KITSAP COUNTY PLANNING COMMISSION
PUBLIC HEARING
May 24, 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: Tom Nevins, Monty Mahan, John Ahl, Lary Coppola, John Taylor, Deborah Flynn and Dean Jenniges. Member Absent: Michael Gustavson. Staff Present: Eric Baker, Dave Peters, Jim Bolger, Arnica McCarthy, Robbyn Myers, Dave Greetham and Planning Commission Secretary Holly Anderson. Eight citizens from the public were in attendance.

9:00 AM

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

9:05 A.M.

Approval of Minutes

B. May 10, 2005 Minutes

A motion was made by Lary Coppola and seconded by Dean Jenniges that approval of the Planning Commission minutes of May 10, 2005 be tabled until the next regularly scheduled Planning Commission meeting. Motion carried.

C. Vacancy of Vice Chair Position

Due to the resignation of the 2005 Planning Commission Chair, Mark Flynn, Vice Chair Monty Mahan is now the new 2005 Chair. This creates a vacancy in the Vice Chair position. The Planning Commission Bi-laws, Rules and Procedures are silent to the procedure for filling this vacancy. At a previous meeting, Tom
Nevins was tasked with creating new language to amend the Planning Commission Bi-laws, Rules and Procedures to allow for replacement of the vice-chair vacant position.

A motion was made by Tom Nevins and seconded by Dean Jenniges that Under Section 7, Elections, of the Kitsap County Planning Commission Bi-laws, Rules and Procedures, the new language will read as follows: “Elections shall be held the first meeting of each calendar year. Any officer may, however, be removed at any scheduled meeting by a vote of a majority of the full Commission entered on record. In the case of a declared vacancy or of the resignation of the Chair, the Vice Chair shall automatically serve the remainder of the Chair's term of office. THE VOTE: For- Unanimous. Motion carried unanimously.

A special election will be held to elect a second Vice Chair to serve until the next regular election.

If the Vice Chair position is vacated, the office of Vice Chair shall be filled via a mid-term election at the meeting following the notice of vacancy or resignation.”

A motion was made by Dean Jenniges and seconded by Tom Nevins that Deborah Flynn be nominated as the Planning Commission’s 2005 Vice Chair. Commissioner Flynn accepted. THE VOTE: Motion carried.

C. Continuation of a public hearing to deliberate and make a recommendation to the Board of County Commissioners on the various Code amendments

Eric Baker - Reminded the Planning Commission members that they had previously made a recommendation on the first of six Code amendments that were the 2:1 lot ratio issue, leaving Code amendments 2-6 for deliberation and recommendation.

2. Urban Low Minimum Lot Width

Baker gave a brief review stating that currently in the Urban Low zone there is a minimum lot width of 40 feet that was instituted with the ULID-6, (McCormick Woods) Subarea Plan. This zoning was
intended to be ULID-6 centric because master planning was required within the boundaries of ULID-6 to provide active recreational opportunities, passive recreational trail systems, parking and other life safety and esthetic issues prior to any type of subdivision. However, when this was approved it was mistakenly implemented countywide, yet master planning is not required countywide. This Code amendment was intended to be for ULID-6 only but was erroneously applied countywide. Master planning is now allowed countywide. The county does have a performance based development standard allowing a developer to get down to 40-foot lot widths. Staff recommends that this error be corrected and that 40-foot lot widths are not permitted in Urban Low zones. The stakeholders involved in this change did not represent all of Kitsap County, only the McCormick Woods area. Consequently, staff is now receiving applications for 40-foot lots, for instance, from the Silverdale area causing consternation from Silverdale area residents who correctly object since they had no say in the creation of this section of the Code. This is basically a housekeeping issue based on process failure.

A motion was made by John Ahl and seconded by Dean Jenniges that the Planning Commission recommends approval to the Board of County Commissioners that the 40-foot minimum lot size be removed from Urban Low zoning.

Discussion

- Jenniges – Since urban low residential is not a lot of property, the esthetics can’t be maintained, even though this is urban, on a parcel this small.

- Lary Coppola – As with previous Code amendments, he expressed concern over an administrative decision being subject to interpretation. This could result in 40 feet becoming the standard versus allowing wider lot configuration. Concern is who on staff makes the determination. After Baker confirmed that approval will put the standard back to 60, not 40 feet, Coppola withdrew his objection.

Fred Depee – A member of the audience, said the Board of County Commissioners approved 40-foot lots, and that staff does not have a
problem with 40-foot lots because it just recommended approval on McCormick Woods North that is over half in 40-foot lots. These are very popular in urban areas. He recommended the Planning Commission leave Urban Low Residential zones at 40-foot lots. He noted this is width, not depth, being discussed.

- Jenniges– Believes that one lot for every five lots is not that significant of a move. Ramblers cannot be built on a 40-foot lot and ramblers are very popular in today’s market. 60 feet is esthetically better.

- Ahl – Sees no reason not to support staff’s recommendation in favor of the change.

