The Kitsap County Planning Commission met on the above-stated date at the Island Lake Community Center, 1099 NW Island Lake Road, Poulsbo, Washington 98370. Members Present: Tom Nevins, Monty Mahan, Lary Coppola, John Taylor, Frank Mahaffay Dean Jenniges, Mike Gustavson and John Ahl. Staff Present: Cindy Baker, Scott Diener, Angie Silva, Shelley Kneip and Acting Planning Commission Secretary Brynan Pierce. 15 citizens from the public were in attendance.

9:00 AM

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

9:05 A.M.

Approval of Minutes

B. June 28, 2005 Minutes


- Lary Coppola – Reminded staff that he previously requested the dollar figure for land that would become unusable if the Critical Areas Ordinance second draft is enacted but does not see it in the minutes.

- Chair Mahan – suggested these minutes be tabled until the next meeting. Mahan reiterated Coppola’s request directly to Cindy Baker, the Director of the Department of Community
B. Work/Study

Special work/study session to present the Planning Commission with an information briefing based on changes to the Interim Rural Forest/Rural Wooded Comprehensive Plan Amendments enacted in 2003. The Board of County Commissioners intends to take legislative action on this matter in response to an order of the Central Puget Sound Growth Management Hearings Board (CPSGMHB), on August 8, 2005 at its regularly scheduled public hearing, 10 AM at the Kitsap County courthouse in the Board’s Chambers, 614 Division St, Room 104, Port Orchard, WA 98366. The CPSGMHB has ordered Kitsap County to take legislative action by August 9, 2005.

Shelley Kneip, Chief Deputy Prosecuting Attorney – Presented an ordinance repealing the ordinance passed in 2003 on Rural Wooded Comprehensive Plan policies. In 2003, there exists a long history with this portion of the Comp Plan. There was a long-standing definition for Interim Rural Forest. This was problematic in that it addressed what was called rural forest lands that were not necessarily rural in nature. In 2003, the County adopted some Comprehensive Plan policy changes allowing for a clustering program with a base density of one residential unit per 20 acres but by clustering, one unit per 5 acres was allowed. There were, however, no development regulations adopted associated with clustering to implement the program. It was the County’s intent to proceed with work on such regulations in the next year. The policies were subsequently appealed to the Growth Management Hearings Board (GMHB) by a number of appellants. The GMHB found in favor of the appellants and that the policies were not in compliance with the Growth Management Act (GMA). On August 9, 2004, the GMHB gave the County one year to get the policies in order. Meanwhile, other appeals have been filed with the GMHB and ruling that the County was to have completed its ten year Comprehensive Plan review by December 1, 2004. This is a different reading of the statute than staff had. This situation has shifting much of the planning activities in that the ten-year Plan review will take up much staff time. Since the County must take some type of legislative action to deal with the Comp Plan policies by August 9, 2005, the only feasible thing to do was to have the Board of County Commissioners repeal the policies found to be non-compliant and to re-instate what was previously in the
Comprehensive Plan. This is planned to take place at the Board’s August 8, 2005 public hearing.

- Coppola – Asked for clarification in that the policies were found to be out of compliance a year ago with a year to get into compliance, but nothing was done until recently and now the policies are back to what they were prior to what they were before.

Kneip – This is partially correct but it is not correct to say that nothing was done. Staff was working on the policies and the order came out on August 9, 2004. On September 17, 2004 the GMHB issued another order on reconsideration and at that time the requirement of the ten year review was brought up. This has been appealed by the County in Thurston County. This was followed by the 2004 amendments were also being appealed in which case a Failure to Act claim filed because December 1 of 2004 had passed with no completion of the ten-year review by the County. In June of 2005, the GMHB issued another order that the County was not in compliance. The ten-year review comes with some automatic sanctions that will be problematic to the County in relation to grant funding.

- Coppola – Did not really answer the question he asked.

