

MINUTES

KITSAP COUNTY PLANNING COMMISSION PUBLIC HEARING March 22, 2005

The Kitsap County Planning Commission met on the above-stated date at the Eagle's Nest Conference Center, 1195 Fairgrounds Rd, Bremerton, Washington 98311. Members Present: Mark Flynn, Monty Mahan, Michael Gustavson, John Ahl, Lary Coppola, John Taylor, Deborah Flynn and Dean Jenniges. Member Absent: Tom Nevins. Staff Present: Eric Baker, Patty Charnas, Jim Barnard and Planning Commission Secretary Holly Anderson.

9:00 AM

A. Chair Mark Flynn called the meeting to Order and introduced the Planning Commission members present.

9:05 A.M.

Approval of Minutes

B. March 8, 2005 Minutes

A motion was made by Dean Jenniges and seconded by John Taylor that the Planning Commission minutes of March 8, 2005 be approved subject to edits. Mike Gustavson, Lary Coppola and Deborah Flynn abstained.
Motion carried.

C. Mike Gustavson entered into the record, for Kitsap County legal review, a hand-out listing a summary of Growth Management Hearings Board (GMHB) conflicting legal decisions. The Planning Commission needs clarification to know what is or is not binding. A motion was made by Michael Gustavson and seconded by Monty Mahan that staff obtain County legal review and opinion for guidance to the Planning Commission. The Vote: 7-Aye; 0-Nay; Deborah Flynn abstained. Motion carried.

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- **Gustavson – Explained that such case law as outlined in his paper will affect future Planning Commission recommendations.**
- **Ahl – Asked if the issues conflicting in the case law would preclude the Planning Commission from moving forward at this point.**
- **Gustavson – Wants to know where the Planning Commission stands relative to the conflicting case law**
- **Monty Mahan – Not willing to move forward without further clarification on these issues**
- **Dean Jenniges – Gustavson basically summarized court cases that could or will affect the Planning Commission’s future recommendations relative to issues such as critical areas and buffers. Gustavson wants legal to be definitive on the specifics of issues such as buffers and setbacks.**
- **Gustavson – Wants to see the Planning Commission put forth recommendations that will stand up in court.**

D. Public Hearing to consider revisions to the Kitsap County Code Chapter 16.48 as it relates to Nine-lot Short Subdivision Ordinance.

Eric Baker – Kitsap County Department of Community Development staff, summarized proposed revisions to the Kitsap County Short Subdivision Ordinance, to accommodate up to nine lots through the short plat process in Urban Growth Areas (UGAs). Discussion with the Planning Commission on this item began in 2003 followed by circulation of a previous draft. The Planning Commission had concerns regarding length, complexity and the process used to develop the document. Subsequently, Kitsap County convened a stakeholders’ group comprised of members of the development community, cities of Bremerton and Port Orchard and County staff. From this process a new draft was created and presented at the previous Planning Commission work/study on March 8, 2005. The details of the changes can be found in the summary presented by Baker at the March 8, 2005 work/study. Briefly, they pertain to

1 streamline items within the Code and more substantive changes
2 relative to the change in number of lots from 1-4 to 5-9 within a short
3 subdivision. Under today’s regulations, a subdivision of 5 to 9 units
4 is processed through a platting process that is not an administrative
5 decision made by staff; it must go through the Hearing Examiner
6 process. The difference proposed eliminates roughly one year of
7 time. The changes recommended in today’s document, allows
8 development of 5 to 9 lots under a short subdivision process
9 potentially saving developers up to a year’s time in getting their
10 subdivision built to capacity. Baker highlighted Section 16.48.090 on
11 page 6, addressing road connectivity. This section provides for the
12 Director of DCD to make a determination if road connection is
13 necessary. The concern is that a larger parcel could logically be
14 accessed through the short platted property. For instance, the larger
15 parcel could have a ravine on both sides, making access into the
16 property impossible any other way except through the short
17 subdivision property. As the most reasonable approach, it still
18 permits a smaller roadway to be used for access into the short
19 subdivision, thus cutting off potential to access a much larger parcel.
20 Since the idea of a UGA is to maximize density, Kitsap County needs
21 to help facilitate development as much as possible. This situation
22 will not occur often, but it does happen and staff wants to utilize the
23 Road Connectivity option if necessary. If determined necessary, the
24 roadway would need to be developed to Public Works Road
25 Standards; a non-requirement for nine-lot subdivisions as proposed.
26 Instead, they are subject to a separate set of Private Road Standards.

- 27
- 28 • Deborah Flynn – Noted “required” has been changed to “is
29 necessary in the latest draft.”

30

31 E. Baker – Entire section (D) is new. This change came from
32 suggestions made by the Planning Commission at the previous
33 work/study.

- 34
- 35 • Jenniges – Questioned why, relative to road connectivity, the
36 County standard would change from one standard to another?

37

38 E. Baker – It is generally expected that road connectivity will be
39 assessed when a large piece of property (40-60 homes) with Fire
40 Marshall standards being required first for the entrance followed by a
41 platting standard requiring a Public Road Standard in the much

1 larger development. For a site that can handle this amount of homes,
2 the Fire Marshall standards are not adequate to provide for general
3 traffic safety issues.