- Nevins – explained that for every three lots you can get four homes. Can see places in UGAs where it might be helpful to have 40-foot lots possibly as a choice. If sewers and other basic urban infrastructure are available, he sees no problem to staying with the 40 feet.

- Flynn – After thinking about Planned Unit Developments, the standard for which is 40 feet and although allowing smaller lots promotes GMA regulations, 40 feet can still be obtained. She requested the dimensions for Urban Medium and Urban High zones and was told there are no lot requirements for either, one can go as small as desired. These two designations are generally intended for multi-family construction.

- John Taylor – Asked if there is a minimum lot size currently for any development in the Urban Low zones and was told it would be 2400 square feet or 40 X 60. Staff will be proposing 3600 square feet or 60 X 60 for single-family construction.

THE VOTE: For - Dean Jenniges, Monty Mahan, John Ahl; Against - Lary Coppola, Tom Nevins and Deborah Flynn. Motion failed for lack of majority. Since the vote is a tie, 3 for and 3 against, no recommendation will be made to the Board of County Commissioners on the Urban Low Minimum Lot Width Code Amendment.
3. View Blockage Process

Baker – Currently on shoreline lots, regulations are adopted via the Shoreline Management Master Program. The regulations apply to how far forward lot owners can build on their lots versus other homes on the shoreline. The designated line creates a boundary beyond which construction cannot take place. In certain circumstances, it is wiser to build beyond that line. A Conditional Waiver process has been established for people to construct their homes in front of the line. Prior to the Hearing Examiner process and the Procedures Ordinance, all Conditional Waivers were taken in front of the Board of County Commissioners. To go before the Board with each Conditional Use Waiver application is an onerous process; particularly since this process is counter-intuitive to the process in which all other land use applications are processed. Approval of the language before the Planning Commission today would remove approval by the Board of County Commissioners and make it a Type II Administrative decision by the Department of Community Development Director. With this new proposed process, a notice will be sent to property owners within 400 feet of the proposed site and will expedite the time for a builder to get a permit. Anyone can still appeal the waiver to the Board. It is important to note that the shoreline Condition Waiver will then be consistent with all other land use applications.

- Ahl – Questioned how many times per year is this an issue.

Baker – Approximately six to eight applications are processed per year.

- Jenniges – Mentioned a view blockage issue at Miami Beach in the Seabeck area. Apparently the surrounding neighborhood was unaware of the structure being build and he asked if there is any recourse as to how notification can be provided.

Baker - Type II applications are mailed out to the property owner and surrounding properties within 400 feet. This is more notification than provided by statutes when the matter goes directly before the Board of County Commissioners. Only the property owner and applicant are notified in this case. Additionally, no posting is associated with the Board of County Commissioners process.
Chair Mahan – Staff recommends a change to the current shoreline regulations to provide for a Type II Administrative process.

A motion was made by John Taylor and seconded by Lary Coppola that the Planning Commission accepts the staff’s recommendation to change the shoreline Conditional Use Permit to a Type II Administrative decision process.

Discussion

• Ahl – Not sure that this process should not have as much visibility as current process allows. Thinks shoreline construction draws attention of neighboring properties. Thinks that, in some way, it should be publicly heard.

• Jenniges– Agrees that the current process is cumbersome.

Baker – a Conditional Waiver cannot be obtained just because a homeowner wants one. They must meet four specific criteria. He reminded the Planning Commission members that the application can still be appealed to the Board of County Commissioners and that more notification occurs in the proposed process.

• Chair Mahan – These applications are usually very controversial and he does not think it appropriate for the Board to abdicate its responsibility for Shoreline Conditional Use Permits. He is not surprised that the Board is short of time in its public meetings since they have cut their meeting schedule in half. He is not sympathetic to that. He noted that these applications can be explosive issues and that it is a mistake to make the notification requirements less rigorous.

• Flynn – As a shoreline resident, she wants to be notified whenever there is development in her neighborhood. She thinks the proposed language shifts the burden so that if the person who is building on the shoreline wants to develop further out, they can do so easier. The procedure makes it more difficult for adjacent landowners because they have to file an
appeal rather than just going to a public hearing to testify. She
agrees with Mahan.

- Coppola – Asked about notification and was told that the
  applicant is required to transmit a letter to adjacent property
  owners on either side and sign an affidavit to that affect.

- Coppola – Agreed with Mahan and Flynn however he would like
to see the 400 foot notification notice be given instead of just
the property owners on each side of the site in question.

- Nevins – Also agreed with Coppola about additional notification
to neighbors other than the two adjoining properties.

Baker – Noted that the regulations only apply to the adjacent
property owners and that the other properties in the neighborhood
do not have standing regarding shoreline rights.

- Ahl – This may be the problem in that they should have
  standing because they are also very much affected.

Baker – The proposed new process will not necessarily make it
easier to obtain a Shoreline Conditional Waiver but will make it faster
in most cases. The burden of proof remains the same.

- Nevins – Referenced skinny lots running down to the shoreline
  and thinks the neighboring properties should have the right to
  weigh in on an application.