Kneip – Coppola did not ask a question but instead stated that the County did nothing for a year and are now repealing the policies for Rural Wooded clustering.

- Coppola – Thinks he heard Kneip say that the County is going back to the ordinance previously enacted before the current one was appealed.

Kneip – This is correct. The County is going back to the Comprehensive Plan policies.

- Coppola – Reiterated that the ordinance in the beginning was out of compliance, the ordinance passed was not in compliance and now going back to the original was not in compliance.

Kneip – The original was in compliance. The County is going back to the original Comp Plan policies.
• Coppola – If it was originally in compliance, why try to change it at all?

Kneip – Again, Kneip explained that the policies in the Comprehensive Plan, page 7, section 3 of the ordinance, states that the County will consider a clustering program. It sets out perimeters that will be used. These are what staff intends to work on. These were found to be in compliance in 1998. When these were adjusted to set up the clustering program, the GMHB found these to be out of compliance due to being too vague, open ended and there were no development regulations associated with the program.

• Coppola – Clarified that the County is going back to what was in place prior to the most recent ordinance and buying some time to complete the ten-year review.

Kneip – The intention is that once the ten-year review and the UGA review countywide is completed, these policies will be revisited.

• Mike Gustavson – Asked for more clarification on a GMHB appeal. First asked if that board provides specific comments on individual appeals for the County’s review.

Kneip – That board provides guidance and does not get too specific. She showed the Planning Commission members a packet containing a decision on the 2003 case and the ordinance. The GMHB’s decision references some ambiguities in standards and the vagueness but did felt it was not in compliance because of the development regulations. The Board of County Commissioners was to have made some Findings of Fact and Conclusions of Law on an Innovative Rural Program, which was not done. While they made their decision based on a technicality, one Board member, McGuire, got very specific on the quantitative dimensions of the clustering program. He said the County did not have any outer limits on how large the clusters could be.

• Gustavson – Asked if this will make it easier to do the second time.

Kneip – While more guidance is given for the second time, there is a complicating factor on the other decisions such as the reasonable measures and the ten-year review. The GMHB held that the County’s available lands report showed an inconsistency as to what is happening in
the rural areas vs. the urban areas. It also shows the same amount of
development in both areas. This will make it somewhat harder to promote
a clustering program and increased density in the rural areas.

- Frank Mahaffay – Noted that in the ordinance it states that “certain
policies” were not in compliance with the GMA and asked why the
Planning Commission has not received the specific policies sited.
Are there certain policies that need to be changed?

Kneip – There are certain policies that need to be changed. The order
states, the Board concluded that the County did not show the Rural
Wooded Land policies. The Board specifically called out RWL policies 10a
and 10b, and RL 11a through i. These are listed in section 2 and section 3
of the ordinance. These are the policies adopted in the 2003 Comp Plan
Amendments. Mentioned that in 2003 most members present were on the
Planning Commission at time of adoption, but the policies were not
recommended by the Planning Commission to be adopted by the Board of
County Commissioners. She listed the entire 2003 list of amendments
that was a huge packet. The Rural Wooded issue became unclear at the
end and some quick fixes were implemented. The Planning Commission
recommended that it be tabled to give time for a completed document.

- Dean Jenniges – Had several questions. First regarding prior
ownership. The draft presented today states that 50% of the
property set aside and put in reserve is designated permanently
undevelopable and placed on a permanent track. Thinks this says a
person will automatically lose 50% of their property.

Kneip – This is part of the policies that are being appealed. It was set up
as an optional program by using Density Bonus. To have one resident per
5 acres rather than one resident per 20 acres, the 50% set-aside is part of
the trade off. However, it wasn’t clear in the policies how long it was to be
kept in reserve. She listed several options for using the Density Bonus
option.