- 4
- 5 • Jenniges – Would this adversely affect the current residential
6 areas or would they need to improve their standards as well.
- 7

8 E. Baker – This would apply only to new subdivisions.

- 9
- 10 • Gustavson – Asked if this provision allows for adequate
11 expansion to match the anticipated growth.
- 12

13 E. Baker – Explained that these issues would be satisfied in the
14 Public Works' overall Transportation Plan. The proposed language
15 requires all new development to address potential road connectivity.
16 The last main area of substantive changes is found under 16.48.095,
17 indicating a list of additional requirements for short subdivisions of
18 five to nine lots. This is predominantly the private road standards
19 section. The development community was concerned about having
20 to use the somewhat rigid Public Road Standards for a relatively
21 small type of development. Doing so makes it difficult to develop.
22 The stakeholders' group developed a set of road standards
23 applicable to only short subdivisions of five to nine lots; not to one to
24 four lots. Instead of utilizing easements, the roadways will need to
25 be created in the form of Access Tracks, owned in part by all
26 property owners in the development. This requirement establishes
27 the maximum widths that must be dedicated to use as well as how
28 much would be developable. For instance, fire standards are roughly
29 20 feet, leaving a 20-foot wide roadway to meet Fire Marshall
30 Standards. The surface needs to either be paved or constructed with
31 other low impact all weather surface materials. In addition to the 20
32 foot Fire Marshall road width requirement, there is also a four-foot
33 pedestrian pathway requirement included. This does not need to be
34 a sidewalk, but must be some type of path dedicated to walkers.
35 Next, there is a utility easement requirement allowing utility
36 companies to work outside of the Access Track. Lastly, there is a
37 requirement to establish a HOA (Homeowners Association) with
38 CCRs (covenant, conditions and restrictions) addressing
39 maintenance of the roadway. He noted items such as the Director's
40 ability to increase or decrease requirements based upon topography,
41 critical areas or public safety issues; approval has been changed

1 from three to five years, making this more commensurate with the
2 State RCWs; and this five year period expires automatically rather
3 than the County having to notify the applicant in writing. There have
4 been problems in the past with disputed receipt of notification.

5
6 Chair Mark Flynn opened the public testimony portion of this public
7 hearing.

8
9 **PUBLIC COMMENT**

10
11 Vivian Henderson – KAPO – Comments, questions and suggestions
12 include: 1) Wording on page 15, under “Construction.” That states “.
13 . . to secure the public health, safety, morals and welfare. . .”
14 Suggested revising this language as she thinks the County should
15 not be charged with protecting anyone’s morals. She submitted a
16 written definition of Morals; 2) Questioned protecting rural esthetic
17 qualities, neighborhood identities, buffers. Government cannot take
18 people’s land for buffers. She submitted a copy of Sandy Macky’s
19 *Protection of Critical Areas and the Methodology of Buffers*; 3) Page
20 2 “Dedication” item G sounds like an exaction. Asked what type of
21 incentive a property owner will receive in return for dedicating
22 property under these requirements; 4) Same page, item K
23 “Environmentally sensitive area” uses the acronym most commonly
24 associated with the Endangered Species Act “ESA.” Cautioned staff
25 not to use this reference as it could be grossly misused and
26 misunderstood by Government; 5) item N asked that the original
27 wording might be considered. Thinks it sounds better than the new
28 language; 6) item Q, not comfortable with “Passive recreational
29 uses.” Thinks this is another abuse waiting to happen since it is
30 open to individual staff members’ interpretation; 7) Page 7, additional
31 requirements for short subdivisions. She is aware of rising cost of
32 doing business and is concerned about sidewalk requirements; 8)
33 item G , asked how Government can mandate a Homeowners’
34 Association. Understands that CCRs) can be mandated, but a
35 Homeowners Association asks people to make a substantial
36 commitment, usually free gratis. Thinks it is the neighborhoods
37 choice as to whether they want to have an association, or not; 9)
38 Page 8, Preliminary Short Subdivision approval, she suggested it
39 simply state “expires in five years.” Housing is needed now and a
40 definite cut-off time will assist in opening up more land; 10) Page 14,
41 (correct page is 13) “Dedications” might be another exaction.

1 Submitted copy of US Supreme Court decision on this issue; 11)
2 Page 14, “Development of Illegally divided land.” Needs clarification
3 for better understanding of this section; and 12) Page 13,
4 “Declaration regarding further subdivision.” Again, Henderson
5 addressed the wisdom of a five-year rule. There already exists a
6 critical shortage of buildable lots. This requirement is too lengthy
7 and needs to be revisited.

8
9 Discussion between Planning Commission members and Ms
10 Henderson ensued regarding requirement of CCRs and
11 Homeowners’ Association membership. Some points
12 mentioned: 1) Whether this is up to the home owners
13 themselves or the developer; 2) If mandated in the past by the
14 County; 3) CCRs and Homeowners Associations being an
15 active part of the platting process over the years; 4) The
16 County’s position on this issue; and 5) Examples of specific
17 CCRs in various areas of the County.

