The Kitsap County Planning Commission met on the above-stated date at the Kitsap County Administration Building – Commissioner’s Chambers located at 619 Division Street, Port Orchard, WA 98366. Members present: Dean Jenniges, Jim Sommerhauser, Lou Foritano, Tom Nevins, Michael Gustavson, Linda Paralez, Fred Depee, and Chair John Taylor. Staff present: Jim Bolger, Katrina Knutson, Scott Diener, Larry Keeton, and Planning Commission Secretary Christina Lindner.

9:04 AM
A. Call Meeting to Order, Introductions

9:05 AM
B. Approval of Meeting Minutes

A motion was made by Commissioner Jenniges and seconded by Commissioner Sommerhauser to approve the minutes of April 24, 2007. The VOTE: Unanimous Motion carries

Gustavson requests a copy of the technical guidance portion of the Shoreline Assessment.

Chair Taylor welcomes Jim Sommerhauser to the Planning Commission.

9:07 AM
C. Public Hearing: Revised Policies and/or Regulations for the use of Alternative Wastewater Treatment Technologies –Jim Bolger, Assistant Director, DCD
Jim Bolger: Presents the draft ordinance to the Planning Commission for recommendation to the Board of County Commissioners. He gives an overview of the process, talks about the elements of the proposed ordinance, some specifics involved and offers clarity to the draft ordinance as it has previously been presented to the Planning Commission.

Jenniges: I understand the frustration of the stakeholder group. Is the purpose of sewer technology to let houses be built on non-permeable soil?

Bolger: This ordinance does not speak to technology types. Those technologies can still be utilized.

Jenniges: The designation of zoning lot sizes and property densities are being complicated by the addition of sewer technologies. The historically platted lots and the change from rural to urban are the real issues. I do not believe sewer technologies are the issue. What matters is whether or not the County is going to allow the historically platted lots to be utilized.

Foritano: I understand the focus of this ordinance to be the small, vested lots. My question is regarding rural wooded lots and an assisted living complex of 100 homes on 20 acres. Contrary to my colleague, the issue of wastewater treatment technology would be principle. If the proponents of this needed to develop, would this ordinance preclude the use of wastewater technology?

Bolger: If the correct zoning were obtained to allow the development of the assisted living center, or if it were deemed an essential public facility, it would be able to utilize this technology. I am familiar with the project you are referring to, but that use is not allowed in the area it is being proposed. They cannot create a nonconforming lot out of the 20 acre piece, unless they went through all the steps.

Foritano: If they went through the steps, is there any thing in this ordinance that would preclude the use of the wastewater technology?

Bolger: If they were included in a LAMIRD, it would not preclude them from using a large on-site septic system. If they were in a rural area, it would depend on how they got there.

Nevins: I assume that soil types and environmental review will be looked at on a project by project basis.
Bolger: The technical performance of the system, which would include a consideration of the soils, would be part of the Health District or State Department of Health’s approval, depending on the size.

Gustavson: Are some high density ancient plats located inside existing LAMIRDS?

Bolger: Yes. Some are inside the Manchester and Illahee LAMIRDS.

Gustavson: Could some be eligible for a sewer?

Bolger: That is part of the struggle the cities are dealing with. They might be in a low urban density but some of the densities of the historic platted areas represent high urban densities, depending on the jurisdiction, so then they are in the middle of the lower density zone within a city or urban growth area.

Depee: States the real issue is lot aggregation and asks why the lowest number was chosen of the Stakeholder’s proposed levels.

Bolger: In the potential appeal of this ordinance, it would be a more defensible position. Our rural element said it should not be urban in nature. Our rural maximum density is one dwelling unit per five acres and four units an acre for urban. There is a space in between and our policy is saying “not urban”.

Depee: Has anything been received, in writing, from the Health Department?

Bolger: They have not submitted in anything that I am aware of. As part of the stakeholder discussions, they stated their policy. If it is a legal lot, and the County considers it a legal lot, they try to accommodate the lot owners with a wastewater treatment system.

Depee: How can they build half acre lot minimums?