- Jenniges – Concern is that the document in total reflects that the
County has re-designated rural. Previously a Rural designation
allowed for one home per 2 ½ acres. He thinks it was zoned Rural
Forest. The re-designation has limited a person from being able to
develop their property to the maximum previously allowed thus
negating the investment value. A hi person can no longer put their
home in the middle of their property due to the clustering provision. Also the 5,000 square foot impervious surface aspect limits land usage. Asked how the County can arbitrarily make these changes that impact people’s life’s so significantly. Questioned compensation.

Kneip – First, pre-GMA, the lowest density lot allowance was 2 ½ acres. The Growth Board ruled that Kitsap County’s Comprehensive Plan was invalid because of this density in the rural areas. It is not the County arbitrarily making this decision; it has been ordered to decrease the density in the rural areas. As to clustering being forced on a person, this is not the case. It is a voluntary program that many of the large landowners wanted in order to develop their land more effectively.

- Jenniges – Asked what is rural about 50 homes clustered in one area.

Kneip – Part of the criteria that would have come from the development regulations was that clustered be done in such as manner as to retain the rural character. This was not spelled out fully. The opponents argued this point.

- Jenniges – Referenced Lake Symington and a “cancerous” affect in this rural area because of current zoning regulations. Needs to understand the need for this change in the rural character of Kitsap County.

- Chair Mahan – Did not think Kneip was disagreeing with Jenniges on that point.

Kneip – The change is being made because Kitsap County is under a GMHB order to make the change. The policies being repealed are ones Jenniges apparently does not agree with anyway.

- John Ahl – He understands that this briefing today is for informational purposes only and that the Planning Commission is not being asked to study the issue, make a recommendation and hold a public hearing on the matter. Further, that this is being done, the Planning Commission is being advised of this and therefore input is not required.
• Jenniges – Asked why then is the item called a work/study issue.

• Chair Mahan – Reiterated that the Planning Commission either holds a work/study or a public hearing.

Kneip – It is important to have the Planning Commission involved because eventually, it will come back before them.

• Ahl – Questioned how the Planning Commission would be involved.

• Chair Mahan – To respect everyone’s valuable time, he suggested that the Planning Commission members should ask brief questions to clarify what is happening with the original ordinance and the Hearings Board decision, followed by a more in-depth discussion if needed by Planning Commission members without Kneip present.

• Mahaffay – Asked if there is an appeal process for orders levied against the County by the GMHB. He referenced the rationale of being out of compliance with more development in rural than urban areas. He is not a supporter of social engineering on which this order appears to be based. People will not go to the County and find out where the County wants them to live, they will go where they want to live. If there is an appeal process in place and has the County utilized this and if not, why not.

Kneip – The County did appeal the Rural Wooded issue, the Reasonable Measures and the Ten-year Review issue. However, appearance before the GMHB is almost an annual event. On the last case before that board, there were 3 main issues dealt with: 1) George’s Corner, 1) Whether or not the County had adopted Reasonable Measures, and 3)

• Mahaffay – Interrupted to repeat his question of did the County appeal the rural zoning issue and if not, why not.

Kneip – It was a Board of County Commissioners decision. It was felt that an appeal of this issue would not be successful and it would be better to concentrate on other more difficult portions of the decision. In fact the GMHB did not explicitly state the reason they did not like the Rural Wooded was because there was more development in the rural areas. The 66-page decision states that Kitsap County has inconsistencies in rural development more than in urban areas. In other words, the decision
did not state whether or not the Rural Wooded policies were in compliance. Kitsap County had 25 separate issues. Each issue is addressed separately, but under the Rural Wooded issue, the GMHB does not specifically state that you can’t do this because of what’s happening in the rural areas. When they addressed the Reasonable Measures issue, it states that Kitsap County is out of compliance because of the inconsistencies in rural development, as stated above. The Board of County Commissioners and Prosecutors put those two items together for interpretation.

- Deborah Flynn – Asked Kneip if the decision is posted on a website.
- Chair Mahan – Also asked if the decision could be obtained digitally or via hard copy, depending on what the individual Planning Commission members preferred.

