

MINUTES

**KITSAP COUNTY PLANNING COMMISSION
Administration Building - Commissioner's Chambers
October 21, 2008, 9:00 AM**

These minutes are intended to provide a summary of the meeting flow and content and should not be relied upon for specific statements from individuals at the meeting.

The Kitsap County Planning Commission met on the above-stated date at the Kitsap County Administration Building – Commissioner's Chambers located at 619 Division Street, Port Orchard, WA 98366.

Members present: Chair Fred Depee, Linda Paralez, Lou Foritano, Jim Sommerhauser, John Taylor, Tom Nevins, and John Hough, and Robert Baglio

Staff present: Heather Adams, Scott Diener, Pete Sullivan, Lisa Lewis, Dave Greetham, Larry Keeton, Shelley Kneip and Planning Commission Secretary Karla Castillo

Members absent: Mike Gustavson

9:02:07

A. Call Meeting to Order, Introductions

B. Adoption of Agenda

Depee adopts the agenda as posted.

C. Public Comments

(Depee hears none, moves to next item.)

Diener: Read a proclamation into the record asked for by Fred regarding National Community Planning Month. He announced that the Month of October is designated as National Community Planning month.

D. Approval of Minutes

Minutes deferred to November 12, 2008 meeting.

9:06:12

E. Work Study – Code Development – Title 22 Shoreline Designation Change Request: Lisa Lewis, Shoreline Administrator, DCD

Lewis: *Kitsap County Department of Community Development is recommending a limited amendment to the Kitsap County Code Title 22, Shoreline Management Master Program (SMP), and is requesting approval of this limited amendment from the Planning Commission. The purpose of this requested change is to correct the anomaly of a conservancy shoreline designation in an area of past, existing and future marina activity. This limited amendment is being undertaken in advance of the statutorily scheduled 2011 Kitsap County SMP update, due to current marina reconstruction and development concerns. In the (references maps) picture to your left, which is highlighted in green, shows the approximate 2500 foot long shoreline segment in question. The 2001 picture*

Kitsap County Planning Commission – October 21, 2008

1 to your right shows the full extent of that particular area. The 200 foot wide shoreline
2 jurisdiction runs from the shoreline landward and incorporates most of the lagoon on the
3 other side of Seabeck Highway. As seen here (**references map on projector**), the
4 Seabeck area has three different shoreline designations that include, from left to right,
5 rural, conservancy and semi rural. The purpose of the Conservancy environment is to
6 protect, conserve and manage existing natural resources and valuable historic and
7 cultural areas in order to ensure continuous flow of recreational benefits to the public.
8 Because there is no documentation justifying the Conservancy designation, a current
9 planner can only assume that the objective of the original determination was to preserve
10 the Seabeck marina area the way that it was at that time. However, marinas are
11 prohibited in the Conservancy environment. Even though prohibited, the current
12 shoreline use is a well established marina, which has been in existence for over 60
13 years and has served as a ferry terminal linking the east and west sides of the Hood
14 Canal, commercial and recreational boat center and a tow boat dock. Once robust, the
15 Seabeck Marina deteriorated to such a point that Kitsap County had to condemn the
16 structure in 2005. Today, and after several severe storms, the marina is closed and
17 consists only of a main approach dock. Up until the last few years, however, the facility
18 was able to provide moorage for 207 boats.

19
20 On September 17, 2008, the Department of Ecology approved a Shoreline Conditional
21 Use (CUP) and Variance Permit (VAR) provided the Olympic View Marina project
22 complies with the conditions required by Kitsap County and the following Ecology
23 conditions:

- 24
- 25 • During Phase 1 of approval of this CUP and VAR, the finger floats shall be
26 limited to 60 percent of the design length (i.e. 40 foot fingers shall be limited to 24
27 feet; 50 foot fingers shall be limited to 30 feet). This reduction will result in the
28 new marina being approximately the same size as the prior non-conforming use.
 - 29
 - 30 • As Phase 2 of the project, the finger floats may be extended to their full design
31 length at such time as the master program is amended to allow the marina as
32 proposed.
 - 33

34 A Determination of Non-Significance (DNS) for the proposed limited SMP amendment
35 was issued on October 15, 2008, with an appeal period ending on November 3, 2008.
36 The limited plan amendment is programmatic in nature. Subsequent development
37 activities under this amendment would be subject to all local, state and federal
38 regulations to conserve and protect the marine environment. Specific development
39 proposals would be conditioned pursuant to Kitsap County Titles 17 (Zoning), 19 (Critical
40 Areas) and 22 (Shorelines) to mitigate development impacts.

