KITSAP COUNTY PLANNING COMMISSION

July 20, 2004


A. Chair Nevins called the Meeting to Order and made introductions

B. WORK STUDY

Approval of Minutes

May 25, 2004

- Chair Nevins asked that on page 104, line 22, the last word in the sentence should read, “met”.

A motion was made by Michael Gustavson and seconded by Dean Jenniges that the Planning Commission minutes of May 25, 2004 be approved as amended. The Vote: Yes-7; No-0. Motion carried.

June 8, 2004

A motion was made by John Taylor and seconded by Michael Gustavson that the Planning Commission minutes of June 8, 2004 be approved. The Vote: Yes-7; No-0. Motion carried.
June 15, 2004

- Gustavson corrected a typo on page 135, line 10, that should read bait.
- Taylor noted he was present but not listed.
- Chair Nevins changed the word section to sector on page 138, line 15.

A motion was made by John Taylor and seconded by Mark Flynn that the Planning Commission minutes of June 15, 2004 be approved as amended. The Vote: Yes-6; No-0; Abstain-1. Motion carried.

June 22, 2004

- Taylor again noted he was present but not listed.
- Chair Nevins asked that the word points should read point on page 146, line 32.
- Chair Nevins asked staff to reword a sentence on page 148 line 37 to read “wants to pursue the entire request.”
- Lary Coppola noted he is listed as both present and not present. He was not present.

A motion was made by John Taylor and seconded by Dean Jenniges that the Planning Commission minutes of June 22 be approved as amended. The Vote: Yes-5; No-0; Abstain-2. Motion carried.

1. Finalize Planning Commission Findings of Fact for the 2004 Comprehensive Plan Amendment Docket, Phases I and II

Jason Rice – Presented the Planning Commission with two versions of the Findings of Fact. Rice explained that the first version, highlighted in yellow and titled vl.doc, contains the original conditions of approval for the Global Investments-Kitsap Transit site-specific application. This was presented at the July 6, 2004 joint public hearing on Phase II. Following further review with legal staff, version two, highlighted in green and titled v2.doc, is a modified proposal based on legal review
and advise. Condition number two is clarified to state that rescinding of the original proposal is done by the property owner, not the applicant.


Vidinhar – This is the July 12, 2004 version that is for the Planning Commission’s clarity from the July 9, 2004 deliberations.

- Ahl – Asked for clarification on language changes. On page 5, reference is made to public rights-of-way. However, under SW-12, it states, “adopt agricultural, including public rights-of-way, Best Management Practices to control and reduce harmful discharges of surface water. . .” Further down the page at NS-26, it states, “Kitsap County shall safeguard marine and fresh surface water resources by ensuring that development, including public rights-of-way, in critical areas is consistent with the Critical Areas Ordinance.” He thinks that the sentence under SW-12 does not make sense and NS-26 is what was actually addressed when the change was made and not recorded as an agricultural regulation.

Vidinhar – The discussion shows that the motion was to include in both SW-12 and NS-26 the words public rights-of-way.

- Ahl – SW-12 states, “Adopt agricultural, including public rights-of-way, best management practices to control and reduce harmful discharge to surface waters. . .”

Vidinhar – Confusion relative to SW-12 deals with policy on agriculture that includes public rights-of-way. SW-12 was also added when addressing discharge of water quality and quantity. It may not be the appropriate policy to include in SW-12 but it was part of the Planning Commission’s discussion.

- Ahl – Suggested changing the sentence to read “Adopt agricultural lands, . . .” Public rights-of-way is a specific piece of
land use whereas Agriculture best management practices covers it all.

Vidinhar – Her suggestion would be to leave SW-12 as is with rights-of-way being addressed when the development regulations discussion begins. This only reflects what was discussed and motions made by the Planning Commission on July 9, 2004.

- Chair Nevins – Thinks confusion comes in because they are linked.
- Michael Gustavson – SW-12 can be fixed with some word smithing.
- Dean Jenniges – Thinks the text changes to reflect best available science leaves out an important market in Washington, the evergreen market, which he believes is a major agriculture activity on the west side of the state.
- Gustavson – Suggested adding the word “runoff” after “agricultural” in SW12. This way agricultural runoff would include whatever is on the land and how the land is used.
- Chair Nevins asked if a word other than “runoff” could be used.

