

MINUTES
KITSAP COUNTY PLANNING COMMISSION
October 25, 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: Monty Mahan, Deborah Flynn, Tom Nevins, John Ahl, Lary Coppola, Dean Jenniges, John Taylor, Frank Mahaffay and Mike Gustavson. Staff Present: Eric Baker, Jim Bolger, Patty Charnas and Acting Planning Commission Secretary Brynan Pierce

9:00 AM

- A. Chair Monty Mahan called the meeting to Order and introduced the Planning Commission members present.

Approval of Minutes

August 23, 2005 Minutes

A motion was made by Dean Jenniges and seconded by John Taylor that the August 23, 2005 minutes be approved. Motion carried unanimously.

- B. **Work/Study**

Discussion and review of the second draft of the Critical Areas Ordinance

- Chair Mahan – The Planning Commission has been given a lot of information as a result of 12 to 16 hours of public testimony, some being duplications. He asked his fellow commissioners if they had the opportunity to go through all of the documents. He suggested that if not, they could recuse themselves from the deliberations. Further, given there are nine Planning Commission members, Chair Mahan handed out a written suggested procedure to allow everyone who wished to, time to voice their issues.
- Dean Jenniges - Recommended that each commissioner give a summary of their position on the document and how they

1 thought the Planning Commission should proceed. Dean
2 brought out a position paper and identified all of what he felt
3 was Important.
4

5 A motion was made by Jenniges and seconded by Michael
6 Gustavson that each Planning Commission member is allowed 4-5
7 minutes to state their comments.
8

9 An amended motion was made by Tom Nevins and seconded by
10 Michael Gustavson to limit each member's time to two minutes. THE
11 VOTE: For-9; Against-0. Amended motion carried unanimously.
12

- 13 • Chair Mahan – Asked that they go in order starting with those
14 who have been on the Planning Commission the longest.
15
- 16 • John Ahl – Thought the proposed changes are good ones
17 overall and they offer more protections and thinks there are
18 minor changes and expressed concerns regarding legal
19 challenges, takings and constitutional changes are not
20 appropriate for consideration by the Planning Commission. He
21 thought they should recommend approval with minor changes.
22
- 23 • Deborah Flynn - Agreed with John Ahl. She was concerned that
24 the Planning Commission members would go through and
25 make changes but then vote against the draft ordinance instead
26 of recommending it after working so hard. She believed the
27 ordinance to be complicated but flexible. People have been
28 asking for site specifics. She was willing to move the draft
29 forward with many recommended changes.
30
- 31 • Lary Coppola - Had many concerns. The question he asked staff
32 to answer relative to the value of the land rendered unusable
33 due to setbacks and buffers was treated arrogantly by staff and
34 he thought it is illegal to require these at all. Next he had a
35 question about the buffers. Staff has not yet answered the
36 question. Who defines reasonable and enhanced? Coppola
37 continued on with: 1) Where is the justification for Best
38 Available Science (BAS); 2) What is BAS? He believes it is
39 whatever supports staff's view; 3) who determines the
40 flexibility? 4) Constitutionality is not the Planning
41 Commission's job. 5) Wants to see specific recommendations

1 brought back to the Planning Commission by staff. If asked to
2 vote now, Coppola would vote against the new draft and keep
3 the existing ordinance the way it currently reads.
4

- 5 • **Mike Gustavson-** Stated when the Board of County
6 Commissioners reviews the documents, they are to listen to
7 staff, public and the Planning Commission members. Decision
8 will not be made by the Planning Commission but by the
9 Hearings Examiners. Science cannot be brought in later after
10 the Planning Commission has deliberated. The Planning
11 Commission has a weighty job and suggests starting off by
12 attacking the hard problems, what wildlife to consider, the
13 concept of the buffers and the function of the wetlands.
14
- 15 • **Nevins -** Believed the second draft is a step forward to protect
16 critical areas. He suggested a few changes and commented that
17 he did not wish to have this work/study turn into a
18 philosophical debate. He reiterated that the counties are
19 directed by law to protect the critical areas which are already
20 defined. If the Planning Commission members move forward,
21 by the end of the day they may have 30 or 40 suggestions.
22
- 23 • **Chair Mahan-** Thought there were strengths and weaknesses of
24 draft ordinance. There has not been enough public involvement.
25 The Planning Commission has been looking at a process with
26 BAS and there is some range of subjectivity. Several speakers
27 have pointed out flaws in the BAS analogy. One good strength
28 of the second draft is flexibility. He agreed with Deborah Flynn
29 in that the Planning Commission should not spend time over-
30 analyzing the little issues. Takings is for the courts to decide,
31 not the Planning Commission.
32
- 33 • **John Taylor-**For the record, he stated he was not in attendance
34 at the October 18, 2005 meeting. He referenced back to the
35 September 22, 2005 public hearing where four people were in
36 favor of the draft ordinance and 31 were against it. Taylor has
37 concerns with the community now being divided. He feels
38 strongly that government should not be in charge of people's
39 property but this is what is happening with the setbacks and
40 buffers. The outcome limits what people can do with the
41 property they purchased. Taylor submitted for the minutes a