Kneip – Will arrange with staff to get copies to the Planning Commission members. The decision is almost a year old at this time. It is difficult to find on the GMHB’s website because every decision made is listed. Kneip reiterated how large a project the ten-year Comp Plan review is for staff.

- Flynn – Noted that all of the wooded forestry issue has a long history and that the issues can be reviewed with the new Planning Commission members as a group with those who have been on the Planning Commission for a long time.

Kneip – Since 1998, nothing has changed on the designation of Rural Wooded lands even with the implementation of the Comp Plan policies. Because of no development regulations, they have been one dwelling per 20 acres for a very long time. The only change here is that the Comp Plan policies are going back to the previous iteration.

- Gustavson – Most of Kitsap County’s large land parcels were chopped into 20 acres a long time ago. In other jurisdictions, 20-acre parcels are becoming quite attractive sales items. Asked if it was appropriate to pass a motion to go before the Board of County Commissioners.
- Chair Mahan – No it is not appropriate at this time.
John Taylor – Asked Kneip if there are any counties in Washington State that do not participate in the Growth Management Act. Also is there any way for Kitsap County to opt out of this?

Kneip – Yes, but unsure of the number. She reads it those counties with certain growth rates are subject to GMA while others are not. Kitsap County falls under the growth rate requirement. As to the second question, not without a legislative change. It is rumored that there could be many changes to the GMA in the legislature next year. It has been amended every year since 1990.

Jenniges – For clarification, he restated the information being presented today and asked if the ordinance revision require public notice and public input.

Kneip – It will be a public hearing before the Board of County Commissioners. However, because the County is under a GMHB order, it is not the same as a typical Comp Plan amendment process. It is exempt from public process.

Chair Mahan – Assumes that after next week, an appeal to the GMHB would not appear favorable to overturn something that complies with something they have ordered in the beginning.

Kneip – By August 9, 2005, the Board of County Commissioners must take legislative action, followed by Kneip filing with the GMHB a statement of actions taken to comply. After that, the parties to the case below, can challenge whether or not the action taken to comply is adequate. There will be a hearing before the GMHB on this issue. Doubts that reinstating what was previously approved would be found invalid.

Jenniges – This also will be impacted by the Critical Areas Ordinance relative to appropriate buffer widths.

Kneip – It is different because it states pro-property boundaries. It is about buffers within a clustered area and the aggregation of lots. This would be to buffer the cluster itself from other boundaries and residences. It could be tied to the Critical Areas Ordinance if wetlands or streams appear on a cluster site. Kneip addressed a previous question posed by Jenniges relative to past lot size development of 2 ½ acres. There is still an opportunity to place a house on a 2 ½ lot in rural areas if it is a pre-existing
lot. This is the argument the County has made to the growth Board under reasonable measures. This argument will probably need to be decided in court. The court system looks favorably on vested rights and lots. The GMHB hinted strongly in its last decision on Reasonable Measures that the County should be looking at lot aggregation to correct the balance in the rural areas. This will probably be the next step.

- Chair Mahan – Thanked Kneip for her time. Stated that it was clear that when it went before the Planning Commission last time, it was not fully developed. He is not surprised to be at the current stage. There is a sense of fairness that is not being attained by the County’s lack of ability to deal with this issue. He is certain personally that if the Board of County Commissioners and Department of Community Development addresses this with a serious methodology, that it will result in a product that satisfies the GMHB, environmental interests and to some extent, a sense of fairness to property owners who did loose a property value ten or more years ago. He hoped it does not take that long to get back to this issue.

- Jenniges – Not sure he feels comfortable that the old ordinance will be approved again. He again referenced there is no purchase of property on the County’s part and that taking of private property and basically telling the property owners that they cannot use their own property without just compensation will be disputed. He sees nothing in the ordinance allowing for such compensation.

- Chair Mahan – Understands but this battle was lost in 1996.

Scott Diener – Nothing further from staff.