18
19 Jim Coomb – Developer in Kitsap County for past 20 years, a member
20 of the Kitsap County Homebuilders, Real Estate Broker and
21 residential subdivision contractor. As a member of the stakeholder
22 group that worked on this draft nine-lot short plat ordinance, he
23 explained makeup of the committee and the work accomplished.
24 Changes begin when plated property can accommodate more than
25 four lots in a subdivision. He concurred that the time savings of up
26 to a year’s time is a great benefit. Coomb referenced page 7,
27 “Access Tracts” noting that the group spent the majority of its time
28 on this section. He questioned the size of access for 5-9 lots but
29 agreed with the clause allowing Director to increase/decrease size of
30 road would be acceptable. Sidewalks make sense in some instances,
31 but are not necessary. Good judgment is needed and again Director
32 has ability to make changes if warranted. This language is agreeable
33 to him. Thinks the document overall is a very good one. There are
34 safeguards for developers to use in creating five to nine lot short
35 subdivisions. The overall intent of the proposed changes to the
36 ordinance was not to change terminology and eliminate old
37 language, but to add 9 lot requirements to the existing document.
38 When asked about thoughts on CCRs, he said this is a problem
39 nationwide and that it comes with selective enforcement. CCRs have
40 a place through enforcement by the Homeowners Association.

1 Suggested the Prosecutor’s Office be asked to take a look at the
2 legalities of CCRs.

- 3
- 4 • Jenniges - Asked who develops the CCRs and was told typically,
5 it is the developer. Knows of several Homeowners Association
6 currently in conflict due to inability to activate their Association.
7
- 8
- 9 • Gustavson – Thinks this only applies to the Access Tracks and
10 not to the adjacent land.
11

12 Coomb –Agreements are necessary to maintain the roads. Needed a
13 mechanism to accomplish this and the Homeowners Association and
14 CCRs appeared to be the best way to address this.

- 15
- 16 • Gustavson – Suggested it might be better to just require an
17 Access Track Maintenance Agreement.
18

19 Jean Bradford – Real estate agent with John L. Scott for 20 years,
20 said that CCRs are usually required by DCD in the list of conditions.
21 She suggested this matter be revisited to determine if the CCRs
22 might be too restrictive. A problem with establishing Homeowners
23 Associations, people in charge can get power hungry and suggested
24 exercising caution about belonging to one. Also, some rules
25 established by Home Owners Associations are far too restrictive.
26 Thinks Kitsap County should rethink having parks within a
27 subdivision, because there is enough open space with buffers and
28 setbacks. Parks might need to be maintained by a Home Owners’
29 Associations but often does not happen. In addition, dues are
30 required to belong to a Home Owners Association. When preparing
31 conditions, staff should keep these issues in mind.
32

33 Fred Depee – of South Kitsap, also addressed page 7, item G,
34 regarding the Home Owners Association issue. He said that normally
35 a Home Owners Association is formed when an amenity to the plat
36 has a common, shared expense attached. Examples would be tot
37 lots, hidden power lines, etc. Believes this particular condition on
38 the nine-lot short subdivision pertains to roads. It is his
39 understanding that if the new road meets all County standards then it
40 can be dedicated to the County, negating any specifically-related
41 expense since the County would then maintain road access. In other

1 words, the maintenance issue would only apply to a private road not
2 meeting County requirements. Depee would therefore like to see
3 reference to requiring a Home Owners' Association removed from the
4 document.

- 5
6 • Ahl – Asked Depee if this provision to maintain non-standard
7 County roads is eliminated from the ordinance, would the
8 alternative be to require County standard roads in all Nine-lot
9 Short Subdivisions?

10
11 Depee – Thinks the option should be left to individual property
12 owners. The reason for this is that there may be situations wherein
13 the topography or make-up of the property is such that it would not
14 allow for a full width County road standard access. The solution for
15 maintaining the road would depend on the size (width) of the road. If
16 private, the plat would need a Home Owners' Association to require
17 maintenance and upkeep. In summary, this needs to be a free market
18 decision, not a County-mandated requirement. To further explain,
19 Depee said If a person has a track of land and develops the access
20 tract to County standards, they would then dedicate the road to the
21 County for maintenance. The expense of upkeep would no longer be
22 a burden to the lot owners. Conversely, if in the same plat, the
23 access road design was too narrow to meet County standards, it
24 would then be privately owed by individuals within the plat who
25 would be responsible for maintaining the road. Therefore the
26 distinguishing factor is whether it is public or private and believes
27 this option should be the decision of the developer of the property
28 and not a County government requirement for plat approval.

- 29
30 • Ahl – Thinks that option is already contained within the draft
31 language of the ordinance. His question is that if a property
32 owner opts out of the County Road Standards, do you then say
33 a guarantee of road maintenance is needed via language to
34 require sharing in the responsibility.

35
36 Depee – Reality is that there is no sure method of enforcement for
37 Road Maintenance agreements. Very few plats' CCRs contain a sure
38 remedy to force a property owner to participate in payment for road
39 maintenance if they choose not to.