1 portion of an article dated October 10, 2005. The article
2 comments on a huge land preservation act where the Union
3 River runs through. The property owners are happy with 50-foot
4 setbacks. His big concern regards dividing the community's
5 citizens against each other. 100% agreement is not attainable.
6

- 7 • Dean Jenniges – The analogy he would use for the second draft
8 of the CAO is like winning a game. A win based on scoring is
9 one point or 30 points. The draft should be a one point win but
10 is formulated for a desired 30 point win. The larger point
11 spread the greater the perceived protection. The regulations in
12 this document are far and above what is needed by the county
13 or a one point win. Jenniges does not believe those speaking
14 against the second draft desire to destroy or contaminate the
15 air, water, aquifers, streams, wetlands or forest conditions.
16 Based on much of the input the underlying concern is that the
17 document is rife with problems of interpretation a presupposed
18 Best Available Science.
19
- 20 • Gustavson - There was no effort made for streams and
21 wetlands. There are too many subjective terms. People with
22 similar properties are being treated different. He has focused
23 on legal and written and some of these statements are defining
24 voluntary things. Following BAS is the fact that there is
25 something stated about science. He read in-depth the Critical
26 Area Ordinance BAS. The people challenging the County's
27 source have credibility and in turn are challenging the new
28 CAO. He thinks the document is in dire straits.
29
- 30 • Frank Mahaffay-Feels there was not enough public participation
31 and too much regulation. Dedication is a powerful word that is
32 not defined. There have been many attorneys working on this
33 draft and he questions some of the legal terms. The Planning
34 Commission has a duty to the citizens to eliminate the legal
35 issues. Mahaffay does not feel the Planning Commission is
36 following the State's mandate. There will be biased science that
37 is apparent in each science opinion there are different sized
38 buffers. Having a long list of specific concerns he would vote to
39 send the document back to staff and use the original document
40 until all issues are resolved. He recommended to the other
41 members of the Planning Commission that they vote the

1 ordinance down until staff can prove issues such as BAS. He
2 feels that the ordinance is terrible and it affects citizen's rights.

3

- 4 • Ahl - Having listened to all comments, he said that basically the
5 Planning Commission cannot modify the document before us.
6 The job becomes too hard. He felt the Planning Commission
7 should go ahead and vote on the draft ordinance. Some of the
8 issues being requested are impossible. The message Ahl is
9 receiving from the majority of the Planning Commission is that
10 the second draft is such a flawed document that it is unfixable.

11

12 A motion was made by Tom Nevins and seconded by Deborah Flynn
13 to forward the Critical Area Ordinance, Draft two, to the Board of
14 County Commissioners, as written, for their approval.

15

16 Discussion

17

- 18 • Gustavson-Feels by doing this, the Planning Commissioners
19 will lose their role as voices for the citizens. Also, the mention
20 of wildlife earlier, protection of wildlife habitat is part of the
21 second draft. The protections described in the second draft
22 primarily talk about water. The ordinance also talks about
23 animals that do not live in water. If we are going to protect the
24 habitat, we will not be able to build at all.
- 25
26 • Jenniges-The original intent is not to harm endangered species,
27 rather have animals adjust to their habitat. Jenniges was
28 impressed with Karl Duff's work and feels the Planning
29 Commission should not go forward at this time because the
30 document is flawed and there is not enough scientific
31 information.
- 32
33 • Mahaffay-Agrees with Gustavson and Jenniges and feels there
34 is no need to push this document through regardless of what
35 the Board of County Commissioner's letter had said. And
36 believes if this document is pushed through, there may be legal
37 action taken in the future.
- 38
39 • Taylor- Would like the signed letter from the Planning
40 Commissioners responding to the Board of County
41 Commissioners submitted for the record. In regards to the

1 motion on the floor, Taylor would like to make it clear to the
2 County staff; the CAO is not a personal attack on the
3 Department.
4

- 5 • **Gustavson-Suggested the Planning Commissioners submit**
6 **their individual questions and concerns to the DCD staff to re-**
7 **write the second draft of the CAO.**
8
- 9 • **Mahaffay-Stated at the last Public Hearing there were many**
10 **people in support of not having anymore regulations.**
11
- 12 • **Flynn-Feels there is ambiguity in the second draft, as well as**
13 **the first. If Flynn is to support the motion, it would not be**
14 **because of the letter the BOCC sent to the Planning**
15 **Commissioners.**
16
- 17 • **Coppola-Does not believe there has been room for compromise**
18 **because the document has been crammed down the throats of**
19 **the Planning Commissioners and believes that is wrong. If the**
20 **Planning Commissioners sit down and decide what there goals**
21 **are, they may be able to have a productive meeting and**
22 **outcome.**
23
- 24 • **Jenniges-Recommends the staff going back through the**
25 **document to input scientific documentation.**
26
- 27 • **Nevins-Feels by submitting individual changes, an acceptable**
28 **document will not be produced.**
29

