

MINUTES

**KITSAP COUNTY PLANNING COMMISSION
Administration Building - Commissioner's Chambers
July 21, 2009 7:00 pm**

These minutes are intended to provide a summary of the meeting flow and content and should not be relied upon for specific statements from individuals at the meeting.

The Kitsap County Planning Commission met on the above-stated date at the Kitsap County Fairgrounds – Eagle's Nest located at Bremerton, WA

Members present: Lou Foritano, Linda Paralez, John Taylor, Fred Depee, Jim Sommerhauser, Tom Nevins, Michael Gustavson and Robert Baglio

Members absent: none

Staff present: Larry Keeton, Katrina Knutson, Pete Sullivan, Scott Diener and Planning Commission Secretary Mary Seals

9:02:00

A. Call Meeting to Order, Introductions

Foritano updates the commission members regarding the Board of County Commissioners response to the motion to move Planning Commission meetings to the day. The Board asked that the Planning Commission remain on evening meetings for a variety of reasons.

B. Adoption of Agenda

Agenda is adopted as posted.

C. Public Comments

None

D. Approval of the July 17, 2009 minutes

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Paralez to approve the minutes of June 16, 2009.

The Vote

Yes: 7

Abstain: 1

The motion carries

9:05:00

E. Public Hearing: Title 21 Mediation – Scott Diener, Manager Policy and Planning, DCD

Diener goes over the history of the mediation process development. The Board of County Commissioners remanded the mediation language back to the Planning Commission. Since then there have been various discussions and we now have a proposed method for mediation.

1
2 **Chair Foritano opens the Public Hearing**
3

4 **Teresa Osinski, Government Affairs Director HBA:** This is an issue we have been
5 following and engaging and talking about for many months. And over those months we
6 haven't realized clarity or become closer to being positive or accepting of this proposal. I
7 say that because I want you to understand this isn't something that we just picked up off
8 the internet, our members have talked quite a lot about this, and I've talked with our
9 members quite a lot about this. I think this is something you need to be thinking very
10 carefully about. About the public policy implications of what is being proposed and
11 whether or not you believe as Planning Commission members this is the right direction
12 to head at a time when people are asking for more accountability rather than less. The
13 piece that I am referring to is one that unfortunately, continues to get left out of what staff
14 has presented to you. That is another amendment to this specific code that will clearly
15 take the Board of County Commissioners out of the position of Hearing closed record
16 appeals from the Hearings Examiner. That language isn't in this draft, but it is a part of
17 this proposal. It should really be not separate, and they are not separable; it all comes
18 together. What the Board of County Commissioners would like to do is no longer hear
19 closed record appeals from the Hearings Examiner. What they would also like to do is
20 have mediation be included in at least one, possibly two, maybe three steps of the
21 process as you proceed through a permit application process. Including during the
22 process the Hearings Examiner holds. But once decision is rendered any appeal would
23 have to go to the court, it would no longer go to the duly elected Board of County
24 Commissioners here in Kitsap County. I think that's something you really need to think
25 carefully about. It's something we are very concerned about for several reasons. I really
26 felt I needed to start with that remark because the mediation issue is a supportive issue
27 of where the Board of County Commissioners is trying to go. And it isn't reflected here
28 nor is it talked about by staff, but it is part of what you are being asked to take public
29 comment on. As far as the mediation itself, our members are generally very opposed to
30 mandatory mediation. They are opposed to creating additional delay and shenanigans
31 in the process of applying for permission to use land in this county. That isn't to say that
32 they can't see times and opportunities when mediation might be beneficial, but that
33 needs to be mutually agreed upon by the parties with the goal being a shared objective
34 to reach resolution. When you mandate mediation it seems a bit counterintuitive to what
35 mediation is really about. There is a lack of support about mediation. In addition to that
36 I realize that staff has said that issues related to time have been addressed in this, I'm
37 not sure that they have been. How much more time will it take? How much more time
38 between being told that you need to go to this mandatory mediation and the first
39 mediation session will transpire? If the county have committed to paying for the
40 mediation costs when the dispute resolution center is used how much delay could be
41 added in order to meet the schedule availability of the dispute resolution center in order
42 to keep it free? Because the alternative would be that the parties agree to pay for
43 mediation themselves. So now they are being told you have to have mediation, we will
44 pay for it, but you have to wait an undetermined amount of time. I don't see any
45 commitment in this proposal from the DRC saying "we will always pick this up within 10
46 business days". I don't see that. So now your alternative would be to pay money to
47 have mediation that you have been mandated to have at some more reasonable
48 timeframe. This is really a bit of a red herring that is being proposed here. I think that
49 you and all of your experience in front of the Planning Commissioners and Hearing from
50 the public. I believe that you understand that it is a complicated process. It is a process
51 involved with a lot of emotions, a lot of opinions and something needs to be done in a

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1 clear way to make it certain that we are not adding more ambiguity, more delay, or more
2 opportunities for ulterior motives. This is about having the code work, having applicants
3 be able to understand what the code is there to do, and so that they know that they can
4 be successful in using the land consistent with the county codes.