- Taylor – In favor of notifying the entire neighborhood because
  problems occur when surprises happen. However he was not
in favor of these applications going before the Board of County
Commissioners. Does not think the Board should be looked at
to make every decision that occurs in the County. That is what
staff is for and prefers dealing with issues at the lowest level
possible.

- Jenniges – Asked how often residents have complained about
  someone building a house adjacent to the shoreline.
Baker – While it is controversial and neighboring properties would prefer that new construction not impact their view in any way, staff does get comments in this regard. Shoreline regulations are very explicate as to the two neighboring properties having standing. Two of the last ten applications have been appealed. Questioned what would make the view blockage issue different from all other land use decisions that are of equal concern to neighboring properties.

- Jenniges – Questioned if a new home would be noticed by neighborhood until actual construction began.

Baker – The entire application process happens prior to any visual appearance of construction.

THE VOTE: To accept staff’s recommendation to change Shoreline Conditional Use Permits to a Type II, Administrative process For-Tom Nevins, John Taylor; Against – Chair Mahan, John Ahl, Deborah Flynn, Lary Coppola and Dean Jenniges. Motion died for lack of quorum.

Chair Mahan wished it stated for the record that part of the concern is the lack of notification to properties beyond the immediate neighbors.

4. Soil-Combining and Composting in Rural Areas

Baker - The original document was sent out some time ago and a revision distributed at the last hearing. Baker explained the practice of soil combining and composting where clearing debris is turned into a specific form for disposal. Given the burn ban issues in Kitsap County especially over the past five plus years and that burning is no longer allowed in the Urban Growth Areas, a problem exists as to how to dispose of the waste. There needs to be locations designated for soil combining and stump grinding to get rid of the debris. Currently, this practice is only allowed in industrial zones. Since this type of use requires a significant amount of property, Baker said it is difficult now and will become more so in the future, to locate these significant public services in the Urban Growth Areas. Members of the Public Works/Solid Waste Division and Puget Sound Clean Air Agency are present if anyone has any questions. The current proposal is to allow these two activities in certain rural zones with very clear development criteria. The criteria includes: 1) particular
size of the property, 2) must access directly off a County-maintained
ing right-of-way, 3) must provide a 50-foot natural vegetation buffer
around the perimeter of the property and 4) the property must be
adjacent to an Industrial zone. In other words, the criteria will only
apply to those properties already closest to Industrial zones where
these types of uses are already taking place. The proposed use must
additionally mitigate noise, odor, dust, light impacts, etc. and meet all
requirements of the Code. There is currently a shortage of soil-
combining and composting activities and likely to be more so in the
future. These uses need to be provided for while protections can be
made for the surrounding neighborhood. Baker thinks the
regulations proposed meet the delicate balance described.

- Flynn – Asked why the buffers are proposed to be reduced from
  100 to 50 feet.

Baker – Once regulations go as far as 100 feet for buffers, the benefit
of the activity needed is almost negated by the rigid buffer
requirements. He gave an example and said it is believed that the 50-
foot requirement can be achieved through a variety of ways.

- Jenniges – Asked about noise mitigation and if the applicant
can plant additional trees in the buffer area. Was told yes along
with native vegetation.

- Flynn — Asked for standards for noise and how noise from
  stump grinding will be eliminated. Neighborhood noises can be
  very disturbing from almost any noise-generated activity.

Baker – There will be strict noise requirements. Stump grinding must
be carefully located on a suitable parcel, for example, Hansville by
the dump, rural land near Pioneer Way and some additional land near
Highway 3. Also the hours of operation must be restricted likely after
a certain time limits plus holidays etc.

- Ahl – Referenced stump grinding on site and asked for
  clarification about the proposed use today.

Baker – Stump grinding entails bringing stumps onto the property,
then ground and chipped in one location. There are various reasons
why this cannot always be accomplished on site and this would provide a specific location for this activity.

- Taylor – Asked Baker if possibly the requirement of “must be adjacent to Industrial zone” is not a little too restrictive.

Baker – This is because the site must be near fire flow and like uses.

- Mahan – Asked Baker what the setbacks for industrial uses in Industrial areas are.

Baker – Building setbacks are roughly 25 feet from the property line and more in some cases for noise protection and he gave examples. Can be up to 50 feet if a business park is located next to a stump-grinding site.

- Chair Mahan – He is all for simplicity in the Code and asked if any thought was given to less of a buffer if on the property line next to Industrial and more of a buffer on the residential side.

Baker – This is going to be a Rural Residential or Rural Protection zone predominantly intended for single-family use. It is not intended to give away an entire buffer against one type of use not be able to get it back if the use were to change.

- Jenniges – Asked if any requests have been received for a stump grinding facility.

Baker – Yes, people have been looking for sites. Stump grinding is usually an accessory use to soil combining.

No further discussion being heard, a motion was made by Dean Jenniges and seconded by Deborah Flynn that the Planning Commission accepts the staff recommendation as stated. THE VOTE: For- unanimous. Motion carried unanimously.