Vidinhar – Need to stay focused on GMA Compliance and SW-12 without “including public rights-of-way”. This does conform to the State Growth Management Act. The runoff issue can be implemented through the Critical Areas Ordinance and development regulations.

A motion was made by Michael Gustavson and seconded by John Ahl that the word “runoff” be inserted after the word “agricultural” in SW-12.

The Vote: Yes-7; No-0. Motion carried.

- Chair Nevins – Need to decide between version 1 or 2 of the Formal Findings of Fact plus review the remainder of the GMA Compliance criteria.
• Michael Gustavson – Noticed in the Findings of Fact, comments on the Planning Commission votes, even those that failed. But missing are two motions on OS-1 and NS-26 regarding wildlife corridors, that failed and since the vote was so close, 4-4, thinks this should be noted for the Board of County Commissioners.

• Chair Nevins – Since it has been determined that minority opinions and reports are appropriate to accompany the Findings, anything a member feels is missing might also be included in this manner.

• Gustavson – Thinks these motions should be added to the findings.

Rice – Asked if the Planning Commission wants each motion within the GMA Compliance review be contained in the Findings rather than being summarized in one motion to adopt what was modified under GMA Compliance.

• Gustavson – Thinks Board of County Commissioners needs to see the discussion held on each issue.

• Ahl – Since the proposed changes to specific policies are not part of the docket, he asked if it would suffice to have the motion reflected only in the minutes.

• Chair Nevins – All votes on other suggested changes are not included either.

• Jenniges – Did not think it necessary since the vote was so close.

• Gustavson – Related a discussion regarding procedural points with the Board of County Commissioners deliberation process, wherein the Department of Community Development Manager responds to any questions along with a member of the Planning Commission to assist in clarification of the issues. A County Commissioner can then ask questions about any motion and subsequent vote and get an immediate response.
• Chair Nevins – Clarified that only issues that passed by motion are included in the final document. The best mechanism for commenting on the docket to the Board of County Commissioners, is a letter under an individual Planning Commissioner’s signature referencing certain issues. Attention can then be directed to specific actions in the minutes.

Rice – Agreed that historically only what was approved by motion of the Planning Commission is included in the Findings. Discussion is then referenced in the minutes for the Board to consider if discussion is had relative to the Planning Commission’s deliberations.

• Gustavson - This could be an issue to address at the next joint meeting with the Board of County Commissioners.

• Chair Nevins – All letters will be collected and the end of today’s process.

• Taylor – Thinks it is best to have everything summarized in one document to avoid the need for referencing other material such as the minutes.

• Chair Nevins – Recommended attaching a copy of the draft minutes to the Findings of Fact when they are forwarded to the Board for review and public hearing.

• Ahl - This is a vote on recommendation to the Department of Community Development staff, not the Board of County Commissioners. Therefore, to include all information not recommended to staff would be of little benefit to the Board.

Cindy Baker – Thinks it would be helpful to know how the Planning Commission voted. If the vote is close, the Board and/or staff may want to analyze further. Staff could prepare a table showing what the vote is for each item.
• Ahl – Thinks adding another process is unnecessary. The rationale behind the joint hearing was to receive the same information.

• Jenniges – Agrees with Ahl. Planning Commission’s task is to supply recommendations to the Department of Community Development. Most votes were very close and if all members were present, there would have been several tie votes. Recommends staff go forward in the Findings with only what was recommended.

• Chair Nevins – Wants to make sure all comments on GMA compliance are heard.

• Jenniges – Goal 14 of Compliance document, has concerns about setbacks in consideration of anadromous fish.

Vidinhar – This is part of the Critical Areas Ordinance that will be coming before the Planning Commission next.

• Jenniges - Objects to the words “hobby farm” on page 3, paragraph 1, of Compliance Review document, Thinks this is not the case and disagrees with the statement. Evergreen farming is major industry in the Pacific Northwest.

Rice – The correct reference for this is Forestry Resource Lands in the Forestry section and suggested reviewing the goals and objectives listed in that section to see if his concerns are adequately addressed.