5
6 **Gustavson requests to have the chance to hear the concerns from the public and
7 not limit time.**

8
9 **Sommerhauser Clarifies that her protest is about taking the Commissioners out of
10 the appeals process has already been dealt with and gone to the Commissioners.**

11
12 **Diener:** The Board of County Commissioners was not dissatisfied with the Planning
13 Commission recommendation on appeals. The portion of the recommendation that they
14 were not happy with was on mediation and that was the portion of your recommendation
15 that they wanted remanded back to the Planning Commission

16
17 **Osinski:** The Board has not actually made the adoption.

18
19 **Diener:** No they have not adopted.

20
21 **Sommerhauser:** I believe you said you did not see the timeframes that Scott
22 talked about. I also did not see them.

23
24 **Depee:** Under F it says mediation will commence within 21 days. I would like
25 clarification of that one.

26
27 **Baglio asks Osinski to expand why she doesn't like the Board of County
28 Commissioners being removed from the process.**

29
30 **Osinski:** Fundamentally, the Board of County Commissioners are the body responsible
31 for adopting the county code. That code is then used for the purposes of these very
32 applications. I think it is a disservice to the public and the voters when the Board of
33 County Commissioners no longer will be in a position to hear the outcomes and sit in
34 judgment upon outcomes related to their code. It's another step removed from the very
35 purpose they are elected and the reason they are the ones that adopt the code. They
36 need to be intimately familiar and intimately aware of the issues related to appeals. I
37 recognize that the County Commissioners themselves are frustrated often times
38 because what they are looking at in the appeals are very specific and finite thing.
39 Nevertheless, I believe that they learn separate from their limited window in which that
40 they can make judgments against the Hearings Examiner on; I still believe that they
41 become much more intimately aware of the challenges and complications associated
42 with language within their code which will become extremely difficult to remarry when
43 they no longer have to sit and listen to their appeal.

44
45 **Foritano clarifies that she would argue in favor of their involvement even though it
46 would add time.**

47
48 **Osinski:** Their involvement exists today and we would want it to stay that way. The
49 other piece is that in an existing structure, when an application comes into the
50 department there is immediately an x-parte issue. Does that mean that the
51 commissioners never engage with staff? No, however, there is an understanding that

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1 an application may ultimately come before them in judgment. As a result of that there's
2 a barrier that exists in code which limits the extent to which they can engage or influence
3 what happens at the staff level and as it moves on through the application and appeal
4 process. If they are no longer are the ones that will ever sit in judgment in any way on an
5 application you now have literally removed any and all obstacles to political interference
6 with applications on land use. You may wonder why that might be problematic. Land
7 use and the positions regarding land use are wide and vast and at any moment
8 somebody who you may not happen to agree with may have the ear of an elected official
9 who influence on the outcome of that application. The removal of the x-part wall is
10 problematic and not in the public interest.

11
12 **Norm Olson, Local Consulting Engineer:** I thought the two issues were still tied
13 together; Mediation and removing the Board of County Commissioners from Hearing
14 closed record appeals from the Hearings Examiner. The example I want to share with
15 you shows the problems with both combined. I am opposed to mandatory mediation as
16 its written. In general mediation, I'm not opposed to it entirely, but as a method to
17 remove the Board of County Commissioners from the process I am opposed to.
18 ***He gives an example of where the mediation process breaks down and why the***
19 ***Board of County Commissioners needs to stay in the process. Decision was***
20 ***received from the Hearings Examiner for a residential plat project in the city of***
21 ***Poulsbo. The project was approved with conditions. Before the Hearing the city***
22 ***staff had submitted a staff report with about 130 proposed conditions of approval***
23 ***that the developer agreed with. In the Hearing they said they agreed with the***
24 ***conditions. When the Hearing Examiner decision was received it had an additional***
25 ***5 conditions that were a surprise to all and would destroy the project. Who***
26 ***appeals this approved decision? What would happen at Kitsap County for a case***
27 ***like this? The current language states: "The director shall advise the parties of***
28 ***mediation available." Does that mean now that the appellant will be in mediation***
29 ***with the Hearing Examiner? If the Board of County Commissioners was still***
30 ***involved they could put some control back into the process. He recommends they***
31 ***reconsider and the fact that the two issues are separated.***
32