41
42 **Sommerhauser: Request for maps of critical areas and how they would affect the**
43 **area specifically the lagoon and church camp.**

44
45 **Lewis: Highlight (refers to map) no proposed development other than what is**
46 **there now.**

47
48 **9:13:59**

49
50 **Taylor: Questions when the Determination of Non-Significance was and the end of**
51 **the appeal period.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

Lewis: Clarifies the dates.

Paralez: Asks if the facility is currently in use?

Lewis: Not at this time. The facility was condemned by Kitsap County in 2005.

Paralez: Asks if there are any permits proposed at this time?

Lewis: There are no new permits; however, on September 17, 2008, the Department of Ecology approved a Shoreline Conditional Use (CUP) and Variance Permit (VAR) for the Olympic View Marina project.

9:15:13

Taylor: Concerned about the time frame? Questions about when the public hearing is?

Lewis: Confirms the hearing is scheduled for November 13, 2008.

Taylor, Depee and Sommerhauser: Discuss the date for the public hearing it is confirmed for November 12th. Public Hearings are normally scheduled for the evening

Diener: Discusses schedule and changes to it and the reason for it.

Taylor: Expresses concerns about the appeal date on November 3rd and a public hearing so soon after.

Greetham: Discusses the shoreline amendment and the upcoming discussion on title 17 and 21 revisions regarding the SEPA appeals being on the same timeline. States that they have no indication of appeals for these projects.

Baglio: Question to Lisa Lewis. With the other uses that are there will this affect them and are they grandfathered in?

Lewis: They have a zoning designation of Neighborhood Commercial and a comprehensive plan designation of rural commercial. The SMP limited amendment would not change these designations.

A motion is made by Commissioner Taylor that the Planning Commission conduct a Public Hearing on the Amendment November the 12th at 6:30 PM and seconded by Commissioner Hough.

**The Vote: Unanimous.
Motion Carries**

9:21:10

1 **F. Work Study – Code Development – Title 21 Appeals: Scott Diener, Policy &**
2 **Planning Manager, DCD**
3

4 **Diener: References the Staff Report located in the back of the room and also given**
5 **to the Planning Commission. The Staff report has a one page discussion of the**
6 **Exhibit A attached to it. Exhibit A is the proposed changes to Title 21. This is a fairly**
7 **simple proposal that the board and DCD began talking about some time ago. DCD was**
8 **asked to consider taking staff out of the legal position that they are in quite often in today**
9 **it would also take the Board out of its truly judicial position that it resides in today. It also**
10 **as you can see at the very end of exhibit A would install a voluntary mediation program.**
11 **We are unsure at this time what it will exactly look like but it will probably be very similar**
12 **to what is in place in other jurisdictions. The Hearing Examiner is responsible for giving**
13 **us an outline of the mediation program. It is not something that needs to go in the code.**
14 **It is something we develop internal. We expect to get you copies of what this mediation**
15 **program will look like very soon.**

16
17 **9:23:03**
18

19 **Diener: It's a voluntary program between the applicant and the appellant. They would sit**
20 **down together to work out the difference with the County as the mediator. That program**
21 **would be installed internally with Community Development before this could be adopted.**
22 **If we see that we are not ready we would slip adoption so that we were consistent. He**
23 **explains that the staff will be taking training courses on mediation and that we**
24 **already have one staff member trained for this.**
25

26 **Nevins: References letter dated October 17, 2008 Title 21 changes. He reads a**
27 **portion of the letter regarding the mediation process and the counties role in it.**
28

29 **Diener: Confirms that he was incorrect and it would not be mediated by a county**
30 **employee**
31

32 **Sommerhauser: Questions how the mediator would be funded?**
33

34 **Diener: The process has not been defined as of yet. He will get more information as it is**
35 **developed.**
36

37 **Sommerhauser: Inquires about appeals and timelines with mediation and how that**
38 **will work.**
39

40 **Diener: Defers to Shelley Kniep with the Prosecutors office.**
41

42 **Taylor: If we go to mediation are we going to follow the general mediation**
43 **guidelines and rules that have been established?**
44

45 **Kniep: Explains that this is the first draft. They anticipate it to be followed by some**
46 **more specific rules. The Hearing Examiner has some draft rules of procedure out and**
47 **we would think that would be a good place to put in more specific rules for mediation.**
48 **The parties first of all would have to agree to go into mediation and the parties would**
49 **share the cost. We may want to put that in the code provision as we go on. We would**
50 **need something to toll the timelines and that would be part of the agreement between**
51 **the people protesting the permit application and the applicant so that no one is penalized**

Kitsap County Planning Commission – October 21, 2008

1 for going into mediation. It could be as simple as an agreement between the two parties
2 that they have agreed that the timelines are tolled during the mediation process. So if the
3 mediation process fails they just pick up where they left off with the Hearing Examiner.
4 The mediation language before you is similar to what King County has for its procedures
5 and then what King County has done it has a separate rules of procedures with the
6 hearing examiner and the hearing examiner has a whole set of rules for mediation.