40

- 1 • Ahl – Asked if Depee is suggesting it might be in the public’s
2 best interest to require the County to maintain the roads.
3

4 Depee –Thinks it should be left to free market to make that decision.
5 In some cases it cost more to seek legal relief from the one property
6 owner who refuses to participate than for the remaining lot owners to
7 get together and fix the road.
8

- 9 • Monty Mahan – The wording does not clearly state that a
10 Homeowners’ Association is not required if developing to
11 County Road standards. If the language was clearer stating
12 that if developing to County Road Standards, a Homeowners’
13 Association is not necessary, would that satisfy Depee’s
14 concerns?
15

16 Depee – Yes, it should not be a requirement, it should take its own
17 course in accordance with how a developer plans the plat, given the
18 make-up of the property.
19

- 20 • Gustavson – County is mostly concerned with fire and police
21 access. If road is accessible to local residence’s vehicles, then
22 it is likely fire and police are able to access the homes within
23 the plat also.
24

25 Depee – Not addressing safety issues today; only requirements for
26 the access tracts.
27

28 Chair M. Flynn closed the public testimony portion of the hearing
29

30 E. Baker – The Home Owners’ Association is basically listed for the
31 lot owners who opt out but HOAs are not always active. The concern
32 is that since these will be private access tracts, owned in perpetuity,
33 someone is in charge of maintenance and liability for problems on
34 the tracts. Thus, requiring a HOA seems necessary as an entity in
35 the event of any grievances as a mechanism that will expand and
36 shrink as areas of interest surface. The County would just want a
37 HOA in place to address specific common issues of interest to lot
38 owners within the plat. The County has no interest in regulating
39 CCRs or HOA, and this provision is only intended to address road
40 maintenance of the access tracts and nothing more.
41

- 1 • Lary Coppola – Two years ago in 2003, the Planning
2 Commission twice directed County staff to mandate that
3 telecommunication infrastructure be included. Questioned why
4 this issue is not addressed in the current draft language.
5

6 E. Baker – Agreed it is not in the document but if the Planning
7 Commission as a body wants this provision added, staff will do so.
8

- 9 • Ahl – For the record, reminded Planning Commission members
10 that the Planning Commission does not direct DCD staff;
11 instead, its mission is to support DCD staff and to provide
12 whatever recommendations it feels will create better
13 regulations.
14

15 E. Baker – Staff acknowledges that there is a wide variety of other
16 changes that could be made to this document. One of the Planning
17 Commissioner’s directions was that this ordinance would relate to
18 development of five to nine dwelling units and to concentrate on that.
19 Also, relative to the “protection of morals” verbiage referenced by Ms
20 Henderson, Baker noted that anything in standard text with
21 underlines and strikeouts is from a previous Code iteration. Staff did
22 not change the old language in any way, only worked with new
23 language. Staff needs to go through the entire subdivision code,
24 large lots, plats and short subdivisions, to get all definitions to match
25 up and remove duplicative language. This process is currently
26 underway and the first draft will hopefully be completed by year’s
27 end.
28

- 29 • Jenniges – Asked if the HOA issue could be resolved by stating
30 “may” instead of “is” required. Questioned the County’s intent.
31

32 E. Baker – This goes to John Ahl’s comment about if opting out is an
33 option, what mechanism is there then to maintain the road for access
34 into the plat. Requiring HOAs and CCRs is the County’s attempt to
35 help address the lack of participation on the part of some
36 homeowners’ within plats, for the protection of all.
37

- 38 • John Taylor – Commented in reference to HOA and CCRs. In
39 recent years according to various court decisions, any plat with
40 CCRs, attorneys will advice clients that they need to have a
41 HOA as a separate non-profit corporation registered with the

1 State of Washington, otherwise individual homeowners can be
2 sued. Therefore the HOA requirement is included to protect
3 individual homeowners from being sued. In today's world, if a
4 plat has CCRs it should also have a HOA.

- 5
- 6 • Gustavson – This discussion is about private property and
7 asked if the County has the authority to regulate private dirt.
8

9 Discussion continued regarding: 1) Road Maintenance Agreements
10 as they relate to the County's authority over fire access, pedestrian
11 access, etc.; 2) Whether DCD should weigh in all of issues impacting
12 every home in a plat or subdivision for life safety and public welfare;
13 3) Should Road Maintenance Agreements, CCRs HOA, be required,
14 mandated, conditioned or be a personal choice; 4) These issues also
15 deal with liability and community involvement; 5) County guidelines
16 for HOAs and CCRs; and 6) Buffers being in Code changes at end of
17 year.
18

- 19 • Taylor –The other option for the private property owner is that
20 the only thing being required by the County is a Road
21 Maintenance Agreement. If the plat is developed with a Road
22 Maintenance Agreement then that is all that is required.
23

- 24 • Gustavson –Questioned if just requiring a Road Maintenance
25 Agreement is all that is needed.
26

- 27 • Taylor – Believes this would suffice but that is not what staff is
28 proposing.
29

- 30 • Deborah Flynn – Asked for clarification of difference between a
31 Road Maintenance Agreement and CCRs for purposes of
32 maintaining an access.
33

34 E. Baker – These are very similar in nature. Road Maintenance
35 Agreements are factored into CCRs. The key issue here for staff is
36 that a HOA will exist because the Road Maintenance Agreement is
37 hanging out without any type of entity in charge of the maintenance.
38 Without the Agreement through a HOA and CCRs, a homeowner is
39 basically forced to approach his/her neighbor for payment of
40 maintenance projects. Also, the discussion involves paved, not
41 gravel roads, necessitating a higher maintenance cost. It is

1 important from staff's perspective that an entity be in place to protect
2 liability and to deal with these issues on a development-wide level.