33 **Jeff Coombe, Real Estate Developer/Broker:** In projects that require development
34 mediation starts prior to making an application. It's an ongoing process with staff and
35 neighbors, environmental groups. Mandatory mediation, the biggest concern I have isn't
36 the timeframes and the problems and delays that come from the applicant side. What
37 we're doing is setting the county up for another regulation that they are not going to be
38 able to meet. DCD has been doing a phenomenal job for the past three years. But
39 there are not consequences when dates don't get met. Mandatory mediation is in 21
40 days? What happens if it doesn't happen? There's only 88 working days left in Kitsap
41 County. When you get into the months of November and December you are going to
42 see those days shrink drastically. There's never urgency for the county to follow their
43 own ordinances and there's never any consequences. I think that adding another layer
44 of mandatory mediation, they cant kick out the projects we have now based on the code
45 and the timeframe, adding another one is just going to put an addition a burden on the
46 staff.

47 ***He states that regarding the Commissioners involved that in some sense it's***
48 ***unfair to have the county commissioner listen to a land use case especially when***
49 ***there is zero history or experience. He suggests that the process change to add***
50 ***one of the x-Hearings Examiners or one of the retired judges to be part of the***

1 *closed record appeals process. That legal mind and/or experience would be able*
2 *to digest what the Hearing Examiner said.*

3
4 **Sommerhauser:** *Regarding the term Mandatory Mediation. He states that he see's*
5 *one reference. He asks for clarification; is the Hearing Examiner mandated*
6 *mediation his concern?*

7
8 **Coombe:** My concern is, I would avoid any terminology or ordinance that would involve
9 mandatory or voluntary mediation as part of the Land Use process in Kitsap County.

10
11 **Sommerhauser:** Timeframe, 21 days is too long? Is there an acceptable
12 shorter timeframe?

13
14 **Coombe:** If it was 4 days or 400 days, I don't know they can be met. We can't meet the
15 existing time frames now. Putting another burden of a timeframe is unrealistic to
16 assume those timelines be met no matter what the timeline is. I would like to see the
17 machine that is in place now work a little better before we add on.

18
19 **Rick Cadwell, Local Contractor, and trained Mediator:** *Been on both sides.* Any
20 language that has mandatory mediation is not going to be good. Both proponents and
21 appellants of the project, it could be used to lengthen the process. It becomes a fact
22 finding mission for them to not only delay, but to use what was learned in mediation
23 further. *He states that disputes do get settled in the voluntary mediation situation*
24 *about 90%. Forced mediation is going to be a tough go. If two parties are in a*
25 *dispute the first step is to agree upon a mediator. He states that he's seen that*
26 *process drag on for months. He believes that the terms mandatory and mediation*
27 *in the same sentence are not going to work.*

28
29 **Mark Eisses, Maps Ltd.:** These individuals have pretty well voiced my and my firm's
30 option regarding this. One option that we threw out on the table at one point was, in
31 Norm's example would be to have a judge or x-Hearing Examiner take the place of the
32 county commissioners so that you're not having to appeal the Hearing Examiner to the
33 Superior Court for some of these issues non-issues that the Hearing Examiner does
34 create.

35
36 **Baglio:** One thing that strikes me with this is that there appears to be so many
37 options for mediation throughout the process. When this initially was proposed I
38 assumed that it would be after the Hearing Examiner rendered a decision; then
39 you're going mediate. It seemed to happen so early in the process, before you
40 know what the conditions of the project are. *He asks what comments the*
41 *public has on that.*

42
43 **Cadwell:** I think the downside to that, correct me if I'm wrong. Is the example I heard is
44 that if an opponent to a project; its one way to string a project out and make the
45 timeframe longer and then loose. And then now let's talk about if we can meet in the
46 middle. I'm going to guess that if it was voluntary at that point you would have the
47 person that just spent a bunch in legal bills, ran through a long process say; "Why would
48 I dot that?" That's just an example I heard from someone else had a similar process in
49 another jurisdiction.

50

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1 **Coombe:** Another problem you have too is that typically neighbors won't negotiate until
2 they've lost. So if you have 10 points of an argument for a development and you
3 mitigate a compromise and mediate with neighbors on 8 of the 10 points in their favor,
4 you're still going to go through mediation on the remaining 2. Mediation's hard to be
5 mandatory.

6
7 **Baglio:** I was thinking voluntary, but that would be the only time that you would
8 actually mediate would be after the Hearing Examiner rendered a decision. So
9 then you could say in essence they actually lost and instead of going to the
10 County Commissioners that would be the point in time that maybe you would
11 mediate.

