

DRAFT MINUTES

KITSAP COUNTY PLANNING COMMISSION June 8, 2004

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6 The Kitsap County Planning Commission met on the above-stated date at
7 the Eagle's Next Conference Center, 1195 Fairgrounds Rd, Bremerton,
8 Washington 98311. Members **Present:** Tom Nevins, John Ahl, Monty
9 Mahan, Michael Gustavson, Lary Coppola, Deborah Flynn and Dean
10 Jenniges, Mark Flynn and John Taylor. Staff Present: Cindy Baker, Eric
11 Baker and Holly Anderson, Secretary.

12
13 Chair Nevins Called the Meeting to Order and made introductions

PUBLIC HEARING

17 1. Application of William and Mitzi Walker for Current Use 18 Assessment - Open Space

19
20 Karanne Gonzales, Department of Community Development staff,
21 reviewed the application and proposed uses. The parcel is 8.76 acres in
22 size, zoned Rural Residential, and is located on Gertsch Road in the
23 Burley area of South Kitsap County. The farm can be seen from the
24 highway. Previously, the farm was used to raise horses and pigs.
25 Currently, they do not have any livestock of their own but allow neighbor's
26 horses to graze on their pastures and are hoping to acquire some beef
27 cattle for their own use. Not looking to have a large amount of animal
28 activity, but want to keep the farm in working condition. The Walkers have
29 had a Farm Plan in place from the Conservation District since 1984 and
30 have fenced the wetlands and streams and kept the grounds in good
31 condition. The Farm Plan was updated last year. There is a Type 3
32 salmon stream on the property designated Class 1 Wildlife Conservation
33 Area and they maintain buffers on that. The aerial photo shows the one
34 acre set aside for the house, outbuildings and recreational vehicles. It also
35 shows an area used for farm equipment sheds and barns associated with
36 farming activity. A condition is added that the Walkers not store
37 recreational vehicles and boats in the pasture and farm area. Staff is
38 recommending approval, exempting one acre for the building site. They
39 will receive a 50% tax reduction amounting to approximately \$309 per
40 year.

1
2 Deborah Flynn –Suggested the condition prohibiting removal of vegetation
3 exempt noxious weeds and invasive species.

4
5 Gonzales – Concurred with this added condition.

6
7 No further discussion being heard, a motion was made by Dean Jenniges
8 and seconded by Monty Mahan that the Planning Commission recommend
9 approval of the Walker Current Use Assessment – Open Space
10 application. The vote: Yes-9; No-0. Motion carried unanimously.

11
12 **2. Application of Pamela Tarver for Current Use Assessment -**
13 **Open Space**

14
15 Karanne Gonzales reviewed the application stating the property is
16 approximately 15.31 acres, located on Peterson Road SE in the Olalla
17 area of South Kitsap County. The property is unique as can be seen on
18 the topography map. It is wrapped by a very deep canyon and stream and
19 is in excellent condition. The logging road that previously provided access
20 to the stream was destroyed by a slide. Consequently, there is no good
21 public access. The owners do not have a problem with providing access
22 for scientific purposes if people want to come down to see the water but it
23 is not very practical. One would have to actually rope up. The Tarver
24 property has been maintained in natural state but there has been some
25 logging activity further downstream by neighbors. This property does
26 qualify for open space, it is a fish-rearing habitat with primary stream
27 buffers, special animals and plants and located in the Burley creek
28 watershed with steep slope protection. The tax reduction is approximately
29 \$485 per year for about 12 acres. Two acres are being exempt for their
30 home and garden area. Standard conditions similar to the Walker
31 application are being recommended as is approval for this application.

32
33 Gonzales – Told Commissioner Jenniges that Tarver does not intend to
34 create another access road. It might be possible in the future to put a
35 small goat trail, but the property is really too steep to be practical.

36
37 Deborah Flynn – Made the same suggestion as for the Walker application
38 regarding noxious weeds and invasive species.

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40 Gonzales – Noted that this could be made a part of the standard condition
41 for vegetation removal.

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Dean Jenniges – Asked if brush picking is allowed for all open space applications in general . He said there appears to be no restrictions for this activity.

Gonzales – People cannot clear and grub the property. This issue is more appropriate for Timberland – Open Space applications. The applications discussed today do not lend themselves to brush picking. Usually the Open Space applications are more preservation of wetlands, buffers and stream corridors.