- 3
- 4 • Jenniges – Asked if the County institutes guidelines for HOAs or
5 what their by-laws and CCRs will be and was told it does not.
6 This is left up to the developer.
- 7
- 8 • D. Flynn – Questioned her email comments submitted prior to
9 the March 8 Planning Commission work/study, one in particular
10 relating to buffers.
- 11

12 E. Baker – Flynn's comments were well noted and will be taken into
13 account when the revisions are made to Title 16 to improve
14 consistency.

- 15
- 16 • Gustavson – Since three Planning Commission members were
17 absent from the March 8, work/study, he wondered when would
18 be the appropriate time to address numerous issues.
- 19
- 20 • Chair M. Flynn – During the deliberation portion of the public
21 hearing.
- 22
- 23 • Taylor – Expressed appreciation to the staff and stakeholder
24 group who spent a significant amount of time on the proposed
25 changes to this ordinance. Coppola also agreed. He felt the
26 latest draft was a great improvement from the previous
27 document reviewed by the Planning Commission.
- 28

29 **BREAK**

30

31 E. Baker – Addressed code amendments to resolve issues with
32 development in rural Kitsap County. Before giving brief overviews of
33 the various Code amendments, he stated that following the previous
34 work/study discussion, the Code amendment addressing electronic
35 reader boards was removed from the list. It was determined that
36 other sections of the Code already speak to this issue. Repetitive and
37 inconsistent language could result from revisiting this issue through
38 the Planning Commission process.

- 39
- 40 1. Removal of 2;1 Lot ratio from Rural Zones. In rural areas of
41 the County, there is a 2 to 1 lot ratio requirement. This lot

1 ratio requirement indicates that any newly created or
2 reconfigured lot must be twice as long as deep, or twice as
3 deep as long. The intent was to protect rural character. In
4 application, it is a very difficult ratio to apply when factoring
5 in critical areas, topography, etc. Example: a property
6 owner has 27 acres in a five acre density zone, but cannot
7 divide into three parcels because of two major slopes on the
8 property and therefore it does not meet the 2:1 ratio. This
9 ratio works well on a flat piece of square land, but with other
10 problems factored in, it causes many problems not
11 anticipated when originally drafted. Staff reviewed other
12 codes as well as Kitsap County's old code and found an
13 alternative approach to address the rural character. This is
14 to return to a known lot width and depth of 140 feet each.
15 This was in place from 1983 to 1995 in rural zones, basically
16 in any lot creation or reconfiguration of a lot. It allows a
17 property owner to go down to 140 feet thus providing for a
18 wide variety of other configurations to work with critical
19 areas and topography. This change is made to all rural
20 zoning, from Forest Resource Lands through Urban Reserve.
21

22 2. Urban Low Minimum Lot Width – This is one of two changes
23 being made due to the overly broad changes made in relation
24 to the ULID-6 Subarea Plan. This subarea plan reduced the
25 minimum lot width for properties within its boundary to 40
26 feet from 60 feet. Unfortunately, this was intended to apply
27 only within the ULID-6 Subarea boundaries, but inadvertently
28 applied in the Code, countywide. Staff recommends this be
29 returned to 60 feet countywide, with 40 feet being the
30 minimum within the ULID-6 Subarea boundaries; the original
31 intent.
32

33 3. View Blockage Process Regulations – On Kitsap County
34 shorelines, construction cannot take place forward from a
35 view blockage line based on location of surrounding homes.
36 To build beyond this line, a property owner must apply for a
37 Conditional Waiver. The original view blockage regulations
38 crafted in the 1970s and early 1980s, pre-dated the Hearing
39 Examiner process making the Board of County
40 Commissioners the initial hearing body for all Conditional
41 Waivers. At that time, Board public meetings and hearings

1 were held weekly as opposed to current practice of twice a
2 month. This has created significant delays for permit
3 processing. A permit cannot be approved until this situation
4 can be addressed. Set criteria are involved for approval or
5 non-approval of a Conditional Waiver. In order to avoid
6 delays in processing these waivers, the Department is now
7 recommending this be changed to a Type II decision. This
8 includes notification to applicant and surrounding neighbors
9 within 400 feet, followed by additional notification when the
10 Department makes its decision either for or against the
11 waiver. A 14 days appeal period to the Hearing Examiner
12 follows. Once the Examiner makes his determination, his
13 decision can then be appealed to the Board of County
14 Commissioners. The Board is still in the loop, but further on
15 in the process. In 2004-05, ten View Blockage Conditional
16 Waivers were processed; of these ten, most had no view
17 blockage impact one way or the other. There are still those
18 that do have an impact and have a right to have their
19 applications processed in a timely manner. Staff believes the
20 Hearing Examiner process which is used in most all other
21 land use issues, is a much better process for the citizens
22 benefit.