30 **Coppola called for the question: All those in favor of moving the**
31 **document forward as is. MOTION FAILED**
32

- 33
- 34 • **Chair Mahan-Asked the Planning Commissioners if anyone had**
35 **a similar motion that may carry.**
36
- 37 • **Flynn-Suggested reviewing some amendments and forwarding**
38 **those with the Planning Commission’s minority report.**
39
- 40 • **Coppola- Suggested looking over the areas agreed upon.**
41

- 1 • **Ahl-If we focus on the document rather than anything else, we**
2 **may get somewhere.**

3
4 **10 minute Break**

- 5
6 • **Ahl- Heard some of the Planning Commissioners will not be**
7 **available the next day and would like to come to some sort of**
8 **agreement today.**
9
10 • **Jenniges-Does not think individually going over the document**
11 **will work because it has been done before and no changes were**
12 **made and asked what staff’s deadline was.**

13
14 **Eric Baker-Understands the Board of County Commissioners have**
15 **the intentions to move forward with a public hearing the first week of**
16 **November with a Planning Commission recommendation.**

- 17
18 • **Jenniges-Asked Baker if there are changes made, will there**
19 **have to be public testimony.**

20
21 **Baker- No, the Board will have there own public hearing.**
22 **Discussion regarding the Planning Commission recommending**
23 **changes to the second draft and DCD staff implementing a third draft**
24 **for the Planning Commission.**

- 25
26 • **Jenniges- Asked what the benefit of the Planning Commission**
27 **putting together a second document when the BOCC will hear**
28 **everything we have.**

- 29
30 • **Mahaffay-If the BOCC goes forward and accepts the Planning**
31 **Commissions changes, they do not have to hold a public**
32 **hearing.**

- 33
34 • **Gustavson-Feels the board is out of order by setting a public**
35 **hearing date without having the Planning Commissions**
36 **recommendation.**

- 37
38 • **Mahaffay-Asked if the Planning Commission could send the**
39 **vote of the existing CAO to the BOCC.**

40

1 E. Baker-The Planning Commission has the ability to adopt a series
2 of changes to the second draft which could revert back to the
3 existing CAO.

- 4
- 5 • Coppola-Does that mean yes?
- 6

7 E. Baker-Yes.

- 8
- 9 • Taylor- To my understanding we are not recommending
10 anything be forwarded to the BOCC.
- 11

12 Jenniges-Made a motion that DCD replace all of the subjective
13 terminology with non-subjective terminology implementing the
14 specific changes from scientists and citizens into the second draft of
15 the CAO. John Taylor seconded.

- 16
- 17 • Taylor-Noted he seconded to have discussion. The BOCC has a
18 public hearing in 10 days and feels the motion is impossible.
- 19
- 20 • Mahaffay-Feels the motion is good, in a sense, but would rather
21 not accept draft two and recommend the BOCC not take any
22 action.
- 23
- 24 • Gustavson-Suspects everyone has put everything in writing
25 and would like to make an amendment to take all of the written
26 comments from the Planning Commissioners and redraft the
27 ordinance or a draft three. Gustavson believes the county will
28 be found out of compliance if they decide to move forward with
29 the existing draft and would like to continue working.
- 30
- 31 • Mahaffay- Thinks Gustavson's suggestion in good, but does not
32 believe that will define the problem.
- 33
- 34 • Flynn-We don't go to the Hearings Board unless someone
35 challenges what is approved, so we should not assume we will
36 be found out of compliance and does not feel removing the
37 subjective language will do anything because the context is still
38 there and would vote against the language.
- 39
- 40 • Jenniges-The intent of the motion is to make DCD take public
41 testimony into consideration. Subjective terms was used

1 because a citizen misinterpreted something from the county.
2 Don Flora's paper reads 6ft buffers are just as effective as 300 ft
3 buffers. Jenniges recommends disagreeing with the buffers in
4 the draft.

- 5
- 6 • Mahaffay-We have a current CAO that was challenged. We
7 would be better to not move forward with any changes.

- 8
- 9 • Nevins-We need to pass something that is in compliance with
10 the GMA.

- 11
- 12 • Chair Mahan-Reminded the commission that the motion on the
13 table is not what is being discussed.

14

15

16 Jim Bolger-Informed the Planning Commissioners that staff will not
17 have a third draft of the CAO and if there are recommendations, they
18 need to be brought to the table today.

- 19
- 20 • Jenniges-Withdrew his motion, but recommends looking at the
21 Snohomish County Critical Areas Ordinance because it had
22 passed judicial periods and he would recommend bringing
23 forward the Critical Area regulations from Snohomish County
24 as an alternative.