Discussion continued about sale of brush on property classified as open space, including transferring application if sale of brush is ever desired. In addition, what happens if owner sells property, how they can transfer to new owner or pay the compensating tax to remove from program.

Gonzales – Defined Compensating Tax – Is due when either a portion or all the property is removed from the Open Space classification. The tax is the fair market value for the current year and the last seven years plus interest at one percent a month, compounded, and an additional 20% penalty if the property is in the classification for less than ten years. Who actually pays is negotiated at the time of a sale. It amounts to approximately three times what was saved. Most purchasers are happy to have the tax break and stay in the program.

No further discussion being heard, a **motion** was made by Deborah Flynn and seconded by Mark Flynn that the Planning Commission recommend approval of the Tarver Current Use Assessment – Open Space application. **The vote: Yes-9; No-0. Motion carried unanimously.**

3. Deliberation and Possible Recommendation on the Draft Ordinance, Potential Amendment to the County Code Addressing Agriculture and Equestrian Activities

Chair Nevins – Consider the following actions: 1) Recommend that this matter be set aside or tabled; or 2) Work with this ordinance and make recommendations on it to move it forward. Asked for comments from the Planning Commission members to get understanding of how the majority feels after hearing public testimony on May 25, 2004.

1 Dean Jenniges – Sent in his original thoughts on this. Thinks proposed
2 changes are unfair to the average farmer and action on this matter should
3 be set aside until another group looks at it as well as similar ordinances
4 from other jurisdictions.

5

6 Mike Gustavson – Asked if the matter is set aside does it then go straight
7 to the Board of County Commissioners for their vote?

8

9 Chair Nevins – If the Planning Commission recommends that this matter
10 be tabled, it would be re-prioritized, not sent to the Board of County
11 Commissioners for action. The Planning Commission's recommendation
12 would be that it be dealt with at a future time.

13

14 Mike Gustavson – Main concern is that the Planning Commission does not
15 give up its voice. Agrees the ordinance amendment needs to be
16 reworked.

17

18 John Taylor – No comment

19

20 Monty Mahan – Does not want to table or send back to Committee for staff
21 to rework. Several farmers are currently out of compliance and
22 enforcement is needed now. If tabled, there is a risk of penalizing people
23 who practice responsible farming. Thinks the Planning Commission
24 should work through the issues today and make a recommendation.

25

26 Lary Coppola – Thinks this matter is a solution looking for a problem and
27 agrees with Commissioners Gustavson and Jenniges.

28

29 Deborah Flynn – Thinks something is needed and many changes to the
30 current regulations are warranted. Agrees Planning Commission can work
31 through it but first wants to see a new cleaned up draft before voting on
32 any type of recommendation. Asked staff to make changes and bring it
33 back to the Planning Commission before proceeding further.

34

35 Chair Nevins – Had planned to take the changes one at a time to be clear
36 at completion what recommendation will be.

37

38 Deborah Flynn – Since all sections appear to be interrelated, it is hard to
39 see the complete picture until all changes are available for review.

40

1 Mark Flynn – Agrees with Deborah Flynn. Feels there are compliance
2 issues. Hopes that enforcement staff mitigates in compliance with
3 regulations so that citizens know what is being done. Wants to see
4 compassion used when working out problems with the farmers. Many
5 problems have yet to be dealt with given the strong feelings voiced by the
6 agriculture/equestrian communities. Wants to keep working on it yet set it
7 aside to allow some cooling off time.

8

9 John Ahl – Did not hear a proponent at the public hearing say the
10 proposed amendments to current regulations are a good thing, vote yes.
11 There was no one there to champion the changes other than staff. Based
12 on oral and written testimony and the overall climate of the public hearing,
13 he is inclined to vote to recommend against current amendment as written
14 and to send the matter back to a reconstituted committee more
15 representative of those who felt threatened. Personally feels this to be an
16 innocuous regulation but apparently, farmers are threatened by it. Further,
17 he does not think the Planning Commission is the correct body to fix it.
18 The present form based on all testimony, both written and verbal, needs
19 further consideration by those it purports to help.

20

21 Chair Nevins - Interested in trying to work through the changes today and
22 flush out sections acceptable or not.

23

24 Monty – Asked if the Planning Commission could insert as a
25 recommendation requiring a Farm Plan, rather than going forward on this
26 ordinance amendment language.

27

28 Lary Coppola – Heard several citizens testify that Farm Plans did not work
29 well. Thinks someone needs to look at this.