• Taylor – Referenced V-1, page 9, of the Findings for Global Investments-Kitsap Transit. Questioned statement on line 41, beginning with “Discussion, the Planning Commission recommended the following condition should accompany approval of this proposal.” Unclear what the Planning Commission’s vote was on this matter. Approved or disapproved?

Rice – Line 35 states “Staff recommendation, approve based on the conditions outlined in the addendum to the staff report dated July 6,
2004.” This is the staff’s recommendation. The Planning Commission
approved with conditions as well.

- Jenniges – Regarding Sedgwick proposal where the vote was a 4
to 4 tie. Does it then go back to a deferral as recommended by
staff?

Rice – A tie means no recommendation is forwarded to the Board of
County Commissioners from the Planning Commission.

- Chair Nevins – Clarification: Staff recommendations remain
unchanged regardless of the Planning Commission’s
recommendations.

Rice – Received a request for reconsideration last week from Charlie
Burrows, KCRP, on the George’s Corner recommendation for approval.
If the Planning Commission wishes to, it can re-open the record. A
motion would need to be made by the majority of votes in approval of
the LAMRID.

- Chair Nevins – Understands that a motion to reconsider does not
require that the majority be present, only that a member of the
majority be present to re-open the record. He asked the question.
No response was heard and the Planning Commission will
therefore not re-open the record on George’s Corner LAMRID for
reconsideration.

No further discussion being heard, a motion was made by John Taylor
and seconded by John Ahl that the Findings of Fact, v2.doc (green) be
accepted with the GMA Compliance review attached. The Vote: Yes-
8; No-1. Motion carried.

- Chair Nevins – The motion to accept does not imply agreement
with every item, but reflects acceptance of the Planning
Commission’s work on the Comp Plan Amendment items.
• Gustavson – Asked that the record reflect he voted no because of the inconsistency of motions referenced under GMA Compliance.

Rice – Clarified that the Discussion on GMA Compliance will be attached to the Findings of Fact to reflect the Planning Commission’s discussion on this issue.

• Gustavson – Referenced the GMA Compliance document, page 18, relative to square footage size of developable lots. Thinks mathematically the numbers do not work, as he interprets the requirements to mean that lots between 8,001 square feet and 11,999 square feet cannot be developed.

Vidinhar – This is a potential list that may not be used. Once it is decided to implement these reasonable measures, all issues will be clarified. Cannot give time line for when this will occur.

• Gustavson – Asked if additional concerns might be noted.

Vidinhar – Staff will not be going forward with specific details until further analysis is completed for implementation. There are many items that the County may not use, may already be using or may want to adjust the criteria.

• Ahl – Understands that on page 15, these items will be included as an addendum to the BLA and that these have been removed from the Comprehensive Plan.

Vidinhar – Confirmed this to be the case.

• Jenniges – Asked if further comments would still be accepted on reasonable measures.

• Chair Nevins – A mechanism is in place to do this. He will accept additional written comments from the Planning Commission members to forward to the Board of County Commissioners.
Rice – August 2, 2004 is scheduled for the Board of County Commissioners public hearing to consider testimony on the Planning Commission’s Findings of Fact. It will be at the Presidents Hall at 6:30 PM.

Old Business

None

New Business

- Chair Nevins – Asked that the Planning Commission members remember that all comments are captured by the sensitive microphones and recorded on tape. He cautioned members to watch the extra conversations taking place while a Planning Commissioner is speaking.

Chair Nevins asked that any letters the members wish to have accompany the findings of fact, be submitted at this time to be sure they get attached. If submitted later, he cannot guarantee the letter(s) will reach the Board of County Commissioners.

Critical Area Ordinance/Best Available Science

This is an information briefing for the Planning Commission members.

