were the rules at the time the property was purchased. While he was not saying that was his final decision on the matter, he just wanted to make the point that he was just trying to wrap his mind around the comments.

Edel Sokol agreed that the hardship argument was pretty thin. She did not think there was a hardship here. She gathered from Mr. Holland that perhaps Mr. Goldsmith had given him some expectations that perhaps he shouldn't have. She thought the hardship issue should be wiped out.

Peter Downey stated that the lots would be very constrained by both the wetland and the stream running through them. If the commission put through a recommendation that would allow them to further subdivide and they drew lot lines such that there was no practical way to build on that lot without having an impact on the wetland or stream, he wondered if the commission could constrain that when they applied for the plat. Bud Schindler responded that would be addressed during the actual subdivision phase. He stated that you could not create an unbuildable lot. The county would not grant the subdivision if the proponent proposed such a scenario. Barbara Nightingale agreed that the county did not allow you to create an unbuildable lot. She stated that in this particular situation, you had sewer and water available. The constraints would be the environment. In such a case, they could apply to have a reasonable economic use variance to reduce the buffer size. That was a future impact that could happen. Mr. Downey stated that his question was still a legitimate question then.

Mike Whittaker stated that "hardship" and "relief" were probably Mr. Goldsmith's words and not Mr. Holland's. He read a comment from Shirley Kempkin that the original deed for the Morrison property said that it could never be subdivided. He asked if that was true and asked that it be researched for an answer and what the implications would be. Mr. Whittaker stated that he and Mr. Schindler had visited the site. He stated that each one of those lots had a building on the waterfront with the exception of Tracts 7 and 8. He stated that the waterfront was the most sought after and valuable. He thought those lots begged to be built on considering what was there already and the nature of the community. He stated that the new houses being built were huge. Yet there were other lots that had what looked like someone's vacation cottage. He stated that Tracts 1 through 14 all seemed to have something on the waterfront. He stated that the comments seemed to express a reluctance to see something built on the waterfront. In terms of the lagoon behind Tracts 1 through 6 being salmon bearing, he stated that it was so choked with grass that he doubted a salmon could use it. Perhaps they could use the main stretch, but he doubted they could use the area behind Tracts 1 through 6.

Henry Werch stated that it was difficult for him to see the issue hinging on whether there were homes on the water or not because Mr. Holland could simply relocate or build on the waterfront and conform to all existing rules, so it was not about that. He stated that he was trained to look at a situation like this in terms of "reasonableness". From a home site standpoint, he asked what the most unusual aspect of these lots was. The most unusual thing was that, in the lots in question, there was only one home because it was restricted to one home while everything around it had two or more homes. Therefore, he could be empathetic with Mr. Holland when he said that these lots represented something of an exception in the neighborhood. He stated that he would not support homes that would infringe on any of the environmental considerations there. He stated that he was willing to take Mr. Holland at his word that his intent was to do no more than create two building sites on each of his lots. He understood that it could apply to other lots as well. He stated that it was hard for him to argue against the reasonableness of the request if, in fact, it was limited to what Mr. Holland claimed to want. He stated that it was easy for him to reject the present

language because it obviously went beyond what Mr. Holland claimed he wanted and what the community would find acceptable. He stated that he did not hear anything from the community that he would interpret as representing community opposition to having two building sites on those lots. He thought all of the objections were directed at a much higher density and something that was out of keeping with the neighborhood.

Edel Sokol stated that the Planning Commission also heard that people bought their land knowing what the rules were and had an expectation that those rules would be maintained. Henry Werch responded that his sense was that the characteristic of the neighborhood not be changed. The question was if the characteristic of the neighborhood was determined by what was currently built or by what could be built under present code. He stated that the commission could see with the current subdivision what could be built and could have a sense of what was reasonable. While he thought the input from the community was very important, the community did not necessarily get to vote on what was built next to them. That should not be the determination of what was appropriate development or appropriate zoning or what was reasonable. He stated that he was still open to there being reasons why a subdivision into even two lots was not acceptable, but he had not heard that yet. He had heard substantial objections to why multiple subdivisions or multiple homes would be inappropriate or inconsistent with the neighborhood.

Jim Hagen stated that it was important to remember that this was not a site specific rezone, even though there had been a lot of focus on Mr. Holland's request. This was a code amendment. He stated that you would not change the code for one piece of property. He stated that the Planning Commission should consider that the code change would affect other properties in the MPR. While the Planning Commission had heard the intent of Mr. Holland as one landowner, the commission had not heard from the other landowners who would be eligible under this subdivision proposal. He stated that if you went to the actual application, there were three indicators that defined whether an amendment would qualify for approval. One was whether the proposed amendment reflected currently widely held values of the residents of Jefferson County. As Mr. Gallant had said, in this case it was not so much the values of the whole county. He stated that the commission had heard tremendous comments on the values of that local community and they had been overwhelmingly against the proposal. Again, while he was not advocating one way or the other at this time, he wanted the commission to consider that issue because it was important to the discussion.