30

31 Dean Jenniges – Agrees with Commissioner Ahl in that no one spoke
32 positive about this ordinance. Thinks the original committee did not look
33 far enough relative to ordinances already in place with other jurisdictions.
34 Suggested some of the more vocal people from the public hearing be
35 contacted to serve on a new committee.

36

37 John Taylor– Agreed with John Ahl and said that this matter should be
38 turned over to some type of Farm Commission to police the farm
39 community and to enforce the existing regulations. Recognized existing
40 regulations are too restrictive. If asked to vote on a recommendation
41 today, he would vote no.

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Chair Nevins – Responded to Commissioner Mahan’s question regarding amending the current ordinance. An ordinance amendment of any kind requires public hearings before both the Planning Commission and the Board of County Commissioners with public testimony taken and legal notice given. Therefore, the Planning Commission can suggest an amendment but cannot pass one at this time.

Mike Gustavson – This could turn out to be two large animals turned out at a time.

Chair Nevins – Current ordinance does have requirements for all animals, so that issue is covered.

Dean Jenniges – Still concerned about tabling the amendment and working with the current ordinance. As Commissioner Mahan pointed out, the current ordinance has limitations in it of concern to farmers. Current ordinance needs modified or updated. Cannot say that modification is not required.

A **motion** was made by John Ahl and seconded by Michael Gustavson that the Planning Commission recommend to the Board of County Commissioners that the proposed amendment to the Agricultural/Equestrian regulations not be approved at this time. Further, that it be remanded for further study to a group or groups of knowledgeable citizens to compose an acceptable version that meets the needs of those it is intended to help.

Dean Jenniges – Thinks staff should review letters to find any with positive recommendations and contact these people to serve on a committee of five members or less.

Monty Mahan – Commented why he will be voting no. The Department of Community Development is having a tough time meeting all of its commitments yet the Planning Commission is consigning this ordinance amendment to limbo. Thinks it is a shame to punish those people who are currently out of compliance but trying to do the right thing. Yet, now for an indefinite period, they are subject to complaints, a situation that staff was trying to avoid.

1 Dean Jenniges – No one liked the changes so why move forward with it.
2 He does understand the concern about the current ordinance, which is
3 why he recommends a new committee.

4

5 Deborah Flynn – Generally, people who support things do not show up for
6 hearings. Consequently, we have no agriculture land designated in the
7 Comp plan. Feel qualified as a group, based on thoughtful, constructive
8 comments especially in the written comments, to review the proposed
9 amendments and attempt to rework it. The Board of County
10 Commissioners still has to hear it.

11

12 Mike Gustavson – Suggested a motion to set aside any enforcement
13 action until a new ordinance is adopted.

14

15 John Ahl – Commissioner Deborah Flynn’s comments are well taken.
16 Even if the Planning Commission comes up with well considered
17 deliberations, it would still receive the ire of those affected because they
18 were not part of the process.

19

20 Lary Coppola – In favor of Commissioner Jenniges’ idea about a small
21 committee being formed. Suggested that someone from Conservation
22 District be a member of the committee.

23

24 John Ahl – That is why he worded his motion as he did. Assumes
25 Department of Community Development staff and Conservation District
26 staff would be included with representation of public whose farms would
27 be affected. A general theme from all testimony was that the previous
28 committee was not representative of the broader picture.

29

30 No further discussion being heard, Chair Nevins called for the vote on
31 Commissioner Ahl’s motion: (Motion stated and seconded above) **The**
32 **vote:** Yes-7; No-2. Motion carried.

33

34 **WORK STUDY**

35

36 **Old Business:**

37

38 **1. Amendments to Planning Commission By-laws**

39

40 Chair Nevins said the Planning Commission began this process last year,
41 with many discussions since then. Potential changes have been

1 composed and handed out today titled Proposed additions to the “Rules
2 and Procedure of the Planning Commission of Kitsap County.” Changes
3 were discussed and proposed. Once completed, the final draft will be
4 presented at the next Planning Commission meeting for signature.