Baker – Concurred that today is a briefing and that a work/study session is scheduled for August 31, 2004 for more detail. A second draft will be issued a week prior followed by an evening joint public hearing with the Board of County Commissioners on September 7 and possibly 8, 2004. Public comment is currently being accepted. A copy of the Critical Areas Ordinance was mailed to the Planning Commission a month ago. A summary sheet was mailed out last week outlining portions of the ordinance most contentious and discussed. Baker introduced the Environmental Review and Natural Resource staff present and explained the format for today’s program. Following today’s meeting, presentations are scheduled with various groups coming up in the next month.
Jim Bolger – Natural Resource Manager for Kitsap County presented a PowerPoint presentation showing background on current status and what staff proposes in the future. The presentation will also summarize changes in the first public draft of the Critical Areas Ordinance and is an opportunity to study the ordinance and to solicit comments from the Planning Commission if desired and a chance to modify the draft. Public comments will be accepted on this first draft through August 22, a time line of 60 days. However, since August 22\textsuperscript{nd} is a Sunday, comments will be accepted through close of business on August 23, 2004. GMA requires review of development regulations for consistency with BAS every seven years. Much of the review at this time in Kitsap County is focused on the CAO. State requires review completion by December 1, 2004. Kitsap County adopted an interim CAO in 1994 followed by a final in 1998. These Ordinances included regulations for the protection of wetlands, streams, geohazards, frequently flooded areas and aquifer recharge areas. The County’s CAO was appealed on best available science in 1998 and upheld by the Central Puget Sound Growth Management Hearings Board (CPSGMHB). More recently, Kitsap County updated the geohazards section of the CAO in 1999. A best available science review was done at that time and revisions made accordingly. The complete PowerPoint presentation can be found on the County’s website on the link below and are attached to these minutes:

http://www.kitsapgov.com/dcd/cao/CAO_BAS_Update_files/frame.htm

Discussion continued about BAS being site specific. Bolger said the best protection available for streams and wetlands and critical areas is specific to the area. The areas with major changes in standards are 1) shorelines, 2) streams, and 3) wetlands.

Baker said each of these three sections could be discussed separately.
Dave Greetham said shorelines and streams are a subset of the overall category called Fish and Wildlife Conservation Areas. These include streams, shorelines and lakes.

In summary, Bolger said the summary sheet could be used as a guide for the Q&A portion. As the body of comments grows, a matrix is being prepared to include all comments, submitted by whom and staff response. Comments will be categorized and posted on the County’s Website. Currently the Website documents all Technical Review Committee (TRC) work, all letters received to date, meeting notes, BAS summary, other studies and information from other jurisdictions. In the subsequent draft, an appendix will review the BAS discussion in Kitsap County.

Bolger – Encouraged citizens to be specific about their likes, dislikes, preferences, suggestions, etc. It is helpful for staff to have specific alternatives opposed to general comments. Any questions can be addressed to Rick Kimball, Environmental Review Division Manager at (360) 337-4966 or rkimball@co.kitsap.wa.us.

Baker – The Website contains a comment form in addition to any written comments submitted to Rick Kimball. Each comment will receive a response and be added to the matrix and posted on the Website.

Greetham – The draft before the Planning Commission today contains numerous strikeouts based on legal review.

Bolger – Emphasized that the TRC is not a decision-making body. It is an advisory group only. The group was tasked with providing a variety of considerations to make when going through the revision process.

Jenniges – Expressed concern about setbacks. Gave an example where fill did not affect the quality of life for salmon. When a determination is made to increase buffer zones, asked how this recommendation is formed. Thinks valuable land is being taken away from private ownership and that property owners should be
compensated financially. Slopes should be considered when deciding on buffers.

Bolger – Correct in that staff does not have enough information to say that 200 feet is better than less. Since information is not always available, staff attempts to provide flexibility by offering a Habitat Management Plan where property owners can collect specific information on their property. Issues like soils and grade have a tremendous influence on the health of the aquatic system. In lieu of taking advantage of a Habitat Management Plan, there needs to be a set standard as a starting point that is not arbitrary with a range of numbers provided. The specialists in other jurisdictions have been very helpful. There is no doubt that peer review is needed.

Baker- Grandfather provisions are still located in the basic ordinance. These provisions however can be considered having gone foul if no activity has taken place for a specified number of years. Also, if a property owner wishes to make improvements within the buffer area, this would be subject to the new regulations.

Greetham – Page 5, line 32, shows a specific exemption for existing, on-going agricultural activities. He explained the flexibility in each chapter. Wetlands - buffer average down to half the distance without a variance. There is also an Administrative Buffer Reduction Allowance down to 25% if there is not enough room to use the Buffer Averaging. Streams – More flexibility is added acknowledging that some buffers increased, specifically with the Habitat Management Plan. Where none of the options addressed works, a Reasonable Use Allowance is available. At the staff level, buffers can be reduced by 25% and with a Habitat Management Plan, by 50%. Relative to the question about slopes, in the Geological Hazardous Area chapter, the buffer along streams and ravines is either the underlying buffer or 25 feet on top of the slope, whichever is greater.