5. Multiple Front Yard Setbacks

Baker – Reviewed this issue stating that as more and more properties are developed, the more difficult sites are coming into the County to be developed. In rural areas, there are many non-
conforming lots. Setbacks changed in the rural areas from 20 foot for front yards and 5 feet at the side and rear, to 50-foot front yard and 20 foot side and rear. On a 3 to 4 acre parcel this is not a big issue. However, on a corner lot, there are two front yards. The proposed regulations allow flexibility to work with topography, critical areas, etc. to reduce certain front yards from the 50-foot minimum or in urban areas from the 20-foot minimum, if appropriate. There may be instances where the entire 50 or 20 are not needed. An example would be a front yard that does not take access off of anything. Access involves parking issues. Areas where the County does not want to minimize setbacks would be on major arterials and collectors where the road may eventually be widened. Examples are Jackson Avenue and Big Valley. This will also provide flexibility to the Director, a request that has been made repeatedly by a number of applicants. Staff requests that the Planning Commission recommend approval of this Code change as written.

- Ahl – Questioned vested vacant lot setbacks.

Baker – The setbacks would actually be moved further down and regulations would indicate that if the property is less than one acre in size, utilization is allowed for 25, 5 and 5 setbacks and not the 50, 20, 20 and 20. This language would only apply to vacant land.

No further discussion being heard, a motion was made by John Taylor and seconded by Deborah Flynn that the Planning Commission accepts staff’s recommendation. THE VOTE: Unanimous. Motion carried unanimously.


Baker – For Urban Medium zones, multi-family is the expected development. As the market is leaning toward single-family lots, accommodation can be made for ten single-family sites in Urban Medium zones. Approval of the ULID-6 Subarea Plan altered this table countywide instead of just the ULID-6 area. Multi-family has parking underneath the structure, fire mitigation strategy, making the setbacks not as necessary. This is not available for single-family lots. Staff recommends returning the setbacks in place prior to adoption of the ULID-6 subarea plan and to improve consistency, the
minimum lot width will probably be 40 feet versus 60 feet. This is also the lot width for Urban Low zones.

- Jenniges – Agrees with changing the minimum lot size to 40 from 60 for single-family residential development in Urban Medium zones.

No further discussion being heard, a motion was made by Dean Jenniges and seconded by Tom Nevins that the Planning Commission concur with Staff’s recommendation to change the minimum lot size in Urban Medium zones for single-family construction to 40 feet from 60 feet. THE VOTE: For-Dean Jenniges, Tom Nevins, Lary Coppola, John Taylor and Deborah Flynn; Abstained-John Ahl. Motion carried.

No further discussion being heard, a motion was made by Deborah Flynn and seconded by Tom Nevins that the Planning Commission accepts Staff’s Code amendments as stated. THE VOTE: Unanimous. Motion carried unanimously.

Work/Study Session

1. Wetlands Section of the Critical Areas Ordinance, second public draft and Science Support document

Baker – This is the first discussion of the Wetlands section. The handout today is the same as found in the entire draft ordinance but is only the Wetlands Section, County Code Section KCC-19-200. He introduced staff members who would be presenting various portions of the Wetlands section.

Dave Greetham – Explained the current and newly proposed process. Update of the Critical Areas Ordinance is mandated by the GMA. Currently wetlands are protected with buffers. This will continue but the buffers are proposed to change in some areas. He explained the rating system in that there are four categories of wetlands, one being the highest value, four being the lowest. Currently, buffers are 25 feet on fours such as pastures, valleys, grazed agricultural pastures. Threes are typical alder forest, medium size wetland, not very high wildlife value with a 50-foot buffer at this time. Twos are large
Lastly, ones are the very pristine wetlands with 200-foot buffers at this time. The four-category system will continue but with more flexibility in the buffers based on site-specific conditions. Current flexibility includes the ability to request a 25% administrative buffer reduction, if needed. Buffers can be reduced up to 50% with Buffer Averaging, a process where the total amount equals up to 50% on one side and 50% elsewhere. First Greetham discussed changes and the proposed certification process (sample given today of Pierce County’s).

Robbyn Myers – Discussed the newly proposed rating system and how it affects the wetlands. Explained that the newly proposed rating system, as opposed to the original, looks at function rather than number of trees present, size of trees, amount of water present, and other items of this nature. The newly proposed system looks at three functions: 1) Water quality; 2) Hydrologic function or the ability to store or release water over time; and 3) habitat complexity or value for plant and animal species. This system is detailed and complex in nature and considers factors above and beyond the original rating system. Myers gave an overview of how it will work with the proposed flexible buffer system being proposed. As wetlands are rated, water quality and quantity is considered as is habitat. Much of the buffer flexibility revolves around habitat structure that is more detailed. This does consider number of trees, corridors, percentage of wetlands versus percentage of water in watersheds. It is basically a habitat based and derived buffer system. Myers discussed examples such population study to determine how Kitsap County would apply this new rating system and how the flexible buffer plan will work in Kitsap County. Seeing application might give people a better understanding of how it works. It is great science, very complicated, looking at potential and capability of water systems or wetlands on a watershed level. It also considers the type of land use and what actually exists in the wetlands.