5
6 Discussion:

- 7
- 8 • Appearance of Fairness and how it applies to statements made by
9 the Planning Commission members. Comp Plan Amendments are
10 considered legislative not quasi-judicial and are exempt from
11 appearance of fairness
 - 12
 - 13 • Explanation of ex-parte communication and the need to leave the
14 room when this occurs (Communication outside of meeting with a
15 citizen regarding a specific issue)
 - 16
 - 17 • Difference between conflict of interest and appearance of fairness (If
18 a Planning Commission member could potentially benefit from a
19 decision)
 - 20
 - 21 • Chair should poll the Planning Commission members at the
22 beginning of a meeting to determine if there is any conflict of interest.
 - 23
 - 24 • When a member calls for the question, Chair needs to poll members
25 to see if they agree or have further comments to make.
 - 26

27 A motion was made by John Taylor and seconded by John Ahl that the
28 Planning Commission approve the Appearance of Fairness clause to the
29 Rules of Procedure. **The Vote: yes-9; No-0. Motion carried**
30 **unanimously.**

- 31
- 32 • Comments given on what constitutes a quorum and when is only a
33 simple majority needed.
 - 34
 - 35 • A conflict in wording on the hand-out. Department of Community
36 Development staff might have clearer direction of they felt the
37 majority of the Planning Commission was in favor on an issue.
 - 38
 - 39 • Discussed Board’s request to see dissenting opinions.
 - 40

- 1 • Overall discussion to clarify wording for definition of Quorum and
2 combining last two paragraphs together for clarification.
3
- 4 • A simple majority vs. a majority of nine Planning Commission
5 members.
6
- 7 • Individual Planning Commission members submitting written
8 comments to the Board of County Commissioners under their own
9 signature regarding views on a matter under advisement to
10 accompany the Planning Commission recommendation.
11

12 **Based on a lengthy discussion on the above issues, Chair Nevins,**
13 **Commissioner Taylor and Commissioner Gustavson will meet**
14 **following today’s meeting to make the changes discussed and clean**
15 **up the document to be presented at the next Planning Commission**
16 **meeting.**

17
18 **New Business**

19
20 **1. Planning Commission Findings of Fact for SKIA Criteria for**
21 **Determination of Land Use Process**
22

23 The Planning Commission did not receive the draft document before the
24 meeting. This matter is continued to the June 15, 2004 agenda. (At the
25 end of the meeting, the Planning Commission members discussed the
26 criteria in the Findings, but still had several questions about the inclusion
27 of Port Properties into the SKIA boundaries and the wording used in the
28 Findings to describe these properties.)
29

30 **2. Open Space Criteria**
31

32 Karanne Gonzales – Explained the benefit rating system. Washington
33 State Law provides the tax relief for current use assessment programs.
34 There are three categories: Timberland Open Space, Open Space
35 General and Agricultural. Agricultural is done automatically through the
36 Assessor’s Office. Department of Community Development staff receives
37 applications from the Assessor’s Office, evaluates relevant criteria and
38 takes the application before the Planning Commission. The program is
39 actually about the taxing process and Department of Community
40 Development does not monitor or maintain the applications. Due to a
41 change in State law, Timberland Open Space applications do not go

1 before the Planning Commission, these go directly to the Board of County
2 Commissioners. Staff is probably finished with these applications for this
3 year. The application fee was raised from \$30 to \$250 and there have
4 been no new submittals to date.

5
6 Deborah Flynn – When and why did the application fee increase? This
7 seems like a good incentive program.

8
9 Gonzales – The Assessor’s office determined the application fee needed
10 to be based on cost of process. The cost for processing is actually more
11 than \$250, so this is a fair increase.

12
13 Deborah Flynn – Good time to discuss the brush picking issue if needed.

14
15 Dean Jenniges– Understands from previous explanation.

16
17 Deborah Flynn – In the three categories of open space, would still want to
18 clarify that noxious weeds and other invasive species may be removed
19 through conditions of approval on all applications.

20
21 Gonzales – This is usually, informally worked out with the property owners,
22 but will add the wording to conditions from now on.

23
24 Deborah Flynn – Sees many noxious weeds coming into the area that not
25 native to this region thus complicating life for our native species.

26
27 Gonzales – Denials are processed in-house to avoid the cost for citizens
28 and are not heard by the Planning Commission. Only staff approved
29 recommendations are presented to the Planning Commission.

30

31 **3. Critical Areas Ordinance (CAO)/Best Available Science Update**

32

33 Eric baker – Staff finished the Technical Advisory Committee (TAC)
34 process in February and March of 2004. The final analysis is located on
35 the County’s website. This involved stakeholders, Tribes, private property
36 groups and the Homebuilders to discuss what is Best Available Science
37 (BAS) in the areas of fish and wildlife habitat, wetlands, geologic hazard
38 areas (steep slopes) and aquifer recharge areas as well as frequently
39 flooded areas. A wide variety of BAS was discussed and a list of
40 considerations was compiled. The committee did not make
41 recommendations just listed areas to consider when drafting regulations.