- 25
- 26 • Chair Mahan asked for clarification if that was a motion or not.

27

28 Jenniges made a motion that the second draft of the Kitsap County
29 CAO be set aside so the Planning Commission can propose the
30 acceptance of the Snohomish County chapter 30.62 critical area
31 regulation.

- 32
- 33 • Ahl-Thought the Planning Commission was going around the
34 table to discuss what we agree on.

- 35
- 36 • Chair Mahan-Asked how many changes would the members
37 have to make to forward a recommendation to the BOCC. It
38 could be a number or a statement.

- 39
- 40 • Coppola-Asked Bolger if it is correct that there will not be a
41 third draft regardless of what the Planning Commission does.

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Bolger- That is correct.

- **Coppola-If the Planning Commission recommended not to approve this draft and sent it to the BOCC, is there still not a third draft?**

Bolger-No. There will be a staff draft and a draft from the Planning Commission, but not a third draft.

- **Coppola-Asked why his time was being wasted.**
- **Mahaffay-Is offended after all of the changes that have been proposed have been ignored and agrees with Coppola when he said the document has been crammed down the throats of the Planning Commissioners.**

Bolger-You have the ability to make changes today.

- **Coppola-Asked why previous recommendations were not implemented in the draft.**

Bolger-Stated staff decided recommendations may not have been appropriate at that time.

- **Nevins-Stated Frank Mahaffay may not have been aware that the process has been going on for the past two years and a substantial amount of public testimony has been swayed into the second draft. There will not be a third draft. We can make recommendations only. Just because we think something is a good idea, it does not mean it will be voted upon.**
- **Flynn-In an effort to do what Lary suggested, Flynn spent a lot of time on the aquifer recharge areas making some changes which staff had agreed were acceptable. All of the Planning Commissioners have a copy.**

Flynn motioned to consider amending the critical aquifer recharge areas as drafted. Tom Nevins seconded.

- 1 • **Coppola-Needs clarification from Jim Bolger when he said**
2 **changes were not acceptable by staff at the time.**
3
4 • **Chair Mahan-Suggested each Planning Commissioner state**
5 **about how many changes it would take them to be able to have**
6 **a recommendation.**
7
8 • **Coppola-Asked Bolger for clarification as to the Planning**
9 **Commission not having a third draft.**

10
11 **Bolger-Stated that was correct, but there will be a staff draft.**

- 12
13 • **Coppola-Feels this is a waste of the Planning Commissioner’s**
14 **time.**

15
16 **Bolger-If there are any changes that the Planning Commission would**
17 **like to see, they need to be brought up today.**

- 18
19 • **Mahaffay-Is offended by not having a third draft and also**
20 **believes the Planning Commission is wasting their time.**

21
22 **Bolger-Told the Planning Commission they have the ability to make**
23 **changes right now.**

- 24
25 • **Mahaffay-Asked Bolger why previously requested changes**
26 **were not made.**

27
28 **Bolger-Stated at the time they were requested staff may not have**
29 **found them appropriate.**

- 30
31 • **Coppola-Feels what staff feels is appropriate is what they will**
32 **get.**

33
34 **Bolger-For deliberation today, yes.**

- 35
36 • **Coppola-Asked what the point was.**

37
38 **Bolger-Stated the point was for the Planning Commission to make**
39 **their recommendations.**

40

- 1 • Chair Mahan-Suggested reverting back to his written
2 suggestion procedure.

3
4 Flynn withdrew her motion.

5
6 Coppola-Made a motion to have the Planning Commission draft sent
7 directly to the Board of County Commissioners without letting staff
8 see it. Mike Gustavson seconded.

9
10 Baker-All staff is doing is compiling the motions for the Planning
11 Commission.

- 12
- 13 • Mahaffay-Potentially staff will take draft two to the Planning
14 Commission and a third draft will be brought to the Board.
 - 15
 - 16 • Gustavson-Asked if the Board of County Commissioners can
17 not choose either draft.
 - 18
 - 19 • Mahaffay-Yes and they will prolong their deliberation.
 - 20
 - 21 • Flynn-Has recommendations but cannot see voting for the
22 motion as is.
 - 23
 - 24 • Jenniges-Believes because of the changes necessary to be
25 acceptable, he proposes a Planning Commission draft, should
26 be the one from Snohomish County.
 - 27
 - 28 • Gustavson-We just need to give our vote on each section of the
29 document. We have a job to do for the citizens. The changes
30 voted on will be the proposed Planning Commission draft.

31
32 Chair Mahan-Asked all of the Planning Commissioners how many
33 changes each would have to propose to have a recommendation.

34
35 Chair Mahan-Would like to revert back to his procedure.