Greetham – This is most likely why the Department of Ecology (DOE) is the State oversight agency for wetlands. The new system looks at what is actually happening on an individual’s wetland and property.

Dean – Asked how water quality is determined. He thinks that wetlands are actually swamps, Had two concern, the impacts: 1) to
the 2 ½ acre lot owners at Morgan’s Marsh; and 2) the entire Big Beef Valley’s homesteads in the lowlands. Has documentation that says 0 buffers are just as good as 100-200 foot buffers. These are the type of questions the public will ask at the public hearing and he thinks the public feels no one is listening to their concerns and that staff is using arbitrary numbers based on a State-driven agenda that wants everyone to have buffers.

Myers – Responded that there is dead animals, plants, rotten vegetation in wetlands that impacts the water quality. What makes wetlands so good at cleaning out water is that they all need something unique to the site. The more vegetation, the more the wetlands work to survive and remove the unwanted debris. This is how water quality is determined.

- Jenniges – Finds it difficult to quantify the aspects involved with cleaning out the water. He continued to discuss impact to citizens with wetlands on their properties and how it affects them personally. He referenced this as a property rights issue.

Greetham – Relative to the property rights issue, if there is an existing home, it is grandfathered as a vested use. However, it is the new development that gets hit the hardest. This is recognized in the analysis. Next, there is a provision addressed within the Code stating that by working with the land owner, if a property is conditioned under prior plat approval, the language allows flexibility to find a balance between old, original buffer approval of, say, 25 feet and the new proposed regulations..

Greetham – Page 38 of the handout shows table shows the tables for wetlands and the flexibility for activity within wetlands.

- Coppola – Buffers is an emotional issue. Remembers a public process where the majority of citizens felt that more buffers were not needed and is this not a case of staff saying, “We know better.”

Greetham – Staff is trying to find the balance where in some cases buffers can be smaller and in others larger.
Myers – Explained rationale how buffers could be smaller. The rating system, as previously stated, gives staff the values for water quality and quantity and habitat functions. Page 38, shows the wetland categories. She gave examples of what a particular score would allow in points for buffering. Myers continued to use the draft document to give examples of application of the point system using comparisons, content of wetlands and an in-depth explanation of the four-category system. In short, she reiterated that each category is habitat driven.

Greetham – Noted that the Department of Ecology allows the newly proposed rating system because it provides for site-specific analysis.

• Coppola –Does not believe the County staff listened to the people. He thinks the County went through the public hearing motion and did what they wanted anyway.

Greetham – Staff has diligently compiled public comment but is also required to determine status of property using best available science (BAS).

Jim Bolger – Noted that public comment was received on both sides of the issue. Staff is charged with balancing community goals and objectives together with staff’s recommendations based on Best Available Science.

• Chair Mahan– Posed a hypothetical situation. If he had a piece of property with a category one wetland on it regardless of the habitat quality, under current regulations, would there be any variance on the size of the buffer?

Myers – There would be a 200-foot buffer at time of application. If encroachment into the buffer area occurs, staff would look at buffer averaging.

• Chair Mahan – What if Department Of Transportation uses the wetlands on this property as a detention pond causing an oily sheen on the water, habitat is dead, is it still 200 feet of buffer?

Myers – If it meets the Category One system, yes.
Greetham – Asked Myers if it was true that if it was created as a detention pond it does not qualify for a regulated wetland.

Myers – Yes, but a Category One would not meet that criterion anyway.

- Chair Mahan – He is aware of ponds in Kitsap County where DOT tight lined their water directly to them. However, under the new system, one could get a reduced buffer because the habitat value is impaired.

Greetham – One of the key changes in this document is that more on-site issues are addressed. The DOE recommends this and several counties have already adopted similar ordinances.

- Jenniges – Again referenced studies published against buffers and has trouble justifying 200-foot buffers. Noted that court cases are allowing construction within critical habitat areas, supported with Best Available Science. Needs justification for Kitsap County’s stand that buffers arbitrarily be 200 feet. Thinks this is difficult to justify and is the wrong approach.