Peter Downey stated that he would like staff to look at the part of the code concerning the environmental concerns. He stated that it was not just the Holland lots; it was any lots that could be created. He was concerned that someone could try to get around the buffers by subdividing and creating a lot that he knew was not buildable and then apply for a reasonable economic use variance. He wanted to see those code references in order to understand the issue better. Bill Miller stated that it seemed to him that what we did in this case could have implications outside of this area for people who wanted to do that. He thought it seemed reasonable, based on the original proposition, to just put three houses close together and leave the rest open. Mr. Downey stated that he was actually not opposed to doing that, but he was just feeling very cautious about that part of the code.

Mike Whittaker stated that a comment was made that the language "shall not be further subdivided" was done by Pope Resources for the MPR community. If

that was the case, Pope Resources had nothing to do with these tracts, but it impacted these parcels.

Henry Werch stated that, at first glance, one would say that these five tracts were the exception rather than the rule in the neighborhood. However, if there was a reason for that exception, whether it was environmental or historically deeded or intended, he would want to hear about it. He stated that he would not want any recommendation the commission may make about subdivision to be interpreted as giving the builder license to then build just because we approved the subdivision if there were other environmental impacts that needed to be addressed.

Edel Sokol commented that the Shoreline Master Program and the Critical Areas Ordinance would have an effect on future subdivisions.

Barbara Nightingale read the Reasonable Economic Use Variance section of the JCC [18.15.220]. Peter Downey stated that there was still the question about environmental concerns on the subdivision approval. Ms. Nightingale stated that was a good question.

Dennis Schultz moved that staff re-word the proposal to limit the subdivisions to two lots per parcel instead of three lots per parcel and using the Deputy Prosecutor's suggestion. There was no second to the motion.

Peter Downey moved that we start with the Deputy Prosecutor's language but limit the number of lots that could be divided into two, not three, and that staff should draft that language and present it at the next meeting. Dennis Schultz seconded the motion.

Mike Whittaker asked if there would be any opportunity for the proponent to work with staff on the language. Jim Hagen stated that it had happened in the past.

Henry Werch asked if it would be possible for the public to comment on the revised proposal. Edel Sokol stated that it would be off the record, but they could comment. Jim Hagen stated that once the recommendation went on to the BOCC, there would be another comment period. Dennis Schultz stated that any further comments on this issue would automatically be forwarded to the BOCC for their consideration since the public hearing before the Planning Commission was now closed.

The motion carried unanimously (9-0-0).

Peter Downey stated that what he wanted was to look at the subdivision language in the JCC and see if it referenced the critical areas language. If it referenced back to that, it should say that you could not do subdivisions that would create a nonconforming lot which would then necessitate a reasonable economic use variance. If such language was not there, it should be because it was a huge hole.

Jim Hagen invited general public comments.

Jack Lambton asked about researching the title question and whether staff would do that. The commissioners discussed whether they should take a motion to direct staff to do the requested research.

Fred Backer asked, bottom line, how many houses Mr. Holland could build on Tracts 7 and 8. Jim Hagen replied that it would be two each for a total of four. Henry Werch stated that the other three affected lots could do the same.

John Paine stated that the potential would be a total of ten. Peter Downey stated that right now there were five lots affected. If each of those lots chose to divide, there could be a total of ten lots.

John McCay stated that two of the tracts had been divided by an estate segregation or by an agreement. Neither was done by an amendment to the code. He asked if that would sway the Planning Commission's opinion. Jim Hagen stated that it had been established that all of the short plats had been done prior to the MPR Code language that prohibited further subdivision. He thought all those prior short plats were done consistent with existing code at the time. Bill Miller stated that the only thing that was changed after the MPR Code was the one that was done in error and the estate segregation.

Bud Schindler expressed a concern that, if we had more estate segregations, we should have language in the code that would prevent such an occurrence. Edel Sokol did not think the county could do that because that was estate law which was dealt with by the courts. Barbara Nightingale commented that would not be counted as a subdivision.

In response to Pat Pearson's expressed concern about where the Planning Commission's discussion was going, Peter Downey stated that the commission had not decided anything yet. All the commission had done was ask for some language the commission could work with.

Bob Peden stated that the thing he heard was that the commission was willing to let these lots divide because the others had been subdivided in the MPR. He stated that the neighborhood down there was a great deal more than the MPR. It went all the way down to the end of the road, which was outside of the MPR boundary. There was one house per acre there. That was the character of the neighborhood. The neighborhood consisted of more than those five lots; it went all the way down to the end of Ludlow Bay Road.