- 36
- 37 • Ahl- Made a motion to add the paragraph *Buffers dedicated as*
38 *permanent open space tracks will qualify for the open space tax*
39 *program and will be automatically entered into that program by*
40 *the county unless expressly declined by the property owner.*
41 Under section 19.200.255.Gustavson-Seconded

1
2 Flynn-Made a motion to amend the aquifer recharge areas as handed
3 out. Mike Gustavson seconded.

4
5 The VOTE: Yes-9 No-0
6 Motion carries.

- 7
- 8 • Ahl-Would support the changes because Deb has experience
9 and knowledge to make acceptable changes and would not like
10 to debate about motion.
11
 - 12 • Gustavson- Made three friendly amendments to Flynn’s motion.
13 1. The term LOSS is not defined and would like staff to define
14 that in the draft. 2. Wastewater disposal wells needs to be
15 defined. 3. A map of the critical recharge areas be shown.
16 Jenniges seconded.
17

18 The VOTE to the amended motion: Yes-9 No-0
19 Motion carries unanimously

- 20
- 21 • Jenniges has significant problems with the words highly
22 susceptible because everything could be highly susceptible.
23
 - 24 • Gustavson-Made an amendment to add the words *listed in table*
25 *five* of Flynn’s motion Category II line 40. Lary Coppola
26 seconded.
27

28 The VOTE to the amended motion: Yes-9 No-0

29
30 Jenniges-made a motion to remove the words *significant* and *highly*
31 from the aquifer recharge areas in sections 3 A-3 E. Mike Gustavson
32 seconded.

33
34 The VOTE: Yes-4 No-4 Abstained-1
35 The motion fails.

- 36
- 37 • Mahaffay-made a friendly amendment to section 19.600.615 to
38 add the words *all stakeholder groups* under B. Mike Gustavson
39 seconded.
40

- 1 • Chair Mahan-Needs clarification on who the stakeholder groups
2 include.
3
4 • Mahaffay-They include: Kitsap County Association of Realtors,
5 Kitsap Alliance of Property Owners, Citizens for Responsible
6 Planning, the Home Builders Association, the Puget Sound
7 Action Team and Futurwise and many more environmental
8 groups.
9
10 • Nevins-Believes this can be fixed by classifying section
11 19.600.615, Development Review Process Standards, as a type
12 two process which automatically requires interested parties to
13 be notified.
14
15 • Mahaffay-Withdrew his motion.
16
17 • Flynn-Stated when she added the words *affected parties* that
18 included stakeholder groups.
19
20 • Chair Mahan-Does not believe that would cover stakeholder
21 groups.

22
23 **Gustavson-Made a motion to include the words *and interested* under**
24 **section 19.600.615 B. Mahaffay seconded**
25

- 26 • Mahaffay-Asked staff if adding *and interested*, a mailing will go
27 out to all interested parties.
28

29 **Patty Charnas-Yes it will.**
30

31 **The VOTE: Yes-9 No-0**
32 **Motion carries unanimously.**
33

34 **The VOTE:**
35 **All in favor: Yes- 9 No- 0**
36

37 **Question was called for Flynn’s original motion as amended.**

38 **The VOTE: Yes-8 No-0 Abstained-1**

39 **Motion Carries**
40

41 **BREAK**

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- Coppola-Made a motion to change the words *one year* to *60 months (5 years) of such damage*. And the words *and is substantially completed within 18 months of the date such damage occurred* will be removed under section 19.100.130 A. Existing Nonconforming structures number 4. Taylor seconded.
- Ahl-Asked for clarification on which numbers were being changed. And asked if 5 years was pushing the time out too far.
- Taylor-Stated that was the maximum time.

The VOTE: Yes-9 No-0
Motion carries unanimously.

Coppola-Made a motion to change the number *ten* to the number *60* under section 19.100.145 B. Appeal Process number 1 and number 2. Frank Mahaffay seconded.

- Mahaffay-Asked Baker where in the appeal process are the guidelines because it costs developers a lot of money to appeal.

Baker-If you want it to apply to a critical areas appeal, yes. If you want to apply to other appeals, it would be title 21 of the zoning code.

- Ahl-Asked for clarification if the days are working days or calendar days.
- Taylor-Feels 10 days is too short and 60 days is too long. Taylor amended the motion to 30 days instead of 60 days. Flynn seconded.

The VOTE: Yes-4 No-3 Abstained-2
Motion Failed.

- Flynn-Is in an appeal and still believes 10 days is too short and 60 days is too long because the applicant is held up for those 60 days.

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- Taylor-Does not feel it is fair to the applicant.
- Coppola-Amended his motion for 10 days to read 30 days.

The VOTE: Yes-9 No-0
Motion carries unanimously

Gustavson-Made a motion to add the paragraph *Kitsap County shall offer to purchase or lease critical areas using property taxes collected as conservation futures as authorized under the RCW.*
Frank Mahaffay seconded.