Bolger– While keeping in mind the need to stay focused on the ordinance as drafted, Bolger reminded the Planning Commission members that science is not a “razor’s edge.” There is no one particular study that is definitive and sets the standard on a particular discipline or topic. State rules regarding Best Available Science provides for an entire spectrum of studies, each of which may qualify as Best Available Science. These will contain a range of recommendations or conclusions associated with them. Given that, one of the issues staff must deal with and is open to review, is to look at the significance of evidence that exists. Some studies may indicate a minimal buffer is required, especially if looking at a single function a riparian buffer may accommodate. Some studies may also indicate, for instance, that 700 feet is appropriate when looking at a single function. This process provides a wide range of options creating one of the difficulties in working with buffers, (this was acknowledged in the white paper) that site-specific information is always the best way to determine the buffer range. Knowing the environment one is working with and how it fits in to the broader
system is the best available science to have. Unfortunately, this is not always available and in the instances when buffers must be used, looking at the localized information as much as possible to find the balance is the conclusion used for guidance. If one study says no buffers and another says a thousand, hypothetically, yet staff finds 100 studies noting a wider range within that spectrum, the more moderate approach has been taken rather than going to the extreme in either direction. He acknowledged that Best Available Science can be found in several studies, peer reviews and publications compiled by recognized experts in their discipline that will meet criteria for Best Available Science. The ordinance approval process will take an inordinate amount of time if the Planning Commission wishes to analyze and discuss every study or scientific piece of information used to draft the proposed ordinance.

- Jenniges – Told Bolger he made his point by stating that there is a wide variety of BAS from 0 to 800 feet. He prefers 100, 75, 25 and 0 and believes he could find science to support this.

Bolger – Staff tried not to take a number and then find science to justify that number. If one looks at the Best Available Science that has been compiled it attempts to determine the direction where the evidence exists—this will be a more narrow range within a broader spectrum of scientific information available. Staff has tried not to back engineer the process. The statutes are very clear that this would not be the preferred methodology. Instead, staff is to review the Best Available Science prior to producing the numbers. This is essentially the process for drafting the ordinance.

- Jenniges - Gave example of road running directly parallel with Big Beef Creek. There is no buffer and asked if the water quality has been monitored for road run-off in this area.

Bolger – This gets back to the preferred site-specific information. He did not have an immediate response to Commissioner Jenniges’ question but noted that the Health District does monitoring.

- Jenniges – Questioned the justification for 200-foot buffers if the affect to wetlands is not monitored.
Bolger – Hopefully a monitoring system will be in place to allow for site-specific information. Flexibility is built into the ordinance to allow for generating site-specific information. It is difficult to respond to site-specific questions such as Jenniges’ without the data.

• Taylor – Point of order. This is a work/study session where staff makes its presentation while the Planning Commission members listen to the presentation and ask clarifying questions in order to understand what staff is trying to communicate. He does not think it is the Planning Commission’s role to debate an issue to this length.

• Mahan – Agrees with Taylor but thinks this is a necessary conversation and that some good points have come out of the discussion on how Best Available Science is derived.

• Taylor – Agrees the conversation is inevitable but does not think it is time for it until staff has finished its presentation with the Planning Commission members being allowed to ask only clarifying questions. This is the time to receive information.

• Coppola – This is an emotional issue and this discussion needs to take place eventually, but agrees that it is inappropriate at this time.

• Jenniges – Thought work/study sessions were held to allow for questions.

Greetham – The road issue brings the presentation back to site-specific analysis under the new rating system, i.e., is there a road nearby. Whether agreement is reached on the buffers or not is where the process will eventually end up. Finally, Greetham discussed the permit process as in when a permit is submitted, how to get it from point A to point Black and should the County go with the new single-family certification form.

Myers – Staff is concerned that there is a lot of information to absorb relative to the flexible buffer issue and rating system, realizing it is good information to proceed with implementation. This will not only recognize the type of buffers needing protection but also water
quality, quantity and habitat in the County. Also, this will be
instrumental in helping staff to oversee large mitigation projects in
Urban Growth Areas and the information gathered will guide staff to
even better success in mitigation areas. Staff has asked the
consultants to implement the new rating system to determine the
types of changes that will take place. There has been little change
and smaller buffers, smaller even than current regulations require.

Greetham – Discussed how staff determines if there is wetland
present when a permit is submitted. Using a large building
limitations map to illustrate, Greetham explained that staff digitizes
existing wetland slopes and soils information. Two sources are
used; the National Wetlands inventory and the US Soil Conservation
Service that indicate where wet soils likely exist. These are not 100%
accurate. When an application is received, staff generates a building
limitation map for each application. The next day, applications go
through triage to determine if wetlands exist on or near the site. If
there is a potential wetland on or near the site, it has to go in the
stack for cycling. The new form would be submitted with the
application and would certify that a project is either completely
outside the wetland buffer or if it is near a wetland, it is a required
buffer under the County system as previously described. The
certification moves the application through the process quicker. The
costs would be a need to hire a consultant in the $3-600 range. The
form allows applications outside a buffer to move quickly through the
process without holding it up for staff review. Again, the form puts
something in the file stating the site is outside the buffer. On the
maps, if the parcel is beyond the determined buffer range, there is no
hold up for site plan review. It is a non-issue if the maps indicate the
site is located directly adjacent to a buffer but with the form, staff can
determine that there is a wetland nearby but outside the buffer. Staff
just needs a way to certify activity is outside a buffer in order to
move the permit through the system more quickly. This has been
placed in the Code as a one-page insert. If the Planning Commission
and/or the Board do not like this concept, it can be easily removed.