12
13 **Coombe:** I think there's been some history just in 2009 of that. That after a decision
14 then mediation happened. I don't know the results. I believe there has been some
15 voluntary mediation.

16
17 **Eisses:** But without conditions of approval sitting on the table, what are you going to
18 start mediating before the Hearing Examiner? But I also think that if you had a pre-
19 submittal neighborhood meeting that you are already starting your mediation process.

20
21 **Taylor: To Scott Diener.** If you can, we have a project in Illahee; Timber's
22 Edge. Could you relate that project to this chart if you could? Could you give a
23 brief summary?

24
25 **9:40:00**

26
27 **Diener:** Timber's Edge is a type III decision. It went before the Hearing Examiner. It
28 probably would have benefited substantially from a neighborhood meeting prior to any
29 formal application. Just so you know that as we look at Title 21 we are going to
30 recommend that neighborhood meetings be included. Because it was known in advance
31 that there were some concerns from some of the neighbors, perhaps opponents to the
32 project. The Hearing Examiner during that process could have considered the testimony
33 he or she heard and directed mediation. As you see here, the language says; "The
34 Hearing Examiner may direct mediation and continue open record Hearing until
35 mediation is held." It's hard to determine whether mediation would have been directed
36 by the Hearing Examiner in this situation, but let's presume that it would. Then you are
37 looking at a 21 day commencement. To be clear, that doesn't mean that the mediation
38 would wrap up in 21 days. It means that it needs to be run through the intake that the
39 resolution center has. They need to find a mediator, and they are typically volunteer
40 mediators, so that can be difficult. But hopefully you would find someone within 21 days.
41 You would begin that process. Typically, mediation is wrapped up in no more than a
42 couple sessions. They try to limit sessions to no more that 3 hours and the mediators
43 are very well trained in recognizing when something is not going to move forward and
44 cease mediation and disband. That will have met the intentions of mediation. Mediation
45 doesn't presume that there is always going to be a successful or agreeable outcome.
46 Then let's presume that that mediation fails. The Hearing Examiner closed record,
47 makes a decision. The Hearing Examiner made a decision, they weren't happy with it.
48 In this case, the Director can advise that mediation is available. And again that goes
49 back to a 21 day commencement process. So, I think the statement that it does extend
50 the process, in some cases it could be by a substantial amount of time, is not an
51 inaccurate statement, it could be very accurate. Let's go back into mediation, let's say it

1 takes 20 days to get to the table for mediation. Then you've got to, perhaps, consider
2 some conditions, and in this case may involve some partners that need to talk about it.
3 The other side of the table may need to go back to neighborhood associations and talk
4 about their conditions. The results of the mediation are not available to anybody outside
5 of mediation unless agreed upon by both parties. It could require a substantial amount
6 of time in between sessions. So, it's conceivable that it could take some time. Again,
7 worst case scenario, let's presume that the Director advises mediation and that fails.
8 Then you would go to an appeal process, in this case to the Superior Court. **He**
9 **discusses the mediation process and how power plays are handled.**

10
11 **Sommerhauser: Poses question to public.** In the first offer of mediation when
12 the project is still being considered; do any of you view this as a way to get DCD
13 to raise the level of concern to get your interests addressed? That having the
14 offer of mediation is immediately going to raise the level of concern with DCD?
15

16 **Olson:** That would seem to work to the good. But at the same time, the negative you
17 would get to the other side would not be worth it.
18

19 **Sommerhauser summarizes that their principal concerns aren't in the discussions**
20 **with DCD, but are with other people that may have concerns about the project**
21 **holding you up.**

22
23 **The public agrees.**

24
25 **Nevins:** I don't think the opposition is at all involved at this point. They don't
26 even know that there is a project. If this is a project that someone whose brought
27 forward and a staff member in DCD has indicated that these are the conditions;
28 the person that brought it forward says "no, I can't accept those points". There's
29 no opposition alerted to the fact that this discussion is even happening. That
30 early mediation point is not really...
31

32 **Sommerhauser disagrees with Nevins and gives two examples.**

33
34 **Larry Keeton, Director, DCD:** Clarifies the purpose of first mediation was. The intent
35 of the first one is two fold. If there are times in the process where staff and applicant
36 cannot come to an agreement, sometimes we just need a third party to be the neutral
37 party. So that's really between the department and the applicant. The second time
38 would be when there is opposition known. **He gives and example of Timbers Edge.**
39

40 **Depee proposes the use of a word other than mediation and suggests that the**
41 **community may need some education about the legal parameters for the property**
42 **before the application comes in.**