- Nevins-Asked if this proposed purchase includes just the wetland and associated buffer or all of the property.
- Gustavson-That is a negotiation between the seller and the buyer, but is intended for the critical areas.
- Chair Mahan-Has a problem with the word shall.
- Gustavson-Made an amendment to his motion changing the word *shall* to *may*.
- Ahl-Feels the critical areas need to be regulated to trees and buffers.
- Nevins-Needs clarification of the value.
- Gustavson-This focuses the Commissioner’s attention on conservation future.
- Taylor-Would like to hear staff’s comments.

Baker-My question would be what in addition does it give the county that the county does not do now? It seems more informational. Staff sees little difference between current policy and this motion.

- Flynn-Thinks it would be beneficial to eliminate reasonable use exceptions being declared.

1
2 Baker-The County looks to obtain relatively useful pieces of property.

3
4 The VOTE: Yes-9 No-0
5 Motion carries unanimously.

6
7 Nevins-Made a motion to eliminate the words *by the affected*
8 *applicant or affected party* from section 19.100.145 A. Appealable
9 Acts 1, 2, and 3; and somewhere add these decisions are type II,
10 staff can determine where that can be. Deb Flynn seconded.

- 11
- 12 • Mahaffay- Has a problem because an appeal process is very
13 expensive to an applicant.
 - 14
 - 15 • Coppola-Does not like the fact that this opens appealing up to
16 anyone who feels like they need to. There have been enough
17 people appealing who didn't have any business to.
 - 18
 - 19 • Gustavson-Would support the motion with the amendment that
20 the losing party pays for all costs associated to appeals.
 - 21
 - 22 • Ahl-Is worried that the Planning Commission is getting into a
23 legal area.
 - 24
 - 25 • Flynn-There are fees to an appeal and to the average citizen that
26 is a lot of money.
 - 27
 - 28 • Nevins-We are not talking about a full blown GMA Hearings
29 Board appeal with lawyers on both sides. We are talking about a
30 Kitsap County hearing officer where you pay \$200.00 to speak
31 and that decision is made. If there are costs beyond that I am
32 not aware of them.
 - 33
 - 34 • Mahaffay- By opening this process up we are allowing people to
35 come after us.
 - 36
 - 37 • Coppola-Has a problem with the fact that the approval process
38 has been used to delay all of the time. By opening the door to
39 anyone except the affected parties, it is a mistake.
 - 40

- 1 • Taylor-Recently filed an appeal and paid the \$200.00 which he
2 feels is his cost to speak. Taylor is not in favor of the losing
3 appealer paying all of the costs.
4

5 The VOTE: Yes-4 No-5
6 Motion failed.

7
8 The VOTE to Nevins original motion: Yes-2 No-7
9 Motion failed.

10
11 Baker-At one of the last work/study sessions, the Planning
12 Commission requested a presentation from one of the water
13 purveyors and we have one of the representatives here. Is there a
14 need for him today?

- 15
16 • Chair Mahan-No.

- 17
18 • Chair Mahan-Was impacted by testimony regarding the lack of
19 measurement that shows current buffers are not adequate.
20 Also, regarding BAS, I do not believe there has been a case
21 made showing the current buffers are not adequate.
22

23 Chair Mahan made a motion that the wetland buffers and the fish and
24 wildlife base buffer widths remain at the current critical areas
25 ordinance levels. Lary Coppola seconded.
26

27 Greetham-The original 25-100 ft buffers on streams and the 25-200 ft
28 buffers on wetlands can be reduced by 25%. Under the second draft,
29 the stream buffers are reducible to up to 50 ft.
30

- 31 • Mahaffay-made a friendly amendment to totally eliminate the
32 setbacks on buffer requirements.
33

- 34 • Gustavson-There are a tremendous amount of “mays” in the
35 RCW. There are no references to buffers in wetlands or fish
36 and wildlife sections in the RCW chapter 36.78. IF there was no
37 buffer language, property owners would have all different
38 looking canopies. We need to eliminate the term buffers.
39

40 Gustavson-Made a motion to delete the word buffers in the Critical
41 Areas Ordinance and replace with the words vegetative building

1 setbacks. And have 35ft as building setbacks. This takes care of a
2 lot of issues. Mahaffay seconded.

- 3
- 4 • Jenniges-Agrees with eliminating the term buffer, but changed
5 to habitat setback. Then there will be a building and habitat
6 setback. Jenniges offered a friendly amendment changing
7 category I to 50, category II to 25, category III to 15 and category
8 IV be 5.

9
10 No second.

- 11
- 12 • Taylor-Asked staffs thoughts on changing the word buffer to
13 setbacks.

14
15 Greetham-Changing to a setback would imply that it is no longer a
16 non-clearing zone. It is just a construction setback from the future.

- 17
- 18 • Flynn-Is going to vote against having 35 ft setbacks will not
19 protect the critical area. There was a lot of critical testimony
20 stating 35ft is not adequate for protecting the Hood Canal.

- 21
- 22 • Gustavson-Added to his amendment *vegetated* building
23 setback.