- Tom Nevins – After meeting, he would be happy to explain the difficulty and problems involved with writing development regulations. The ordinance being repealed caused more problems that it solved.

Vivian Henderson – Sat on the committee and expressed interest in explaining some of the problems.

- Chair Mahan – Assumed the Planning Commission is now moving into a discussion on the Critical Areas Ordinance.
• Gustavson – Presented the other Planning Commission members and staff with a paper regarding Cross Direction and Confusion in Development of Critical Areas Ordinances. He then reviewed the issues listed in the paper.

• Mahan – Reminded Gustavson he didn’t have to read in verbatim. He may enter the entire document into the record and highlight the important issues.

• Chair Mahan – Although interested in allowing people the chance to have their say, however he suspected Gustavson’s paper will lead to a general discussion, one that is not listed on the agenda of this Special Work/Study. Asked that Gustavson submit his paper for review by County staff and Planning Commission members then discuss it at the next regularly scheduled meeting. This would be August 9, where the Critical Areas Ordinance will be the only scheduled item of discussion. This is a full month prior to the date discussed for a joint public hearing with the Board of County Commissioners.

• Gustavson – Does not agree with this.

A motion was made by Lary Coppola and seconded by Frank Mahaffay that the Critical Areas Ordinance be tabled and not be forwarded for review by the public until the concerns expressed by members of the Planning Commission are fully addressed and included as appropriate in a new draft of the Critical Areas Ordinance. The new draft should display proposed changes from the existing 1998 Critical Areas Ordinance.

Discussion

• Deborah Flynn – Asked how the Planning Commission could work on the Critical Areas Ordinance in such depth as depicted on Gustavson’s paper without a public hearing to get the citizens’ opinions. The Planning Commission may have its own opinion but believes its job is to listen to the public as well prior to forming a recommendation.

• Tom Nevins – Voted no and to proceed as proposed. The Planning Commission has been involved with the public process since
January of 2003. There have been several meetings, this is the second draft and concerns have been expressed. Preference would therefore be to move forward to joint public hearing(s) with the Board of County Commissioners, after which a recommendation can be made on changes the Planning Commission’s might wish to send forward to the Board. Discussion can be held on each change. Thinks the process has been two years in the making. The first deadline was missed and the County will be lucky to meet the next one of December 1, 2005. Thinks it is time to move forward.

- Jenniges – Concerned in that the Planning Commission members have expressed concerns, but the County staff’s responses have appeared to be from a predetermined outcome and are cursory in nature. He thinks staff is turning a deaf ear to the Planning Commission’s thoughts on this. He doesn’t care how long it takes.

- Coppola – The Planning Commission has expressed concerns, asked questions continually but has not received satisfactory answers to the questions. That is the reason for his motion. Thinks it is a waste of everyone’s time. No problem taking this to the public but wants the questions answered first.

- Gustavson - Does not know how anyone can read draft two when it is merely a mark-up of the unapproved draft one. There is no way to compare apples to apples without the original ordinance to compare.

- Mahan – Believes the Planning Commission’s role is to advice and with that he repeated the motion and called for the vote.

- Coppola – Included in his motion a request for responses also to Gustavson’s paper submitted today.

**THE VOTE:** Aye-5, John Taylor, Michael Gustavson, Lary Coppola, Dean Jenniges and Frank Mahaffay; Opposed-3, Deborah Flynn, John Ahl and Tom Nevins. The Chair did not vote. Motion carried.

- Jenniges – Believes this will be a contentious hearing because the public believes that any input has not made a difference. It is perceived as a County land grab. Staff needs to look hard at the buffer issues and habitat issues. Otherwise, it should be left up to the County Commissioners to take the heat.
• John Taylor – Asked Mahan what he meant by the comment, “We will see what that means” in reference to passing this motion.

• Chair Mahan – Is unsure if the Planning Commission has the power to table this matter. No value is given one way or the other, he is just unsure what comes next. This may be a good way to find out.