43
44 **Keeton:** Where we have the meetings with the public before the application comes in;
45 which rarely occurs at this point, that's exactly when that should take place. We also
46 agree that when staff receives those letters that the need to make sure that the
47 individual sending them in understands what the zoning is. That takes time from staff
48 and processing time is a premium. So you got to be careful about what you want staff
49 doing to advise the public.
50

1 **Depee disagrees. He states that if you pick it up in the beginning it will reduce**
2 **staff time.**

3
4 **Keeton:** The second piece on mediation that is offered in the proposed ordinance is
5 when we have a Type I and Type II decision. That is truly the only mandatory aspect of
6 mediation as it is currently written. What that means is that those are department
7 decisions that have been made and moved to the Hearing Examiner for appeal.

8
9 **9:52:00**

10
11 Foritano closes the Public Hearing and moves on to deliberations.

12
13 **Nevins:** The term mediation is a difficult one for me. There are laws connected with
14 mediation. **He explains the details of the legal term and asks to avoid the word**
15 **mediation. He asks who would know what was presented by the mediations**
16 **parties if the mediation is closed. He asks for a definition of the word “toll” in the**
17 **document.**

18
19 **Diener: Defines Toll. It means to stay or to put on hold.** It's important discussion
20 point. There is a central tenant to mediation particularly in land use cases. The results
21 of mediation can be disclosed. But it has to be agrees upon by both parties. What is
22 disclosed is written up in a mediation agreement. If one or both of those parties don't
23 agree to disclose the results of mediation we are not moving forward.

24
25 **Foritano clarifies his understanding of public Hearing had to do with mandatory**
26 **mediation and the removal of the Board. He welcomes comment on these or any**
27 **other.**

28
29 **Taylor expresses appreciation for the public coming here.** If there's any way
30 I think this thing could be shifted, rather than shifting away from the County
31 Commissioners, I'd like to shift it back to the legislature; that' s where the
32 problem is. I've always felt that the department is charges with enforcing the law.
33 **He states that the citizens don't know that the problem is with the**
34 **legislature.**

35
36 **Sommerhauser: Defines “toll”; aggress with Diener's definition. He asks if the 21**
37 **time frame has an end limit.**

38
39 **Diener:** No, there is no end limit and that's because it's hard to understand how long it
40 might take to get the two parties to come to successful conclusion. **He gives examples**
41 **of this. He states that the dispute resolution center believes they could**
42 **commence mediation within 14 days. He states that we could put language in that**
43 **offers that if the 21 day timeframe is not met that the process will be sacrifices.**
44 **He reminds the commission that the process will be reviewed again in September**
45 **2011.**

46
47 **10:00:00**

48
49 **Sommerhauser: He asks where multiple bites of the apple issue is that dealt with.**
50

1 **Diener:** That's also in the first paragraph seven lines down. "Mediation shall not be
2 engaged for conditions that previously have been the subject of a mediation session."
3

4 **Foritano:** *Asks about concern regarding the Board being out of the process. Why*
5 *did they opt for removal?*
6

7 **Diener:** We've heard it go both ways. *Sums up basic concern from commissioner*
8 *is that the decisions that come out of the Hearing Examiner process are so*
9 *complex that it asks them to act as attorneys in making this decision.*
10

11 **Keeton:** What my discussions with the Board have been is this. There were cases that
12 came in that they saw the code, they recognized the error in the code, but they couldn't
13 change it. They felt they were required to follow the law. They felt they were required to
14 follow the law which somebody else had written. On a closed record appeal where they
15 see some real inconsistencies where they may politically or personally believe there are
16 some inconsistencies with their own value system following that code makes them make
17 decision they don't necessarily agree with. There is this level of separation right now.
18 They are not allowed to influence our decision making as a department because in our
19 current county code they are not allowed to interfere with the Hearing Examiner process.
20 But more importantly because they are having this x-parte relationship, potentially they
21 will provide a judicial review they have been advised by our legal community just to stay
22 out of it. *Regarding the 21 day time frame that the 21 days exists either way. He*
23 *states that under state law that the appeal process is 21 days and under state*
24 *superior court.*
25

26 **Gustavson comments on county commissioner concerns. He states that they are**
27 **elected and can be voted out. If they are uncomfortable with the rules they have**
28 **the ability to change them for future development. Keeping them in the loop is**
29 **vitaly important. He says that the strongest states in our country are the ones**
30 **that do anything they can to help the developers. He believes this is another**
31 **burden to the developers.**
32