Flynn – It is her understanding that this is an option for the
landowner. That they can either goes this route or opt for
something different.
Greetham - This is up for discussion. Staff is proposing this become a standard if there is a wetland on or adjacent to a parcel. If this is not approved, it puts the applications back into the site review status.

Myers – Also the department is trying to reduce staff time in the field. If staff is asked to perform a feasibility study, information can be input into the County’s database to state an applicant will either need this certification or wetland delineation.

- Flynn – If an applicant has a parcel with a known wetland present, she understands the certification step is omitted and this parcel would go straight to delineation. This is for parcels where the status is in question.

Discussion continued regarding the need to clarify that the certification process is not for all permits, only those where a wetland is involved.

- Taylor – Sounds like each permit submitted is guilty until proven innocent at the expense of the applicant.

Myers – This is not the case. This only applies to those parcels where the map clearly shows a resource is located within 250 feet, or whatever range is decided on or if one is located on the property. This will also only come into play if there is no additional or historical information available. Staff may have already completed a site inspection or feasibility study and made a determination. This is relying on in-house maps.

Greetham – The maps are only approximately 70% correct. The drain field design maps will usually indicate if any wetlands are either on or near the site. All maps are used to make a determination. This is essentially a short form wetland report.

- Chair Mahan – What if the wetland specialist inputs data without actually viewing the site?

Greetham – Checked with Pierce County that is already using this system. They have had some problems with the “letter factories” that can be created by this process but they are now being double-checked in the field.
Meyers – There are some violators. However error-free, quality, professional work is expected and this will be defined in the ordinance.

Baker – In summary, the second draft includes:

1. A new rating system that adopts flexible buffers specifically stated in a bulk best available science. Based on the rating system, a buffer will either get smaller or larger depending on site-specific conditions of the property. Rather than using an ill-fitting system of 1-4, this will provide flexibility at base level. The type of wetland on the site will be determined.

2. Additional flexibility regarding buffers. The current flexibility in the Code allows for up to 50% decided administratively by the Department of Community Development and more than 50% with a Critical Areas Variance. This is another site-specific factor in working with the property owner. It is not just with Best Available Science, not just with site-specific constraints of the property but also what the applicant wishes to do with the property under the guise of no-net-loss philosophy.

Between these two systems, the new Department of Ecology (DOE) rating system and the flexibility worked into the Code, staff believes it is operating with Best Available Science and not what a specific property’s wetland is like and not what a wetland should look like in a theoretical perspective. Also, staff will have the flexibility to work with individual property owners to get a project on a site that provides a no net loss to the resource.

Greetham – This is in addition to the flexibility for existing structures and minor expansions explained earlier in the presentation. Also on top of whatever buffer range is ultimately decided on by the Board.

Baker – Highlighted that this is the most flexible method possible to allow for both resource protection yet allowing the applicant to proceed with a project. With the inclusion of the single-family certification program, provision is made to expedite the building permit process and gives individuals the flexibility to do up-front
work that speed up efforts when an application is submitted to the Department of Community Development.

- Chair Mahan – Asked for clarification of the process from this point forward for the Planning Commission’s work.

Baker – When Wetlands Section work/study is completed, the next work/study will address streams. A final work/study will be held on the remainder of the proposed ordinance: steep slopes, frequently flooded areas, aquifer recharge, as well as any residual issues remaining from wetlands and streams. Obviously, buffers will be discussed at multiple meetings. Following these work/study sessions, a Board of County Commissioners and Planning Commission joint public hearing will be held, no sooner than at least six weeks from now. Most likely July or later. Staff has worked for 18 months on Best Available Science. The second draft of the ordinance and the Science Support document is the Department’s professional, technical opinion on the ordinance that is appropriate for Kitsap County with all the flexibility previously described.

Bolger – Legal review has also been performed on an on-going basis throughout the drafting of this document.

- Chair Mahan – Asked for target date for Planning Commission recommendation and was told by Baker most likely late July. Additional Planning Commission meetings are also anticipated.

- Flynn – Needs to have proposed dates for additional meetings as soon as possible. Also, asked about the Comprehensive Plan review process.

Bolger – Staff has an initial draft docket for Comp Plan amendments for 2005. Site specifics will not be considered this year. Staff anticipates the Comp Plan amendment process to begin later in the fall with the potentially the Kingston and South Kitsap subarea planning processes moving forward. Hoping to get through the Critical Areas Ordinance before starting the Comp Plan amendments.

- Coppola – Asked for the mandated completion date for the Critical Areas Ordinance process.
Flynn – Language needs to be cleaned up on the certification process for clarity that it does not apply to everyone. Also asked that if this is not made mandatory, what are the options. If not mandatory, then more staff will be needed for site inspections or the process will take longer.

Greetham – Staff is proposing that it be mandatory if there is a wetland hit. The map shown today is the one used by the applicant to prove whether or not his property is outside the buffer range. It will only not be required only if there is no wetlands on or near the site.