C. ADJOURNMENT (Continuation)

Jim Hagen stated that the agenda was set for the next meeting. Brent Butler reminded the commissioners that the meeting should be continued to accommodate the Brinnon MPR walk through.

JD Gallant moved that the Planning Commission meeting be continued for the purpose of attending a walk through of the proposed Brinnon MPR from 1:00 to 3:00 p.m. on Thursday, November 2. The motion carried unanimously (9-0-0).

Jack Lambton stated that the title issue had not been finalized. The commissioners agreed by consensus that staff should research the deed issue and asked staff to do so.

Fred Backer complimented the Planning Commission on its meeting. While there was much that was confusing, he was impressed with the process. Other members of the public agreed.

The meeting was continued at 9:25 p.m.

D. BRINNON MPR SITE TOUR, MLA06-87
(Continued meeting on 11/2/06)

The continued meeting was reconvened at 1:00 p.m. on November 2 near the Settlers Real Estate office at the intersection of Highway 101 and Black Point Road in Brinnon, Washington.

Those in attendance were: Planning Commission Members - JD Gallant, Bill Miller, Mike Whittaker, Bud Schindler, Henry Werch; Brinnon Chamber of Commerce - Joe Baisch; Department of Natural Resources - Ross Goodwin; Statesman Group - James Mazak, Elin McCloud; 2020 Engineering - Mark Buehrer; DCD Staff - Brent A. Butler

The presentation began in pouring rain underneath an outdoor tarp extending over an unmanned espresso stand adjacent to Settler's Real Estate.

James Mazak, the Statesman Director of New Communities, said that the project proponent expected to have a draft Environmental Impact Statement (EIS) to the County by Christmas, December 2006. He further stated that Statesman Group was no longer combining a project and non-project level EIS. They wished to complete a non-project level EIS sufficient to meet the standards for a legislative decision.

Brent Butler indicated that two major elements were being completed now: Transportation and Archeology. He further stated that one element remained to be incorporated into the draft EIS, water resources. With regard to the archeology on site, Mr. Butler stated that one Tribe, the County, and Statesman, as well as their designated archeologist/consultant were drafting a Memorandum of Understanding to protect the cultural and historic resources. He stated that this was proprietary information of the Twana First Nation, AKA the Skokomish Tribe. Stacie Hoskins, in her role as the EIS responsible official, shall represent the county.

James Mazak said that earlier in the day a meeting with the Washington Department of Transportation and Jefferson County's Public Works cleared up some of the remaining major elements related to transportation. Furthermore, Mr. Mazak stated that only one wetland on the fringes of the site appeared to be connected to waters used in navigation. This is important, he said, because this nexus is necessary for Army Corp of Engineers jurisdiction. He stated that, since this wetland will not be impacted by the site development, it was therefore possible that an Army Corp of Engineers permit would not be needed. Mr. Mazak said that Mr. Wayne Wright of Geo Engineers, which is also retained by them, has written a letter to the Army Corp referencing this project.

First Site Stop - kettle:

At this point, the assembled group started the tour of the site. The group first stopped at the kettles - natural depression. Mark Buehrer of 2020 Engineering and the Statesman representatives explained how they would be used, noting that the wastewater shall be treated to Class A level and then stored in the depression, allowing one smaller kettle to be used as overflow. Mr. Buehrer stated that they would implement Low Impact Development [mimic natural hydrology as closely as possible]. Additionally, Mr. Mazak mentioned the following:

- 1) Water traveling to one smaller kettle would be pumped back to one of the other kettles. Brent Butler expressed a concern about using pumps, noting that in wet weather events they often failed.
- 2) Planning Commissioner Henry Werch expressed concern about overflows. Apparently, however, according to the project proponent, overflows should not be a problem as they intended to use topography to create or enhance a berm that would redirect flow.

Second Site Stop - shoreline area

At the second stop near the shoreline, James Mazak explained that they expected to maintain a safe distance from the shorelines and that they expected to be sensitive to the vegetation. Mr. Mazak mentioned that, at a recent conference on Lake Louise in Canada, they learned about the importance of leaving trees along with some native vegetation because it was critical in maintaining slope stability.

Ross Goodwin, DNR, stated that a Forests Practices Permit would be needed at a later point. They would also need to contact one of the other departments for a possible Joint Aquatic Natural Resources Permit. He did not expect that the issuance of these permits would be a roadblock.

James Mazak concluded this discussion by saying that he needed to return to the airport soon and thanked everyone for attending.

The meeting was adjourned at 3:00 p.m.

E. APPROVAL OF MINUTES

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

Jim Hagen, Chair

Cheryl Halvorson, Secretary