- 23
- 24 4. Soil-Combining and Composting in Rural Areas – This fits in
25 tandem with the stump grinding issue the Planning
26 Commission had before them in 2003. As burn bans have
27 been imposed in most UGAs, it has become difficult to
28 dispose of clearing materials and vegetation. The County
29 does not have many places for these materials to be
30 deposited. The proposed regulations would allow for soil
31 combining and composting taking place in a number of
32 zones in Kitsap County as well as Rural Protection and Rural
33 Residential zones. Conducting this activity in these two
34 zones would come with a series of design criteria. The
35 criteria would include: properties must be greater than 2 ½
36 acres in size; use must take direct access off a County
37 maintained roadway; a 100 foot natural vegetation buffer
38 must be maintained around the perimeter; and all other
39 conditions of the Code Title must be met. These conditions
40 are intended to mitigate any potential impacts to neighboring
41 properties as this activity is proposed to be held in

1 predominantly rural residential areas. Staff wants to allow
2 these types of uses where appropriate while limiting them in
3 areas where they are not appropriate.
4

5 **5. Multiple Front Yard Setbacks** – This is another situation
6 similar to the 2:1 ratio. Staff is experiencing a number of
7 issues where development is being hampered by the
8 property owner having more than one front yard. Front yard
9 is defined as the property line that abuts an easement, right-
10 of-way, access tract, or something of that nature. Some
11 properties can have as many as three or four. Front yards
12 come with a larger setback than side or rear property lines.
13 In rural areas it is 50 feet, in urban areas, 20 feet. Front yard
14 setbacks are met to deal with access issues; driving onto
15 yards, parking, etc. With the additional front yards, there
16 needs to be a mechanism to minimize the setbacks as this
17 does not meet the intent. Staff is proposing reducing the 50
18 feet in rural to 20 feet and in urban, from 20 to 5 feet. There
19 are several impacts that would preclude wanting to make
20 these changes. An example would be if the additional front
21 yard is not being used for access but is abutting a County
22 arterial or collectors. It would not be in the property owner's
23 or the County's best interest to reduce setbacks along, for
24 instances, Fairgrounds road due to heavy traffic and the
25 need to possibly widen or improve the road in the near
26 future. Additionally, such reductions shall have no adverse
27 impacts to surrounding properties. This should provide
28 flexibility for property owners working with critical areas and
29 difficult topography. The issues are truly the most difficult
30 issues facing staff today when working with developers to
31 develop their properties. If staff has the ability to reduce
32 critical area buffers, it should also have the ability to reduce
33 setback issues to assist in facilitating development of
34 difficult lots.
35

36 **6. Lot Requirements for Single-Family Residential Development**
37 **in Urban Medium Zones** This is another ULID-6 change.
38 ULID-6 Subarea Plan removed all lot requirements, setbacks,
39 etc. since there was a set of design criteria accompanying
40 development within the ULID-6 Subarea. This however was
41 not met to be countywide but a change was made to the

1 **County Code that affected Urban Medium Zones in the entire**
2 **county. This has a significant affect on single family**
3 **development. The Urban Medium Zone is predominantly met**
4 **for multi-family. It is possible to develop single family units,**
5 **allowing single family or duplexes in these areas. Multi-**
6 **family development, however, allows for apartment**
7 **complexes, condominiums, etc. with a series of fire codes**
8 **that are met to mitigate the fact that multi families have no**
9 **setbacks from certain property lines. Single family**
10 **construction need setbacks for fire access to the rear of a**
11 **property to enable fire vehicles to access the entire property**
12 **and to provide fire separation between uses. Additionally,**
13 **there are lot size necessities for single families that do not**
14 **exist for multi-family dwellings. The proposed language in**
15 **this Code amendment would re-instate requirements for**
16 **single-family development in an Urban Medium Zone while**
17 **still allowing multi-family dwellings to go without the setback**
18 **requirements.**

19
20 **Chair M. Flynn opened the public testimony portion of this public**
21 **hearing**

22
23 **Fred Depee – Suggested a language change on the first item, i.e.,**
24 **removal of the 2:1 from Rural Zones. Depee asked that the minimum**
25 **lot acreage size be inserted for consistency throughout. Minimum lot**
26 **areas in this case should be 40 acres for newly created lots.**
27 **Minimum lot depths should apply to all lots. This is the key since it is**
28 **interpretational. He reads this to say “ Minimum lot area for newly**
29 **created lots.” His point is to incorporate Baker’s language and have**
30 **it state, “Minimum lot area shall be for whatever size acreage for**
31 **reconfigured and newly created lots. Wants to have existing**
32 **properties, not newly created, to also have the same flexibility**
33 **applied to them. An example: a property having 4 lots with a stream**
34 **running through the middle. Main point: Baker may not always be**
35 **with the County and this Code section is left up to interpretation by**
36 **any staff member. Again, asking that newly created and reconfigured**
37 **be added. The next issue Depee addressed was the Urban Low**
38 **minimum lot width. When ULID-6 approved this, it changed the**
39 **configuration for all existing lots. The question: is 40 feet acceptable**
40 **width for a buildable lot. Staff believes it is. He questions why**
41 **preferential treatment is given to one area is of concern to Depee.**

1 Questioned why 40 to 60 feet would be more acceptable.

2 Additionally, 40 feet cuts the footprint down to a townhouse, side
3 entries, two-story structures and single-car garages. 50 feet is very
4 conducive to not only two stories but small ramblers as well. 60 feet
5 gives a pad space that is more accommodating to current market
6 demand, rambler homes. Depee asked the Planning Commission to
7 leave the language in the Code the same and not allow preferential
8 treatment to ULID-6, McCormick Woods, and questioned the intent of
9 GMA to place population in urban areas and preserve the rural lands.
10 Unclear why staff wants to change to larger lots. Purpose should be
11 condensing lot sizes. If 60 feet is maintained, it limits options. He
12 noted this is within sewer boundaries.