Bolger: The State is requiring local jurisdictions to revise their on-site regulations. We expect new standards later this summer.

Paralez: The County, regardless of zoning, has never kept anybody from developing on a legal lot. The only issue has been the ability to install a usable septic system. Now that the technology is available to allow a septic system, it is the only reason septic is even mentioned.

Bolger: Anybody is able to apply for community septic systems or on-site septic systems. The cumulative area of the drain fields can be reserved for something else. The concern is that as you get newer technologies you may be able to
shrink the areas of those drain fields. We do not have one of these approved systems in place in the County. It is still under review with the State Department of Health.

**Discussions held regarding the current version of the problem statement.**

**Bolger:** The Board has scheduled an initial public hearing on June 11, 2007 and they have decided to continue this issue on June 18 for additional deliberations.

**Public Hearing Open**

**Jerry Harless:** The County has tried to combine two problems which has resulted in a mess. One issue is the emerging sewer technology and the other is the increasing lot density. What is being proposed to you is an ordinance to use sewer technologies as a way to reduce densities. An advertisement for these systems shows that they increase lot densities. 35,000 gallons a day serving 300 people indicates an urban size sewer system. They are prohibited from rural areas with 2 exceptions: LAMIRDS and existing areas with a hazard to health or the environment. There is no hazard where there is no house. Both restrictions are found in the GMA and both conditions are required to exist. Policies LU-18 and RU-12 in the County’s Comprehensive Plan prohibit urban services in the rural area.

Density is the other issue. What are acceptable rural densities? Two units per acre have never passed the threshold.

The County has two tools to deal with non-conforming lots: lot aggregation and Transfer of Development Rights. A balance of those two tools is the answer. The sewer ordinance is not going to help.

The other problem is, by violating the Growth Management Act, the County jeopardizes its revenue source from the State. The County is already sitting under an order of invalidity because of an inadequate capital facilities plan.

These systems need to be prohibited in rural areas. And then the County should address the lot aggregation issue.

**Depee:** How do you feel about the documents stating these systems are beneficial to lakes and streams?

**Jerry Harless:** When an urban service is brought into the rural areas, it is a waste of resources.

**Tom Donnelly:** The proposed ordinance is a non-responsive to the recitals. That is not to say it is a waste of your time to consider the problem. The problem defined in the recitals can be addressed by disinvestment and aggregation of the lots. Those issues were not on the table for the stakeholders. There are only two sewage disposal systems to which it applies. What happens
when the systems fail? The Health Department steps in and directs the remedy. The number of homes involved becomes the major factor in the cure. Too many homes will bring in sewer, which is a “no-no” in the rural area. There is some purpose to this ordinance.

Theresa Osinski: In the first process, many knowledgeable people decided there was no problem. When the moratorium expired, they asked for an additional stakeholder process. Again, it was decided there was no problem. The first three meetings were spent trying to define the problem. This does not make the process unimportant but it may mean that the end result is a forced product. There are codes in place to protect properties. We believe the codes have already solved the problem.

Ball Palmer: These stakeholder groups came to the conclusion that there is no problem. The Board wanted something to go forward with. The issue they are trying to resolve, septic technology, does not address the real issues, which are lots platted prior to 1937. To add to Jerry Harless’s presentation, I encourage you to look at state law and the difference between septic and sewer systems. The County does not have a problem. The issues can be resolved in other ways. I am not in favor of lot aggregation either.

Gustavson: How many legacy lots are in the County?

Bolger: There are about 1,000 legacy lots in the Manchester area. GIS does not have all lot lines but I can get those maps. There are approximately 5,000 lots total for the County.

Gustavson: How many of these lots are outside the existing LAMIRD?

In the 10-Year Comprehensive Plan, we found that we were undersized for the population allowed for Kitsap County.

Bill Palmer: That is a study that needs to be undertaken.