33 **Keeton:** If you leave the Board in the current process there is nothing in our current
34 county code that says when an appeal has to go before the Board of County
35 Commissioners. There are other rules and regulations that talk about processing an
36 application and getting it done in 120 days; appeals aren't covered. If you look at our
37 history of appeals, they don't normally get to the Board in 21 days, 30 days, sometimes
38 60 and often 90. So there is a delay in the process. Plus if the applicant does not agree
39 with the Board's decision, then they still go back to Superior Court. Superior Court is still
40 in the system, regardless. If you want to reduce the amount of time an application is
41 in the process taking the Board out reduces anywhere from 30, 60, to 90 days. And it
42 automatically goes to Superior Court unless there is mediation. Remember it's offered
43 at the end. So, that's also an attempt to speed up that process.
44

45 **Baglio:** Regarding the County Commissioners being involved in the process.
46 You made a comment that they wish that they couldn't vote against, that they
47 wish they could change it. If they weren't making a ruling they wouldn't have any
48 idea of the zoning ordinance or land use that they adopted and its impact. They
49 would be so far removed they really wouldn't realize that there would be
50 something to fix. Additionally, it really can potentially politicize the process.
51 Maybe not with our current county commissioners, but the people that work for

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1 DCD; their boss is the county commissioner. The county commissioner comes
2 down and knocks on your door and says; “Hey, you know what, I don’t want this
3 project to go through.” Right now they are not supposed to do that, if they are
4 removed from the process they can talk either way and they are your boss,
5 you’re going to see what you can do about making sure you accommodate them.
6

7 **Keeton:** The code says they are not allowed to but the practicality is that there is
8 potential.
9

10 ***Baglio states that the first opportunity someone has to request mediation is the***
11 ***SEPA checklist. Then it could be requested again after the technical review for***
12 ***other issues. There is the ability to mediate the same project on different points***
13 ***more than once.***
14

15 **Keeton:** In that case, prior to the Hearing Examiner, we offer it once to somebody.
16 That’s what the intent there is. We are not going to keep going for different groups.
17 Let’s say it’s after the tech review and we are getting ready to go into the Hearing
18 Examiner, we’re not going to mediation, we’ll just take it to the Hearing Examiner.
19

20 **Depee agrees with Baglio.**
21

22 **Discussion about county commissioner involvement.**
23

24 **Foritano asks if staff is still looking for a recommendation.**
25

26 **Diener:** I need to know what it is you would like to see. I have a couple things, one is
27 maybe we look at shortening the timeframe, maybe to 14 days. The Board was not
28 dissatisfied on your earlier recommendation on appeals. So we are not bringing that
29 back to you, you’ve already made a recommendation on that.
30

31 **Baglio:** I’m not sure about that.
32

33 **Diener:** Ok.
34

35 ***Sommerhauser clarifies the rules of procedure for the decision to come back on***
36 ***the table for reconsideration. Someone who voted for that in the affirmative has***
37 ***to move to bring it back on the table.***
38

39 ***Depee requests a trigger for the date on perceived suggestion of changes.***
40

41 ***Discussion is held about the triggers for dates.***
42

43 A motion is made by Commissioner Paralez and seconded by Commissioner
44 Sommerhauser to reconsider this mitigation issue and provide some recommendations
45 for the staff to revise their proposal to us in terms of the mandatory issue and in terms of
46 the timeframe issues. To evaluate at what point the mandatory frame is even relevant.
47

48 **Paralez:** I’m Hearing that the clarity of whether or not it needs to be mandatory
49 is uncertain.
50
51

1 Foritano points out that her motion did not address the other major issue which is
2 the commissioner's involvement.

3
4 *Sommerhauser states that he has a lot of mediation experience and that it
5 resolves a majority of the problems in the labor arena. He discusses the
6 confidentiality points of mediation. He states that he thinks it's not clear what is
7 mandatory. Also, timeframes; getting started sooner and a trigger on the
8 mediation process to move on to the next step.*

9
10 *Diener: Reviews the points he needs decisions on from the planning commission:
11 ve to timeframe, what happens if we don't commence within 21 days, what
12 happens when you are appealing a Hearing Examiner decision.*

13
14 *Foritano asks what the conclusion is for the Board's involvement.*

15
16 *Diener:* The Board was clear that the portion they were not happy with was mediation.
17 They were happy with how the Planning Commission recommended on mediation. Staff
18 feels that that ship has set sail. You are asking to revisit something that has already
19 been recommended by the Planning Commission.