- 13
14 • Coppola – If the lot size is reduced to 40 feet countywide,
15 questioned if this does not once again become a staff
16 interpretation. Currently, you can have a minimum of 40 but
17 can make it 60 feet if desired. However, if in ten years staff
18 completely changes and declares that 40 feet is the limit, there
19 is no interpretation available. He wants to see language to
20 removes ability to interpretation.

21
22 Vivian Henderson , representing KAPO, does not see the phrase
23 rural character in the language yet it is in everything. This is another
24 “feel good” terms she would like to see eliminated. Everyone has a
25 different vision of rural character definition.

26
27 View Blockage – Disagrees with using the Board of County
28 Commissioners’ schedule as an excuse to make a change. This does
29 not meet the test of validity.

30
31 Page 7 – Asked if the soil combining and composting is for
32 commercial use and was told it is. Asked to be shown the section
33 addressing distinction between commercial and private land owner
34 conducting this activity. Also page 5 under proposed action, it
35 references a Condition Use that to her knowledge, requires a public
36 hearing.

37
38 Multiple front yard setbacks – Asked if government intended to
39 eventually regulate every inch of private property. Each of the Code
40 amendments calls for more government oversight.

41

1 Chair M. Flynn closed the public comment portion of the public
2 hearing.

- 3
4 • Taylor – Asked what property the soil combining or composting
5 applies to.

6
7 E. Baker –Used Emu Topsoil off Port Gamble Road as an example. It
8 is basically a commercial facility where all citizens can bring their
9 materials to drop off for proper handling. The use table in the draft
10 document, titled “other uses” could be clarified per Ms Henderson’s
11 comments. The table is taken from rural hence can be confusing.

- 12
13 • D. Flynn – Regarding the lot table for Urban Low, asked what
14 requirements are for Urban Medium. Wants to make sure there
15 is a distinction between Urban Medium and Urban low relative
16 to lot width.

17
18 E. Baker – Referenced page 7 stating that at this time, there is no lot
19 sizes for Urban Medium. Staff is recommending that single family
20 units in Urban Medium be identical to Urban Low, as it was
21 previously regulated. 40 foot lot widths are allowed through
22 Performance-Based Developments, the old PUD option. Design
23 standards are incorporated in ULID-6 that he doesn’t believe the
24 public would want to see applied in Urban Low zones.

- 25
26 • Gustavson – Questioned if design standards are necessary in
27 developing a few lots. , ULID-6, McCormick Woods, is a huge
28 development. Thinks it will not benefit anyone and will drive up
29 the cost for small developments.

30
31 E. Baker – When getting down to 40-foot lot sizes, parking problems
32 will increase because densities are increased and on-street parking
33 possibilities are decreased. Parking is also addressed elsewhere in
34 the Code. An example: a specific number of parking spaces are
35 required for a single family unity. (two spots). This will address
36 families with three or more cars per residence.

- 37
38 • Coppola – Would still like to see language to disallow this
39 section of the Code not being open to interpretation. Relative
40 to view blockage, concurred with Ms Henderson that the Board
41 of County Commissioners needs to make the decision on this

1 issue. Gave example of problem currently under way in
2 Manchester.

3
4 E. Baker – Did not intend to make the Board of County
5 Commissioners’ public hearing schedule the primary motivation for
6 the recommended change. The Conditional Waiver is the only land
7 use process that still goes before the Board of County
8 Commissioners first. Other large permitting processes such as
9 Harrison Hospital go before the Hearing Examiner first. The Type II
10 process also provides for more notification to neighbors. This would
11 not apply to the Manchester example, this is only for shoreline lots.
12 The Manchester example is associated with the Manchester height
13 requirements and is an administrative decision that due to building
14 permit and Land Use Procedures Act (LUPA) laws created an inability
15 for an appeal mechanism. This will be addressed by staff in future
16 Code changes near the end of the year.

- 17
18 • Ahl – Asked about lot width requirements in Suquamish.

19
20 E. Baker – Suquamish has minimum lot sizes, much like Manchester
21 with 8,700 square feet to aggregate down.

- 22
23 • Ahl – Asked staff to check on Suquamish regulations to
24 determine how their regulations dovetail and if it is germane to
25 this issue. **

26
27 E. Baker – Thought Suquamish was related to storm water drainage.

- 28
29 • Gustavson – Read a court case stating that what you own is not
30 subject to a neighbor’s overview. This was addressed on the
31 dock permit on Beach Drive. Suggested if someone does not
32 like what a neighbor does with his property, this constitutes the
33 desire to control that which does not belong to you. Thinks the
34 view blockage issue might fall under the same purview.