7
8 **Sommerhauser:** I thought that Appeal timelines are statutory and I don't
9 understand where we see two parties whatever two parties get to waive a
10 statutory timeline. Unless we put it in the legislation we are looking at.

11
12 **Kneip: Agrees and states we could put it in the paragraph that says all appeal**
13 **deadlines are tolled during the mediation process.** The statutory appeal process is
14 from the hearing examiner to court. Typically for a permit it's a 21 day appeal time from
15 the time the written decision is issued. Even there parties can agree through some kind
16 of formal agreement to waive certain deadlines. We have done this before in settlement
17 agreements. King County in its rules of procedures specifically states that King County
18 has no responsibility for cost of mediation and we would want to do the same. We would
19 refer the parties to the Dispute Resolution Center or find their own mediator but they
20 would be responsible for the cost. We are unsure at this time how often it will be used.
21 We would just like to have it available.

22
23 9:31:07

24
25 **Depee:** How binding is it?

26
27 **Kneip:** It is a contract just like any other agreement. It would be similar to a settlement
28 agreement that both parties would sign and that would hold up in court. I envision in this
29 case once we get the rules spelled out more detailed that the Hearing Examiner would
30 fold in DCD would need a role after the mediation has taken place because the parties
31 can not agree to something that is obviously against the law and we couldn't enforce as
32 a County. DCD would need to approve it and then the Hearing Examiner would probably
33 fold that agreement in as a condition of approval.

34
35 **Depee:** Is the Hearing Examiner bound by the agreement?

36
37 **Kneip:** No we would not want either the Hearing Examiner or DCD completely bound
38 and that is part of the rules we will need to flush out. They will need to give it some
39 difference and some weight. If they came up with some condition that was completely
40 out there that the parties have agreed to but the county could not agree to it. We need
41 that flexibility to not allow it in the final approval. These are some of the details spelled
42 out in the final rules.

43
44 **Baglio:** Asks for a little clarification between mediation and going to court when
45 the Hearing Examiner makes a decision that either party does not agree with.

46
47 **Kneip:** I think we envision this to occur before the HE makes his decision it could go
48 either way. If the parties are both amenable to mediation it wouldn't waste the county
49 and HE time if they could hammer out a lot of the details. Then it would need to come
50 back to the county and the HE for final review.

1 **Baglio: Questions how do you know if you have an issue before the Hearing**
2 **Examiner makes a decision.**

3
4 **Kneip: You could do it in advance or if you agree to do it after the decision you would**
5 **definitely need a written agreement to toll the twenty-one day statue. If the parties agree**
6 **to go to mediation after the fact.**

7
8 **Baglio: Right now the HE makes a decision and then goes to the commissioner**
9 **if it is appealed and then after that it would go to court if someone does not**
10 **agree. So were going directly to court after the Hearing Examiners Decision if**
11 **they don't want to mediate? The timeframes on court they simply are going to act**
12 **like it is a civil case. Isn't this going to drag out this process?**

13
14 **Kneip: No the LUPA appeals are administrative appeals and they are generally a fast**
15 **court case relative to other civil cases. There is generally no discovery. You would need**
16 **to get approval from the judge for discovery. Discusses the LUPA process and**
17 **timeframes.**

18
19 **9:37:50**

20
21 **Taylor: Question who the Dispute Resolution center is, who it is affiliated with**
22 **and its funding?**

23
24 **Kneip: I believe it is a 501 C3 and not affiliated with anyone. It is the major mediation**
25 **arbitration organization in Kitsap County. I believe it gets some funding from United Way**
26 **but it is pretty much self sustaining.**

27
28 **Taylor: Who pays the Hearing Examiner?**

29
30 **Kneip: Those are through the fees and our fee schedule.**

31
32 **Diener: We have a contract with the Hearing Examiner. However, our fees are designed**
33 **to support that contract with the Hearing Examiner.**

34
35 **Keeton: We have a contract with the Hearing Examiner. The Department pays the**
36 **Hearing Examiner. The appellant pays 500.00 for and appeal.**

37
38 **Sommerhauser: Expresses concern for the document that has been**
39 **presented before them not being ready and too many changes needed.**
40 **Would like Scott to lay out a timeline to get these things fixed.**

41
42 **Diener: We have talked about a few fixes in the last paragraph. This is something that**
43 **would only take a couple of days. We would be ok to have a public hearing on**
44 **November 12th.**