Greetham – A Habitat Management Plan can be expensive. Every attempt will be made by staff to work directly with the property owners without involving an expensive consultant.
Baker – It is entirely site specific. There may be some constraints that indicate larger buffers are necessary, but the Code doesn’t address requesting a larger buffer under any circumstance.

Discussion continued between staff and the Planning Commission regarding the rationale for 50% reduction and how this was determined.

- Chair Nevins – Regarding agricultural activities being exempt, he questioned where to find this in the ordinance.

Baker – Agricultural uses are listed in both Title 17 and Title 17.110. Agricultural practices are defined in 19.150.105 or in the draft on page 15, line 39.

Greetham - Explained Reasonable Use, page 8 of the Code, as being when it is so obvious that a property owner cannot possibly comply with the variance requirements and cannot otherwise use their property, the Reasonable Use option is applied. The Hearing Examiner makes the decision whether this is necessary for reasonable enjoyment of the property.

- Taylor – Used a specific example where a creek abuts a parcel of land and a determination was made to impose a 200-foot buffer. He questioned who makes this determination and how it is made.

Greetham – A State Stream map is used. It breaks streams down into categories. Since the map is broad brush in general, an on-site inspection is made by staff to ascertain if the stream matches the map category. Next the Code is used for the requirement of a particular category. Wetlands and streams have different systems for categorizing water on property.

- Taylor – Concerned about one parcel being close to a stream via grandfathering, but new owner told must have a 150-foot setback or pay a substantial amount of money for a Habitat Management Plan. If not, they risk losing the use of land but are still paying taxes on unusable land without compensation.
Greetham - Stream buffers do put a burden on landowners but the long-term debate is how should society compensate the landowner for benefiting the entire community. Trying to find the balance is tough.

- Gustavson – Suggested that the statement in the State law regarding buffers and setbacks be place in the front of the ordinance along with the Best Available Science criteria. Proposed that taxes for unusable land be taken off tax rolls. Discussed shading issue and using average height of trees. Public needs to know the general issue of concern. He expressed concern over categories in the wetlands. Sees discrepancies between private property vs. public property uses. Technology exists to mitigate stormwater and it needs to be applied to public works projects.

Greetham – New County road projects have full stormwater controls, but repaving of existing roads does not. In the Wetlands chapter, Section 200, page 38, is a summary table with provision for private driveways going through wetlands. Focuses on when there is no alternative and applies to both public and private properties.

Baker – Staff makes every attempt at consistency between public and private properties.

Bolger – The appendix in the next draft will cover the values and functions for a clear understanding of the issues.

- Ahl – Asked if Kitsap County has separate shoreline regulations and was told there is a Shoreline Master Program. He then asked how the Critical Areas Ordinance dovetails with the Shoreline Master Program relative to buffer requirements.

Greetham – The State Legislature directed that buffers and setbacks on shorelines be pulled out of the Critical Areas Ordinance and placed in the Shoreline Master Program. He will provide copies of the Shoreline Master Program to John Ahl and any other Planning Commission member who wants one. When the County updates its Shoreline Program, the shoreline buffers will be addressed in this
document and referenced in the Critical Areas Ordinance. The County has until 2011 to complete the update but intends to do it sooner. The basic difference between the two documents is the Shoreline Program comes from a 1972 shoreline law to manage and protect shorelines. It is a little vague compared to the Critical Areas Ordinance and is not specific on setbacks.

Baker – Both documents are State mandates. Local staff needs to assure as much consistency as possible.

Greetham – In response to a concern expressed by Commissioner Jenniges regarding erosion, he noted reference to Bank Stabilization on page 61, line 18. Currently the County is focused on protecting structures rather than undeveloped land.

- Gustavson – Addressed issue of unnatural waves from watercrafts vs. natural occurrences. Concerned about the bank sloughing off.

Greetham – Currently adding a comment to his version to suggest adding, “man caused” to the Bank Stabilization section.