- 24
- 25 • Chair Mahan-Will vote against the amendment.

26
27 The VOTE: Yes-4 No-4 Abstained-1
28 Motion failed.

- 29
- 30 • Jenniges-Asked for clarification on Chair Mahan's motion.
 - 31
 - 32 • Chair Mahan- It is to go back to the original base buffers.
 - 33
 - 34 • Jenniges-Disagrees because 100 ft is excessive.
 - 35
 - 36 • Gustavson-We have not spoken about site potential tree height.
37 The County's Best Available Science suggest 150 ft potential
38 tree height, when in fact, the timber people were told we do not
39 have viable timber countries because our trees do not reach
40 150 feet. Also, the science of the people who counted the large

1 wooded debris in the stream find the vast majority of it fall from
2 about 10 feet of the streams edge.
3

- 4 • Flynn-Is concerned that reducing buffer widths while
5 maintaining the flexibility of the new ordinance might make the
6 overall protection less than what it is in the original ordinance. I
7 would have to vote against the motion.
8
- 9 • Nevins-Had my motion passed, I would have been able to vote
10 for this. However, I will have to vote no for this.
11
- 12 • Gustavson-Currently, there are approximately 5,000 wetlands in
13 the county. We have many miles of stream and if you look at the
14 amount of acreage taken up by the buffers of the current
15 ordinance, we could easily be between 50-65% of the County
16 blocked up in buffers. The dear do not follow lines of a piece of
17 property. We are creating a bunch of tied up land.
18
- 19 • Mahaffay-Finds it interesting three pieces of science state the
20 current buffers are too much. A former Governor indicated the
21 buffers being proposed in this draft are way too large. I will
22 support Monty's motion.
23
- 24 • Taylor-Asked for clarification from the staff if the percentage
25 equation calculate into that?
26

27 Baker-Does not believe the proposal makes any modification to the
28 second draft's ability.
29

- 30 • Taylor-Asked if it is possible to subtract 50% from 100%

31
32 Baker- No. you could go up or down by 50% with the exception of
33 category 4 wetlands.
34

35 The VOTE: Yes-6 No-3
36 Motion carries.
37

- 38 • Taylor-Upon reading the text in section 19.100.150, he is very
39 concerned with putting something in the title that is a public
40 notice.
41

1 Greetham-This came from the 1995 CAO because citizens asked for
2 better notification of property buyers that there may be a stream or
3 wetland on their potential property.

- 4
- 5 • Mahaffay-Does the county pay for that recording of notice of
6 title?

7

8 Greetham-The notice of title is signed by the landowner when they
9 receive a permit then sent to the auditors. This is a minor fee that we
10 do not tack onto the building permit.

- 11
- 12 • Coppola-Made a motion to eliminate the sections 19.100.150
13 and 19.200.220 G. Coppola has spoken with a number of title
14 representatives and lenders. They believe there will be a
15 problem with title insurance companies and lenders with this on
16 the title. The county is putting themselves in the position for
17 lawsuits.

- 18
- 19 • Gustavson-Ron Templeton made good points stating wetlands
20 change over time and if dedication is compelled, the owner
21 cannot qualify for the income tax deduction granting a
22 conservation easement.

- 23
- 24 • Mahaffay-A lot of people think this is going to be a problem. We
25 will be putting mortgage companies at risk if their loans cannot
26 be approved. People will not be able to purchase homes in this
27 county. I would vote for this motion. In addition to Mike's
28 friendly amendment, I add an amendment that any section of
29 the ordinance that references the *Notice to title* it should be
30 eliminated including the appendix. Mike Gustavson seconded.

- 31
- 32 • Taylor-There have been consumers that did not know about
33 something because they did not read their title report and do
34 their own research. I feel it is wrong for us to try to correct their
35 mistake. It is basically buyer beware.

- 36
- 37 • Nevins-I believe the original motion would pass because I agree
38 with it. I agree with it because I'm not sure what it does to
39 protect critical areas.

40

- 1 • Ahl-I understand the reason for this is to protect the
2 unsuspecting buyer. My concern is how do you know if you
3 under calculate or over calculate? I would go along with the
4 motion because nothing is forever.

- 5
6 • Jenniges-As John said, there is a public disclosure form and I
7 believe this is already covered.
8

9 The VOTE to the amendments: Yes-7 No-1 Abstained-1

10 The VOTE to the motion: Yes-7 No-1 Abstained-1

11
12 **BREAK**

- 13
14 • Chair Mahan-Has to leave the meeting at 3:00 and needs to
15 hand the gavel over to Vice Chair Flynn. There is also a
16 continuance tomorrow. Chair Mahan is not available; nor is
17 Flynn or Coppola.
18

- 19 • Coppola-Is available Monday or Tuesday of next week.
20

- 21 • Mahaffay-Feels it is important to move forward for the citizens.
22

- 23 • Taylor-Is fine with next Tuesday, but is concerned with public
24 notification.
25

- 26 • Gustavson-That was discussed with staff and as long as it is
27 continuance, it is not a problem.
28

- 29 • Mahaffay-Legally, the Board cannot move forward without a
30 recommendation from the Planning Commission.
31

- 32 • Jenniges-Feels that the Board of County Commissioners will
33 take DCD's recommendations and run with them.
34

- 35 • Chair Mahan-Suggested to continue next week.
36

- 37 • Coppola-Would like to continue on Monday, October 31, 2005.
38

- 39 • Ahl-We need to do something or not do something. If we are
40 going to, it needs to happen today.