45
46 **Baglio: Concerned about using King County as model.**

47
48 **Kneip: Explains the reason for using King County as the model they are using.**
49

1 **Sommerhauser: Request to Scott the last three years and tell us how many**
2 **appeals have come forward that were not carried forward by the appellant by and**
3 **attorney.**

4
5 **Diener: Clarifies the request.**

6
7 **Sommerhauser: Discusses his interpretation of the changes in front of him and**
8 **how much the cost savings would or would not be to the appellant.**

9
10 **Baglio: Asks about LUPA and if this prevents the county from being named as a**
11 **third party.**

12
13 **Kneip: No the county is always named in a LUPA suit.**

14
15 **Baglio: Do you feel this is going to save a lot of time?**

16
17 **Kneip: Discusses the process and timeframes and who they affect.**

18
19 **Sommerhauser: One of the aspects that I have heard as a potential benefit of**
20 **this is that the Commissioners are no longer barred from this process. Requests**
21 **for a clear statement from Shelley confirming that it's true.**

22
23 **Kneip: Discusses the BOCC's role in this.**

24
25 **Depee: Expresses concern over the lack of information given and feels that this is**
26 **being pushed to meet the deadline of November 12, 2008.**

27
28 **Keeton: Explains how this process change came into being. This is a request**
29 **from the BOCC for DCD to come up with a mediation process.**

30
31 **Discussion continues between Commissioners regarding moving this forward.**

32
33 **Diener: Goes back into his original presentation. Discusses the benefits of the**
34 **changes and some of the negatives. He also gives examples of staff time used on**
35 **appeals.**

36
37 **A motion is made by Commissioner Foritano that we move forward with the**
38 **Public Hearing on November 12th at 6:30 PM and seconded by Commissioner**
39 **Taylor.**

40
41 **The Vote: Unanimous.**
42 **Motion Carries**

43
44 **G. Work Study – Code Development – Title 17 Use Table and Associated**
45 **Changes: Heather Adams, Associate Planner, DCD 9:56:07**

46
47 **Adams: Gives update on DCD's 2008 Code Development process also known as**
48 **Phase III. (Refers to PowerPoint)**

49
50 **10:01:09**

51

1 **Greetham: *This is primarily a procedural change in obtaining permits. The***
2 ***environmental effects of each application still have to go through an individual***
3 ***SEPA. It will not change the underlying zone or the regulations and rules that each***
4 ***project has to meet.***

5
6 ***Diener: Discusses going to a committee of the whole.***

7
8 ***Depee: Asks the Commissioners if they would like to go to a Committee of the***
9 ***Whole.***

10
11 **Commissioners all agreed.**

12
13 **Depee: *Calls for a break***

14
15 **Break**

16
17 **10:07:55**

18
19 **Reconvene**

20
21 **10:17:14**

22
23 **Meeting goes to a Committee of the Whole minutes are suspended: 10:18:43**

24
25 **Reconvene from the Committee of the Whole: 2:49:52**

26
27 **H. Work Study – Silverdale Design Standards: Katrina Knutson, Associate**
28 **Planner, DCD**

29
30 **Diener proposes to defer the Work Study – Silverdale Design Standards to the**
31 **October 28, 2008 meeting.**

32
33 **The Planning Commission members agree.**

34
35 **I. For the Good of the Order**

36
37 **Diener reviews Planning Commission schedule through the end of 2008.**

38
39 **Diener discusses Perry Site Specific applicant Loren Johnson. He plans to meet**
40 **with him next week to discuss Mr. Johnson's concern raised at the October 14,**
41 **2008 Planning Commission meeting.**

42
43 **A motion is made by Commissioner Sommerhauser and seconded by**
44 **Commissioner Nevins to adjourn the meeting.**

45
46 **The VOTE:**
47 **Unanimous**
48 **Motion Carries**

49
50 **Time of Adjournment: 2:55:37**

51

Kitsap County Planning Commission – October 21, 2008

EXHIBITS

- 1
- 2 A. Work Study on Shoreline Master Program Limited Amendment – Seabeck Shoreline
- 3 B. Staff Report: Title 17 Amendments
- 4 C. Draft Code Development Process: Title 17
- 5 D. Staff Report: Title 21 Changes
- 6 E. Silverdale Design Standards- Fact Sheet
- 7 F. Staff Report: Draft Amendments to the Silverdale Design Standards
- 8 G. Map of Proposed Design Districts with Zoning
- 9

10 **MINUTES approved this _____ day of _____ 2008.**

11 _____
12 **Fred Depee, Planning Commission Chair**

13 _____
14 **Mary Seals, Planning Commission Secretary**