1 An internal draft was prepared and is now going through the Prosecutor
2 and various staff departments. A draft for public dissemination should be
3 ready by June 18th. Because the Planning Commission is busy with Comp
4 Plan amendment issues at this time, the CAO will likely be presented in
5 September, with the understanding that the Planning Commission has the
6 month of August off. The public process includes presentations at a
7 number of stakeholder groups, visits to the mall and libraries for input.
8 Comments will be circulated to the Planning Commission before meetings
9 are set to hear this matter.

10
11 D. Flynn – Asked if there were any farmers on the Technical Advisory
12 Committee. Baker responded there were none.

13
14 D. Flynn –Sees many connections between the Agricultural/Equestrian
15 ordinance and the CAO. Some issues seem to be duplicated. For
16 instance, water quality protection should also be in the CAO.

17
18 Baker – Historic farming activities are exempt from the current CAO. Staff
19 is currently working on this issue in the current draft analyzing whether this
20 issue will change. Most other jurisdictions have some farming criteria in
21 their CAOs. There is no guarantee that Kitsap County will however.

22
23 Dean Jenniges – Was told that BAS will consider ground coverage and
24 slopes.

25
26 Mike Gustavson– Wording should require that Kitsap County Public
27 Works comply with the ordinance.

28
29 Lary Coppola– Told that the TAC, Department of Community Development
30 and the Board of County Commissioners will help to successfully define
31 BAS.

32
33 Dean Jenniges– Told that the State mandates that the County work within
34 the parameters of BAS to address concern and that BAS is not an exact
35 science. The County is asked to look at it from a realistic standpoint.

36
37 Deborah Flynn – Addressed specific issues of farm provisions, such as
38 manure storage and confinement areas that should be included in the
39 CAO as they relate to stream setbacks.

40

1 Baker– Does not think these items are in the current draft. Comments will
2 go back to staff and public then the Planning Commission.

3

4 Deborah – When suggesting the farm community could be contacted to
5 discuss this, Baker said if farmland affected at all, it will be considered.

6

7 **Other Business:**

8

9 Chair Nevins called attention to the upcoming event calendar for the June
10 10, Growth Management Hearings Board appeal hearing.

11

12 Chair Nevins asked where the location of the joint meeting at 4:30 PM on
13 June 29th with the Board will be held. Concerned about location and time.
14 Since there is a 6:30 public hearing that evening at the Presidents Hall.
15 Laura and Holly will try to get the location changed to the Eagle’s Nest.
16 (Eagle’s Nest was not available. Meeting changed to 4:30 PM at the
17 Presidents Hall) Lary will buy pizza for everyone if holly will get meeting
18 place changed.*

19

20 John Taylor – Was informed that the county’s website did not list today’s
21 meeting but a member of the audience said they copied today’s agenda
22 from the website.

23

24 Laura distributed binders containing Comp Plan amendments, Phase I
25 information, George’s Corner LAMIRD and 2003 deferred site specific
26 requests and Phase II tabs. Phase II will contain GMA Compliance and
27 2004 Site Specific requests.

28

29 In keeping with the Appearance of Fairness, Monty stated that he is
30 related, is related to a Port of Bremerton Commissioner.

31

32 **11:15 AM - No further discussion being heard, a motion was made by**
33 **Dean Jenniges and seconded by Monty Mahan that the meeting be**
34 **adjourn.**

35

36 **Exhibit No. Description**

37

38 A. June 8, 2004 Planning Commission Agenda

39 B. Sign-in sheet for public hearings

40 C. Staff report for Walker Open Space application

41 D. Staff report for Tarver Open Space application

Kitsap County Planning Commission –June 8, 2004

- 1 E. Draft Agricultural and Equestrian Regulation Revisions
- 2 F. Amendments to the Planning Commission by-laws
- 3 G. SKIA Findings of Fact for Land Use Process
- 4 H. Open Space criteria documentation
- 5 I. Growth Management Updates
- 6 J. Sound Waves
- 7 K. Legal Notice for June 8, 2004 Planning Commission meeting

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9 MINUTES approved this _____ day of _____, 2004.

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Tom Nevins, Chair

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Planning Commission Secretary