Myers – Alternative will be business as usual as the process currently exists. Turn-around time now can take anywhere from six to eight weeks, depending on permit load and staff availability.

Greetham – Staff will start with this and wait to see how it is received.

Ahl – Asked if joint public hearings are proposed for this process and Greetham reiterated that they are. Next he referenced two paragraphs on page 41 of the draft ordinance, paragraph G. Dedication of buffers that states, “The buffer area shall be dedicated as a permanent open space tract functioning as critical area buffers or as required by the department the buffer shall be identified on the site plan and filed with an attachment with the notice as required by Section 19.150, Notice to Title. This essentially removes this parcel of property from any other status. He also asked if that parcel is removed from the tax rolls.

Greetham – The intent is that the purchaser has something on record stating this, for instance, has a critical area buffer so there are no surprises further on. The parcel is not removed from the tax rolls. On major plat projects it is typically dedicated as common open space, but on single-family homes, the majority of applications, it is
simply a notice to title and a note on the site plan stating this to be
the buffer area.

- Ahl – On page 52, paragraph 19.200.255, Settings for Wetland
  Protections, “Kitsap County recognizes that property owners
  hope to gain economic benefits for their land. The County
  encourages such mechanisms as the Open Space Tax Program,
  Conservation Easements, donations to land trust, in order to
  provide taxation relief upon compliance with the regulations
  under this title.” Asked if buffered areas on individual single-
  family properties will be eligible for these tax set asides
  regardless of size.

Greetham – Currently small, single-family lots do not receive much
benefit from these incentive programs because if there is already one
residence on the property, this is all that is allowed anyway. Usually
it is a benefit on larger parcels. The Assessor’s Office lowers the
taxes for poor utility that is wetlands and critical areas, in part but not
significantly.

- Ahl – The intent of his question deals with established
  properties relative to some type of relief for owners of wetland
  properties. There is nothing to mitigate the removal of say 300
  feet of his property but he is no longer taxed for his property.
  In other words, the owner ends up with a taxed parcel that he
can use. He asked if any thought has been given to this issue.

Greetham – In order to respond to this question, he needs to contact
the Assessor’s Office to get additional detail on a typical small
parcel, and ask how much tax relief they are allowed. **

- Ahl – The question is should they get more relief. Suggested
  compensation to the owner since this is no longer taxable
  property.

Bolger – This type of system is in place through the Public Benefit
Rating System. If part of a parcel is encumbered, a property owner
can apply for an Open Space, Current Use Tax Assessment
reduction. This is a tax shift. Currently, this is done through the
application process. Discussion needs to be held as to whether this
could possibly be automatic enrollment when the buffer is identified.
The Assessor’s Office’s currently does not have enough staff to do the fieldwork.

- Ahl – Page 41, paragraph G., the County will be removing in perpetuity a parcel of land from uses that once were viable options. Along with this it seems there should be language stating the County recognizes this and will no longer consider the buffer areas as part of the tax rolls. This might make the issue more palatable to the property owners.

- Flynn – Asked if there is a minimum size that can be put into open space.

Bolger– Explained the various types of open space programs. Thinks there is a restriction on size on some of the programs but it is actually determined on resource-based protected through the program.

- Ahl – Thinks this is worth looking at and possibly incorporate into the Critical Areas Ordinance.

- Nevins - If he were in charge, he would want very specific guidelines speaking to reduction or increase of any attribute associated with critical areas. Can staff imagine making a decision not covered by any written guidelines and knowing that any final decision made will be considered unfair, regardless of the language.

Greetham - The new point system puts the County on solid ground with buffers.

Myers – Numbers are heavily relied on which will probably bring forth the criticism. Whatever the result of this is, the buffers will then be fairly clear.

- Jenniges – Asked if options exist to fill in wetlands to construct a barn on an acre of land.

Greetham – There is, but it will be costly. The easy answer to this question is if wetlands are less than 2,500 square feet, you may build.
• Chair Mahan – Thought enough material as needed was covered and entertained a motion to adjourn. The next meeting is June 14, 2005.

No further business being heard, a motion was made by Deborah Flynn and seconded by John Taylor that the meeting be adjourned. THE VOTE: Motion carried unanimously.

APPROVED THIS ___14___ day of ___June__________, 2005.

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Monty Mahan, Chair

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Holly Anderson, Secretary
Kitsap County Planning Commission

Exhibit No. Description
A. May 24, 2005 Agenda
B. Draft language for amended Bi-Laws
C. Draft Short Subdivision Ordinance
D. Proposed Kitsap County Code Amendments
E. Insert for Proposed Code Amendments
F. Kitsap County Critical Areas Ordinance – Second Draft May 17, 2005
G. Insert for Critical Areas Ordinance, Single-Family Wetland Certification
H. Insert for Critical Areas Ordinance, Overview of the Cooperative Public Process
I. Several sample maps that would accompany Certification document
J. Email from Tom Nevins – corrections on the May 10, 2005 draft Planning Commission minutes
K. Legal Notice for the May 24, 2005 Planning Commission meeting