20
21 **Baglio requests that the issue of Board involvement be revisited. Foritano agrees.**

22
23 **A motion to amend the motion on the floor is made by Commissioner
24 Sommerhauser and seconded by Commissioner Gustafson to add beyond the 14
25 day the trigger as Scott has noted, that you have a timeframe window to request
26 mediation then it closes. The exclusion of specified parties from mediation to
27 make that clear; you can't mediate the Hearing Examiner. To have a deadline at
28 which any party involved in mediation can withdraw and move the process to the
29 next step.**

30
31 *Diener would like to know what you are calling a termination of mediation
32 process. What would the planning commission like to see?*

33
34 *Sommerhauser would like more input from staff.*

35
36 *Depee suggests 21 days.*

37
38 **The vote on the Amendment:**

39 **Yes: unanimous**

40 **The amendment carries**

41
42 **The Vote on the motion:**

43 **Yes: unanimous**

44 **Motion Carries**

45
46 **A motion is made by Commissioner Baglio and seconded by Commissioner
47 Depee that the Planning Commission reconsider the Board of County
48 Commissioners' involvement in the appeal process.**

49
50 **The Vote:**

51 **YES: 6**

1 **No: 2**
2 **Motion Carries.**

3
4 **A motion is made by Commissioner Nevins and seconded by Commissioner**
5 **Paralez to come up with an alternative term for mediation; to remove that term**
6 **from wherever possible in the document.**

7
8 **Nevins:** It has to do with open government principals which I believe take
9 precedence over how long a project takes to come to fruition. The governmental
10 functions need to stay open. I understand how mediation for other kinds of
11 disputes may be facilitated by non-disclosure agreements. But I don't think that
12 governmental functions are helped by non-disclosure agreements. If any email
13 exchanges or paperwork that goes on are privileged information then I don't think
14 that the general public is well served.

15
16 **10:34:00**

17
18 **Sommerhauser states that he's not sure changing the word gets you out of the**
19 **law. But if it does he suggests "non-binding dispute resolution".**

20
21 **Foritano:** If you change the word, do you really want a process change?

22
23 **Nevins:** The reason I have an issue with this because of the word mediation.
24 The word mediation triggers a process and triggers conditions that I don't think
25 serve the public good. They may facilitate mediation, but that is secondary to
26 closed government and I value Washington State's open government policy.

27
28 **Sommerhauser:** I support Tom's motion for another reason. In discussion
29 several of us confused mediation with arbitration.

30
31 **Paralez:** Is the concern that someone could later sue and claim that they were in
32 a mediation process therefore the rules of mediation apply and regardless of
33 what process you apply and you should have applied the mediation process?

34
35 **Nevins:** I could see how someone could enter information into the mediation
36 process which would lock down ever using that information anywhere else.

37
38 ***Paralez clarifies that staff communications could inadvertently become***
39 ***confidential.***

40
41 **Diener:** If you want to look at changing the word that's fine. I would not encourage
42 nonbinding dispute resolution because often the results are binding. Maybe dispute
43 resolution.

44
45 **The Vote:**
46 **Yes: 4**
47 **No: 4**
48 **Motion Fails**

1 **A motion is made by Commission Gustavson that the Board of County**
2 **Commissioners' vote be included in the process of approval for Land Use**
3 **decisions.**

4
5 **Keeton:** As I understand it when you asked for the reconsideration you recall the
6 original Hearing decision, which included the one sentence on mediation, was about the
7 Board taking themselves out of the mediation process. You voted to do the
8 reconsideration, what you are reconsidering is your recommendation to the Board
9 whether they should be in or out of the process.

10
11 **Sommerhauser:** Until there is some other motion that's all we've done. There
12 is not motion to the Board as yet.

13
14 **Keeton:** Is this the appropriate time to make that motion. Would it be appropriate,
15 because you said you want to reconsider the decision, so with the next meeting you are
16 reconsidering that decision is where that motion would be appropriate.

17
18 **Discussion is held about the motion timing.**

19
20 **Gustavson withdraws motion**

21
22 **Foritano rules to continue the public Hearing and discussion to the August 4, 2009**
23 **meeting.**

24
25 **Diener states that due to the length of the meeting today agenda item F will be**
26 **rescheduled to a special meeting on July 28, 2009 at the County Administration**
27 **Building at 9:00 am.**

28
29 **Break: 10:45:00**

30 **Reconvene: 10:55:00**

31
32 **F. Work Study: RCO and RI zones and Policy RL-8: Katrina Knutson Senior**
33 **Planner DCD**

34
35 **Knutson explains the use table for discussion at the 7/28/09 meeting and reviews**
36 **what will be covered in the next meeting. She reviews the grandfathering for**
37 **existed uses on these properties.**