• Frank Mahaffay – He understands the RCW relative to the Planning Commission to read that the Planning Commission does have the power to table this matter.

• Flynn – In response, she stated that there are many people who oppose this ordinance and issues have been avoided. However, there are also many citizens who want to see environmental protections in place the way they should be, in compliance with the GMA. She wants to hear from the public and she hopes her fellow Planning Commissioners will listen to both sides of the issue not just the ones that support their position.

• Gustavson – As a strong environmental supporter, he is concerned that what the Planning Commission puts forward, does not come back the way of the Interim Rural Forest matter. Wants to see this pass through the GMHB. Need to ascertain what the County is trying to solve, which is not stated by staff or citizen comments. He only hears that this is a critical area but wants to know what makes it critical. He said that every inch of the State of Washington is considered a wildlife preserve. It is also a question of should property be purchased that is unusable. It is a very big issue.

• Flynn – In deference to Gustavson’s comments, she thinks what the County has put forth is defensible, that the work accomplished to date is defensible and have that the Planning Commission has gone through the process as required, and even beyond.

• Mahaffay – Any recommendation to the Board of County Commissioners, need to realize their recommendation has an impact on people’s dollar. Taking this into consideration, one of the questions not yet answered by staff is the dollar value of unusable land. Need to be careful.
• Coppola – Just wants County staff to answer his valid questions prior to a public hearing.

• Nevins – Questions: 1) How much value is being removed from the land via buffers, etc. The response may be of benefit. The response may be that there is an additional value to the land because of the protections provided for streams and wetlands. 2) Takings. The courts can decide on this issue. The Planning Commission is not empowered to decide this. His understanding is that none of the buffer requirements have been considered takings in the past and it is his belief that the future will look the same.

• Chair Mahan – Requested a meeting next Tuesday, location unknown. He requested that at the next meeting, if motions are to be made that they be in writing and that position statements be in writing in a concise format. He agreed that the motion is to stop all action on the Critical Areas Ordinance if it is within the Planning Commission’s powers to do so.

The Planning Commission reviewed the upcoming meetings section of the agenda.

• Taylor – As a commission, the members should rely on the chair to convey their wishes to staff.

• Chair Mahan – Staff will be consulting with the Prosecutor’s Office and the Board today.

• Jenniges – Because the Critical Areas Ordinance is not advertised and not on the agenda, perhaps the motion is out of order.

• Chair Mahan – The risk taken is that of being in violation of the Open Meetings Act and a more general ethical responsibility to the public a chance to be heard.

• Coppola – If the motion is found to be inappropriate, he would like the Critical Areas Ordinance to be the first item on the next agenda.

• Gustavson - The rationale finding the motion appropriate should be in writing and signed by someone.
11:15 AM - No further business being heard a motion was made by Mike Gustavson and seconded by John Taylor that the meeting be adjourned.

APPROVED this ____ day of ____________, 2005.

Monty Mahan, Chair

Holly Anderson, Secretary

EXHIBITS:

A. Agenda for August 2, 2005
B. Agenda Summary packet for repealing portions of Ordinance 311-2003 regarding Rural Wooded Policies
C. Executive Summary for repealing portions of Ordinance 311-2003 regarding Rural Wooded Policies
D. Comments on CAO Draft Two written and submitted by Michael Gustavson
E. Letter to the Board of County Commissioners from Vivian Henderson, Kitsap Alliance of Property Owners with attachments regarding review of Kitsap County’s 2nd Draft Critical Areas Ordinance by Dr. Robert N. Crittenden
F. Cross Direction and Confusion in Development of Critical Areas Ordinance submitted by Michael Gustavson
G. Cover letter with the Central Puget Sound Growth Management Hearings Board Final Order and Decisions regarding the 2003 and 2004 Comprehensive Plan amendment appeals transmitted to the Planning Commission members
H. Planning Commissions Journal
I. Motion prepared by Lary Coppola
J. Public notice for August 2, 2005 Special Work/Study Session