1 Jenniges-Made a motion to change the words *the department* to *the*
2 *property owner* under section 19.100.130 B. Danger tree removal.
3 And strike the rest of line 45 to 47. Also replace *the department* with
4 *the property owner* on page 9 line 1. And strike the rest of the
5 section. Lary Coppola seconded.

- 6
- 7 • Coppola-Feels there needs to be something that addresses
8 danger.
- 9
- 10 • Mahaffay-If a property owner calls DCD and says they have a
11 dangerous tree, DCD will be out to remove it as soon as
12 possible.
- 13
- 14 • Gustavson-Made a friendly amendment to Jenniges' motion that
15 the land owner be required to take substantiated photographs
16 for the removal of a tree. Jenniges seconded.
- 17

18 The VOTE to the amendment: Yes-6 No-0 Abstained-3
19 Motion carries.

- 20
- 21 • Flynn-Feels the language is fine. She has had arborists on her
22 property looking at trees that may need to come down and feels
23 it is beneficial to the property owner.
- 24
- 25 • Flynn-Asked staff if there is a permit required to remove a
26 dangerous tree.
- 27

28 Greetham- This is a notification process. The property owner would
29 call DCD to inform them of a hazardous tree.

- 30
- 31 • Coppola-Asked staff how long that process usually takes.
- 32

33 Greetham-Typically it is a site visit if the landowner or applicant
34 indicates it is urgent , staff will be out there as quickly as possible.
35 Within 1-3 days depending on the situation.

- 36
- 37 • Coppola-Does not want someone to go through a permit
38 process that may take 2 days, then the tree falls down that
39 evening.
- 40

41 Greetham-It is not a permit process, just a phone call notification.

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- Jenniges-Asked why citizens need to rely on the government to make life threatening decisions that can be taken care of by the citizens.

Greetham-The original intent was to make sure people were not cutting out a buffer that they may say was dangerous.

The VOTE to the original motion: Yes-6 No-3 Abstained-1
Motion carries

- Mahaffay-Made a motion to change the word *shall* to *may be* then deleting everything after the word tracts on line 14 under 19.300.315 number 9. Gustavson seconded.

The VOTE: Yes-9
Motion carries unanimously.

- Ahl-Has nothing further
- Flynn-Made a motion to 1. Delete *existing and ongoing* on the Related Uses and Activities Table number 1, which would mirror number 3 on the same table. 2. On number 9, change the S's under category II and III wetlands to X. And 3. Under number 16, changing the S under Category II wetland to X.
- Flynn-It seems that these uses are not commensurate with the other ones.

Baker-There are individuals who think we are too lagged on ongoing agriculture and some regulations should be imposed on.

- Jenniges-Feels the County is too strict on the agriculture.
- Nevins-Feels that there are problems with animals walking through streams.
- Coppola-We are getting off the topic.

The VOTE on motion 1: Failed
The VOTE on motion 2: Failed

1 The VOTE on motion 3: Failed

- 2
- 3 • Taylor-Made a motion to have a continuance on November 1,
 - 4 2005.

5

6 Discussion was held on who was available to attend a continuance

7 and on what day.

- 8
- 9 • Coppola-Made a motion to have a continuance on Monday,
 - 10 October 31, 2005. Mahaffay seconded.
 - 11
 - 12 • Gustavson made an amendment if there needs to be a
 - 13 continuance after Monday, it will go until Tuesday.

14

15 The VOTE: Yes-7 No-1 Abstained-1

16 Motion carries.

- 17
- 18 • Taylor-Made a motion to adjourn. Mahaffay seconded.

19

20 The VOTE: Yes-8 No-0

21 Motion carries.

22

23 C. No further business was being heard.

24

25 APPROVED this ____ day of _____, 2005.

26

27

28

29

30 _____

31 Deborah Flynn, Vice Chair

32

33 _____

34 Brynan Pierce, Secretary

35

36 EXHIBITS:

- 37
- 38 A. Newspaper article dated October 10, 2005 by John Taylor
 - 39 B. Suggested rules by Monty Mahan
 - 40 C. Motions by Mike Gustavson
 - 41 D. Legal Notice for October 25, 2005

- 1 **E. Agenda for October 25, 2005**
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- 3
- 4
- 5