38
39 11:05:00

40
41 **G. Briefing: Greater Hansville Area Community Plan, Downtown Kingston**
42 **Master Plan, 2009 Site Specific Comprehensive Plan Amendments: Pete**
43 **Sullivan, Associate Planner, DCD**

44
45 ***Sullivan gives an overview of the days activities. Proposes going through the re-***
46 ***zone process and review the communities as we go to them.***

47
48 ***The Planning Commission members agree.***

49

1 ***Sullivan reviews the 2009 site specific comp plan amendments. He explains that***
2 ***this year there are 17 applications countywide instead of being limited to a***
3 ***specific area.***

4
5 ***Gustavson asks what's RL-8?***

6
7 ***Sullivan explains that RL-8 is a comp plan policy that says no new expansion in***
8 ***commercial and industrial uses in the rural area unless you do a LAMRID.***

9
10 **Discussion is held about notification to public about potential change of zoning or**
11 **issues that will impact community members.**

12
13 **Recess for travel to Kingston: 11:30:00**

14
15 **H. Tour of Downtown Kingston**

16
17 **Arrive at North Kitsap Fire and Rescue: 12:15:00**

18
19 **Sullivan gives an overview of the Kingston Master Plan.**

20
21 **Discussion is held regarding the community's definition of Kingston, concerns**
22 **with ferry traffic, parking, and the community identity.**

23
24 **Sullivan explains that the commission members will visit 4 case study areas that**
25 **characterize the range of issue that the Kingston projects have.**

26
27 **Arrive in Downtown Kingston: 12:55:00**

28
29 **Stop 1: Case Study Area 3: Washington Blvd. NE**

- 30 • **Indicative of the Kingston downtown core**
- 31 • **Less parking lot, convert into a normal road with two way travel lanes**
- 32 • **Angle parking on one side, parallel parking on the other**

33
34 **Stop 2: Case Study Area 4: NE 1st Street**

- 35 • **Re-route the bulk of ferry traffic**
- 36 • **Change to two way traffic with tree lined center**
- 37 • **One Lane going to toll booths with second lane for parking at low times**
38 **and ferry traffic at peak times.**
- 39 • **Two lanes leaving the ferry**

40
41 **Stop 3: Between the two Case Study Areas: NE 1st Street and Iowa Ave. NE**

- 42 • **Could be ferry overflow staging area**

43
44 **Stop 4: Case Study Area 1: NE Second and Iowa Ave. NE**

- 45 • **Point to divide the downtown activity areas commercial/residential**
- 46 • **State named streets are busier with**

47
48 **Stop 5: Case Study Area 2: NW E. Kingston Rd.**

- 49 • **Main thoroughfare through town**
- 50 • **Similar street-scape with addition of bike lane**

- New sidewalks, street lamps, parking

I. Tour of Greater Hansville

Arrive at Eglon: 2:28:00

Sullivan reviews Greater Hansville plan

Stop 1: Eglon

Stop 2: Norwegian Point Park

Stop 3: Buck Lake Park/Hansville Community Center

- Judy Foritano give overview of Hansville community and history
- Discussion regarding what to expect in future work study session for Hansville.
- Art ? give overview of the Greenway Trail
- Discussion about the Greenway development
- Commission member visit the Greenway map site

Stop 4: Drive through Driftwood Key

J. For the Good of the Order: Chair Foritano

Time of adjournment: 5:00:00

EXHIBITS

- A. Executive Summary: Proposed Amendments to KCC Chapter 21.04 – Mediation Language
- B. KC Land Use Mediation Process Chart
- C. 2009 Site Specific Comprehensive Plan Amendments List
- D. Downtown Kingston Proposed Design Boundaries
- E. Photos of Downtown Kingston
- F. Details of Kingston Old town District
- G. Case Study Areas photos
- H. Study Area Two Details
- I. Study Area Three Details
- J. Study Area Four Details
- K. Old Town Existing and Proposed Master Plan Boundaries Comparison
- L. Projects Identified by Downtown Kingston Planning Committee as applicable to Downtown Kingston
- M. Map of Field Visit sites for Greater Hansville
- N. Building Limitations Map for Greater Hansville
- O. Hansville Community Study Area
- P. Hansville Planning Area Geo
- Q. Hansville Planning Area Details
- R. Hansville Community Study Area Map
- S. Rural Commercial/ Rural Industrial Parcels Inventory
- T. Rural Commercial/Rural Industrial Parcels Details
- U. Table 17.381.040 (E) Parks, Rural and Resource Zones

Kitsap County Planning Commission – July 21, 2009

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10

MINUTES approved this _____ day of _____ 2009.

Lou Foritano, Planning Commission Chair

Mary Seals, Planning Commission Secretary