35
36 E. Baker – The State statute that Kitsap County’s Shoreline Master
37 Program (SMP) is based on with the view blockage being
38 piggybacked off of this, indicates that the County and other
39 jurisdictions are responsible for views of shoreline property owners.
40 He will review specific citations referenced by Gustavson as a

1 substantive change vs. a process change to the View Blockage
2 regulations. **
3

- 4 • Taylor – Noticed a typographical error under 17.45.0. Should
5 say administrative instead of ministerial.
6
7
8

9 Monty Mahan left at 10:05 AM.
10
11

12 New Business:

13
14 John Ahl distributed a draft Retreat Agenda and requested comments
15 be submitted no later than April 1st. Also, Holly Anderson provided
16 him with a copy of the previous retreat agenda. He offered copies to
17 anyone interested.
18

19 E. Baker– Noted next public hearing to be April 12, to take testimony
20 on the Updated Land Capacity Analysis (ULCA). Staff would like to
21 bring this forward to Planning Commission and asked if the Planning
22 Commission would like to have a work/study session prior to the
23 public hearing on April 12. Staff is looking for a recommendation on
24 the ULCA at the April 12 public hearing.
25

- 26 • Coppola – suggested a Planning Commission meeting prior to
27 the April 12 public hearing. The Planning Commission needs to
28 expedite its recommendation to the Board of County
29 Commissioners as soon as possible.
30
- 31 • Gustavson – Supports option #5 presented by Byron Harris.
32
- 33 • D. Flynn – Not sure the County has the option of adopting
34 Harris' approach. Also thinks an additional work/study session
35 is unnecessary since the Planning Commission has heard the
36 presentation on ULCA at least three times.
37

38 Discussion was held between Planning Commission members about
39 whether or not they need a work/study prior to the April 12 public
40 hearing. Baker will determine if the Harris option can be adopted by
41 the County.** He also will define the Planning Commission's roll in

1 the ULCA process.** It is important that the Planning Commission
2 decides on a more specific option instead of several options as
3 proposed.

4
5 E. Baker - Explained the need for Planning Commission involvement,
6 stating there are a number of options to be presented to the Board of
7 County Commissioners. The Board needs the Planning
8 Commission's assistance as it moves forward with a decision. DCD
9 will most likely compile its major recommended option. The County
10 has employed a consultant, Mark Personius. A question was asked if
11 a free analysis has a greater/lesser importance that a paid
12 consultant.

13
14 It was determined that there would be no work/study prior to the April
15 12 public hearing. The Planning Commission unanimously agreed.

16
17 11:20 AM – No further business being heard, a motion was made by
18 Lary Coppola and seconded by John Ahl that the meeting be
19 adjourned. Motion carried.

20

21 Exhibit No.	Description
22	
23 A.	March 22, 2005 Agenda
24 B.	March 22, 2005 Legal Notice
25 C.	Draft Short Subdivision Ordinance
26 D.	Draft Proposed Kitsap County Code 27 Amendments
28 E.	Email note from Tom Nevins – will not be 29 attending the Mar. 22, 2005 public hearing
30 F.	Email note from Ian and Shelly Laughlin, 31 dated March 7, 2005, regarding View 32 Blockage Code change
33 G.	Email note from Ian and Shelly Laughlin, 34 dated March 7, 2005, regarding View 35 Blockage Code change
36 H.	Email note from Eric Baker to Chris Endresen, 37 Cindy Baker and Ian and Shelly Laughlin 38 dated March 8, 2005, regarding View 39 Blockage Code change
40 I.	Email note from Mark Flynn to Holly Anderson 41 regarding Planning Commission retreat and

Kitsap County Planning Commission – March 22, 2005

- 1 joint meeting with the Board of County
- 2 Commissioners
- 3 J. Sign-in sheet for the Planning Commission
- 4 March 22, 2005 public hearing
- 5 K. Draft retreat agenda prepared by John Ahl
- 6 for distribution to Planning Commission
- 7 members and Board of County
- 8 Commissioners for comments (Holly
- 9 Anderson reformatted the document and
- 10 sent it out to each member plus the Board of
- 11 County Commissioners for review and
- 12 comments)
- 13 L. Vivian Henderson's hand-out giving definition
- 14 of moral
- 15 M. Vivian Henderson's hand-out – US Supreme
- 16 Court Collection, Dolan v City of Tigard
- 17 N. Vivian Henderson's hand-out – *Protection of*
- 18 *Critical Areas and the Mythology of Buffers* By
- 19 Alexander W. (Sandy) Machie
- 20 O. Deborah Flynn's hand-out – Newspaper
- 21 article "*Only thing developed by Measure 37*
- 22 *is a headache*" published March 6, 2005, *The*
- 23 *Oregonian*
- 24 P. Michael Gustavson hand-out – *Cross*
- 25 *Direction and Confusion in Development of*
- 26 *Critical Areas Ordinances*

27
28 Minutes approved this _____ day of _____, 2005.

29
30
31
32 _____
33 Mark Flynn, Chair

34
35
36 _____
37 Holly Anderson, Secretary