Leslie Hassid: I disagree strongly with many things that have been said. The Beaver Creek Conservation Group was told they would be invited to the stakeholders group and we were overlooked. The second stakeholders group was reformed because we were not invited to the first. The non-conforming lots have been here for decades. County Resolution-090 prevents the extension of sewer to rural areas. Is the County taking private property by enforcing Resolution-090? Why weren’t these lots developed prior to these community sewer systems? These systems should be considered public because they fail. They can serve 78 homes. The Health Department has had to handle the approval of it. If it fails, it is owned privately. With a system that large, it could be a potential threat to public health. The object is to not allow urban level services in rural areas. The courts have said that water can be a rural service, but
providing public water cannot be used to support urban level growth. If these
LOSS systems have the capacity to treat and manage sewage at a higher level
than septic systems for large levels of development, they are an urban level
service. If there is a public health problem, if the sewer systems fail, the County
is reserving the right to use these LOSS systems to manage public health
problems. They are large enough to be used in place of a sewer system.

Vivian Henderson: Jim Bolger conveyed the feeling that people do not want
things to change in their area. I do not believe he was absolutely correct in that.
I understand the concern over high density, but others should be allowed to live
here too. Many people do not like to buy homes on tiny lots, but because of the
GMA, they do not have a choice. I have not received a definition of rural
caracter from County staff. The County uses subjective terms that do not mean
anything except to make it more difficult and more expensive for people to live
here. KAPO represents all property owners, even when emerging technology
presents itself. Technology is there to help mankind. Developing the land would
help carry the load.

Jim Avery: I am surprised at the number of lots affected by this issue. 1,000 or
1,200 is just not the case. The Manchester area is topographically challenged. If
we are going to look at this, we need an idea of how many lots are really affected
by it. Some lots cannot be developed. You will find that there really is not a
problem.

Norm Olson: This ordinance is a waste of time, seeing as how the issue of
legacy lots will be discussed later this summer. Given the condition of the land, I
do not think anybody is going to duplicate Woods View. I strongly disagree with
lot aggregation. We are trying to mask the problem with sewer. Gross density is
difficult to calculate and trying to control density with sewer is even more
problematic. This ordinance will not accomplish what everybody realizes is the
problem.

Leslie Hassid: I e-mailed Jim Bolger about the ordinance exceptions. Jim
stated if the developer was able to get a separate ordinance passed, a LOSS
system could be allowed for a particular development. The language in this
ordinance is vague. Resolution-090 does not have a provision for a developer to
create their own resolution and be exempt from 090. Jim also said it would be
possible for an industrial LOSS to be approved in a rural area. The ordinance is
silent about maintenance. I strongly urge you to find those codes that are
‘assumed’ to manage operation and maintenance.
Jerry Harless: There is confusion over terminology, specifically the terms public and private, septic and sewer, and Health Department regulations and Land Use regulations. This ordinance is a development regulation under the GMA. A development regulation needs to be approved, addressing LOSS. I am not in favor of the way it is now.

Sommerhauser: If I have one house on five acres and I want a more efficient system, by your interpretation, I still could not use a LOSS system instead of a traditional septic system?

Jerry Harless: If it is only serving one house, it is basically a septic system.

Sommerhauser: If the proposed ordinance stated that I was meeting current zoning for number of units per acre, then could I use a LOSS system?

Jerry Harless: If single system serves multiple dwellings, then I do not believe you could.

Discussions held regarding the deadline for written testimony: Board of County Commissioners accepting until June 10, 2007.

Public Hearing closed

2:00:25

11:06AM

D. Deliberations: Revised Policies and/or Regulations for the use of Alternative Wastewater Treatment Technologies –Jim Bolger, Assistant Director, DCD

Paralez: To what extent has staff researched Transfer of Development Rights, lot aggregation, or other mechanism to deal with these non-conforming lots?

Bolger: The purpose of the first working group was to develop a suite of options. That group did not come up with a recommendation. There would still be some economic realization of those lots; buy 3 and sell the rights of 2. Transfer of Development Rights is a relatively new program.

Paralez: Does the Transfer of Development Rights program apply?