- Monty Mahan – Questioned the comment made by Bolger regarding Category 3 wetlands dominated by a single plant species. Asked if this had to be a native species or could it be a wetland dominated by wild blackberries. The response was yes to native vegetation. Next, he observes in the Wetlands and Wildlife Habitat section that the provision for Conservation District Farm Plan has been struck. Questioned the rationale for this.

- Greetham – The wording to do a farm plan left it open ended. For instance, one person could get it down to 10 feet of buffer when a neighbor has 50-100 feet.

Baker – Farm Plan is still highly recommended for properties with historic farmland located within buffers.

- Mahan – Asked how channel migration zones are mapped.
Greetham – Pierce County has mapped seven zones on major rivers. In his experience, most are located at the bottom of steep ravines.

Baker – Currently in process of trying to map zones through LIDAR technology.

Greetham – Currently mapping on a site-by-site basis.

- Gustavson – Asked about construction limitations in flood zones.

Greetham – Need to elevate to certain heights. This is addressed in the Flood chapter. It is more about how high you are and less about where you are.

Bolger - For seasonable streams, BAS is not indicating these to be natural wildlife habitat. Many are tributary to fish-bearing streams. During winter when water is flowing, is time to implement protection measures for silt and erosion issues downstream where the fish are.

- Gustavson – Thinks that roadside ditches should be included in NS. Restrictions are too onerous.

Greetham - Manmade ditches are not considered under this provision.

Bolger – Intent of Critical Areas Ordinance regulations is to conserve and protect. There are water quality laws on books that the DOE can enforce. By protecting values and functions, you avoid restoring because once degraded, restoration is difficult and expensive. These regulations not only benefit human health and property but also natural systems and resource that belong to everyone.

- Gustavson – Public Works still mandates curbs and gutters when the money could be used elsewhere for low impact development.
Bolger – Explained the complexities of making the changes needed and shifting the mindset to low impact development. Work on this is ongoing, but it takes time.

Greetham – Currently working with Public Works on the curb and gutter issue.

- Mahan – Public Works has a long way to go but has corrected in the right direction.
- Taylor – Regarding takings of land value and taxing it, notices in Section 19-100-150, Critical area and buffer notice to title, when an individual finishes his project and wants to sell, the purchaser is alerted to the fact that some of the property he purchases he is not useable. Just compensation is a necessary action.

Bolger - Some areas could qualify for open space reduction.

- Mahan - Takings issue is an on-going conflict. The Supreme Court has upheld protection of community natural resources.
- Ahl – Reminded the Planning Commission members that before them today are changes to existing regulations to the Kitsap County Code and the Planning Commission is not being asked to address takings issue. The task is narrower and thinks it might be good to address the Critical Areas Ordinance and support the Department of Community Development.
- Gustavson - Hopes that by the end of August, staff provides credible justification from a scientific perspective for each change. He questions a 200-foot buffer having any rationale in science. Wants to see enough scientific data provided to support this.
- Jenniges – Citizens need to know why they are protecting streams.

Other Business
No further business being heard, a motion was made by John Ahl and seconded by Mike Gustavson that the meeting be adjourned. The Vote: Yes-7; No-0. Motion carried.

Exhibit No.             Description

A. Draft Agenda for July 20, 2004 Planning Commission meeting
B. Findings of Fact adopting the Comp Plan Amendments for 2004, vs-1
C. Findings of Fact adopting the Comp Plan Amendments for 2004, vs-2
D. Request for Reconsideration of George’ Corner LAMIRD from KCRP
E. Minority report from 4 Planning Commission members
F. Letter to Cindy Baker from Chris Hugo dated June 8, 2004
G. 2004 Comprehensive Plan Compliance Review Amendments Staff Report dated July 12, 2004
H. Kitsap County Critical Areas Ordinance proposed changes based on BAS review
I. Kitsap County Critical Areas Ordinance First Public Draft dated June 22, 2004
K. Draft Agenda for August 31, 2004 Planning Commission meeting
L. Legal Notice for July 20, 2004 Planning Commission meeting

MINUTES approved this ___ day of ____________________, 2004.

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Tom Nevins, Chair

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Planning Commission Secretary