Bolger: If you aggregated these lots you could sell the development rights to the lots you will not develop. Those lots would be used for rezones and urban growth areas.
Gustavson: The Transfer of Development Rights program does not apply rural to rural; they apply from rural to urban. I understand the general findings and intent of the proposed ordinance, but the purpose is to limit the use of community sewage disposal systems. I am not sure that is beneficial to the community. Part of the document talks about limiting parcels to two units per acre. Much of that in question is adjacent to existing areas of intense development, certainly creating delightful suburban sprawl with half acre lots, which boxes us in. In 50 years we will have a tight urban community that can no longer be developed. What is the minimum lot size requirement? We could face serious lawsuits from people who have owned these small lots for a long period of time. This ordinance is very premature. We should handle it all at one time.

Bolger: The ordinance does not say anything about individual property owners and their desire to develop a lot. Assuming they can get an approved system from the Health Department, they are able to build.

Gustavson: Now that we have a membrane system that serves a few buildings it seems like a step to allow membrane systems to serve one building. That is an achievable thing to develop and market. One benefit to a system in Beaver Creek is constant water flow.

Tom Nevins: We are still dealing with sewage, but I do see it as sprawl function. I suggest we deal with the legacy lot issue first. Since we do not have approved systems on hand yet, we can move into lot aggregation, Transfer of Development Rights, or other mixtures of solutions other than this ordinance.

Bolger: I was not accurate earlier. There are some on-site systems approved in the County. The Suquamish Tribe is going online with an MBR system. I was referring to rural residential areas.

Jenniges: This is a land use issue. The new technology allows smaller lots to have septic systems. And now it allows sewer systems. Half acre lots have two individual septic systems. If those vested lots are allowed to utilize community sewage disposal systems, it would increase rural development and they do not want that. We should table this ordinance and address legacy lots.

Bolger: That is not part of the ordinance.

Depee: Are these systems approved and in use in the County?
Bolger: They are not the same technology, but I understand some mobile home parks have utilized the community sewage system. The membrane bioreactors systems are not approved by our local Health District, but they are approved by the EPA and the state. Suquamish and Karcher Creek both have the systems. Smaller package plans have not been approved.

Gustavson: When we come back to the legacy lot issue, can you provide us with maps so we can see what we are dealing with?

Bolger: A work plan could include a quantification of the lots. These lots are generally limited to the Manchester, Indianola and Suquamish areas.

Discussions held regarding the platting of vested lots.

A motion was made by Commission Depee and seconded by Commissioner Gustavson to recommend to the Board of County Commissioners that the ordinance does not move forward and that it be reconsidered at a later time when the legacy lot issue comes before them.

The VOTE:

Unanimous
Motion carries

Jenniges: I believe this is a land use issue and we need to look an ordinance that will consider boundary line adjustments.

Sommerhauser: If we take action, can somebody applying in the current development under consideration use this system with Health District approval?

Bolger. The project is considered to be a vested project. If they get approval from the State Department of Health, that project can go forward. It does not affect the Director’s decision to require approved systems for any future applications.

Commissioner Depee commended Jim Bolger on his work and Commissioner Nevins thanked Katrina Knutson for her clarity on meeting summaries.

Jenniges: Now that we have decided, will there be another Moratorium?
Bolger: We are scheduled for a work study session with the Board tomorrow. They may choose to follow your recommendation, but they will make the call. I will emphasize that it was a unanimous movement.

Jenniges: I recommend they change boundary line adjustments as well.

A motion was made by Commissioner Foritano and Commissioner Gustavson to adjourn the meeting.

The VOTE:

Unanimous

Motion carries

Meeting adjourned 11:30AM

EXHIBITS

A. Draft Ordinance Creating Development Regulations for the Application of Community and Large on-site Sewage Disposal Systems in the Rural Areas of Kitsap County.

B. Revised Draft Ordinance Creating Development Regulations for the Application of Community and Large on-site Sewage Disposal Systems in the Rural Areas of Kitsap County.

C. Suquamish Tribe Testimony

MINUTES approved this _______ day of _______2007.

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John Taylor, Chair

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Christina Lindner, Planning Commission Secretary