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

Members absent: Michael Gustavson and Michael Brown

Staff present: Larry Keeton, Dave Tucker, Katrina Knutson, Scott Diener and Planning Commission Secretary Karla Castillo

6:59:19

A. Call Meeting to Order, Introductions

B. Adoption of Agenda

C. Public Comments

D. Approval of the July 21, 2009 minutes

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Paralez to approve the minutes of July 21, 2009.

The Vote:
Unanimous
The motion carries

A motion is made by Commissioner Nevins and seconded by Commissioner Sommerhauser to approve the minutes of July 28, 2009.

The Vote:
6: yes
1: abstain
The motion carries

E. Directors Update: Larry Keeton, Director, DCD

Keeton gives an update on the status of the Department. Keeton discusses the backlog on Residential and Commercial Permit review. Keeton also gives update on Hearing Examiner contract and how many projects have gone before them to date.

F. Public Hearing and Deliberations: Stormwater Manual LID Update, Dave Tucker, Assistant Director, Public Works
Tucker gives clarification of what is being proposed for approval. Tucker gives a brief PowerPoint presentation going over the highlights of the LID manual.

7:23:50

Chair Foritano opens the Public Hearing

Art Castle, Executive Vice President of the Home Builders Association: I think Dave’s presentation was pretty thorough essentially this gets confusing when the state pushes back timeframes and the goal was to get this manual so people could begin using it sooner than later. Dave talked about it but it has the latest methodology in modeling as well as the tree credit. All the latest that the Department of Ecology has approved and the methodology that we adopted some two and half years ago that has some outdated modeling. He gives examples of the updated methodology that the new manual has. As part of this process of the years we have had 20 to 25 workshops open to industry professionals. I have given over 300 hundred presentation to community groups at workshops, homeshows, tradeshows and variety of community settings. There have been numerous newspaper articles. Low Impact Development is not a secret in Kitsap County. I even read a newspaper article recently that Kitsap County do to the combined efforts has become the LID capital of Washington. One other thing I would add to it and this is not for tonight this is for future. I will give 2 copies to staff to hand out when appropriate. When you get into the more subtenant discussion on LID and the updated Stormwater manuals later in the year What this is a list of unranked lid incentives and we are providing this to each jurisdiction as we go through the adoption process and letting them decide which one makes since for their jurisdiction and as a variety of codes come up it allows that jurisdiction to consider incorporating them as other codes get amended. The City of Poulsbo adopted this manual in June; the City of Bainbridge Island will adopt it next Wednesday night your approval on this will allow it to go in front of the County Commissioners before the end of the month. The City of Bremerton is in the process of Administering adopting and I expect that to occur this month and Port Orchard will follow what the County does on their timing on adoption letting them decided which one

William M. Palmer, Land Use Planning Consultant: I have watched storm drainage reports be prepared and stormwater systems being implemented for close to 30 years. I am delighted in some respects that the County is taking the steps for Low Impact Development (LID). I support the system; I tried to recommend it to the County a long time before Art Castle got involved. I think Art Castle has been instrumental in getting us to this point. I do have one concern. If the system becomes mandatory and I believe that is where we are headed with the State guidelines. As an option I think it is a great choice. However, if it becomes mandatory it is a means in which projects will be killed. I have a project in Port Orchard that if we were forced to use LID we would not be able to develop this piece of property. The soils are not good enough and there is not enough room and the only reasonable economic way to take care of Storm drainage is through a pond system in this case it’s a commercial development. If we had the soils or the landscape to make it work we would probably use LID. I just do not want it to become mandatory because everything that becomes mandatory we have to go through some sort of variance process or heaven forbid an appeal process to get things approved but if it’s an option I will encourage my clients to take advantage of it anywhere it works. I like the products that are part of LID the pervious pavement and landscaping uses. I’m supportive of all of those things as long as it is not mandatory. If it’s an option great.
Discussion is held regarding the fact that currently the manual does not reference LID as being mandatory it just recommends the process.

7:30:26

Foritano closes the Public Hearing and moves on to deliberations

Discussion is held on if the legality of having the Public Hearing, Deliberations and the Finding of Fact all in one night. Keeton confirms that yes that it is legal and has been reviewed by our legal office.

A motion is made by Commissioner Taylor and seconded by Commissioner Paralez to approve the Stormwater Appendix 5B revision.

Discussion is held between Baglio and Tucker on who maintains the Rain Gardens.

Clarification is made on the cost estimates that were used in Tucker's PowerPoint presentation.

Discussion is held between Baglio and Tucker on working with the Landscape ordinance to make sure that the street trees will work with the landscape ordinance. Tucker states that is their intent to make sure that LID and the Landscape policy work together.

Discussion is held about the maintenance of permeable pavements on private projects.

Tucker: For large developments, they are required to identify a maintenance provider and to put in a covenant that runs with the property for the life of the property that identifies that the maintenance needs to be done. Public Works through the Surface and Stormwater Management Program has a listing of all those sites. We have documentation of the maintenance that is required and mapping. We go out and meet the owners and explain to the owners if they don’t understand and educate them on what needs to be done.

Discussion is held regarding the Kensington project that was presented in Tucker’s PowerPoint which was one of the only projects that it was not more economical to go with LID. However, it was reassessed after the project was built and it was found out that it would have been cost effective to go with LID.

A motion is made by Commissioner Taylor and seconded by Commissioner Paralez to approve the Stormwater Appendix 5B revision.

The Vote:

Unanimous

The motion carries
G. Findings of Fact: Stormwater Manual LID Update, Dave Tucker, Assistant Director, Public Works

A motion is made by Commissioner Sommerhauser and seconded by Commissioner Taylor to approve the Finding of Fact for the Stormwater Manual LID Update.

The Vote:
Unanimous
The motion carries

7:45:25

H. Public Hearing and Deliberations: RCO and RI zones and Policy RL-8:
Katrina Knutson, Senior Planner, DCD

Knutson gives an overview of the proposed changes before the Public Hearing is opened.

Discussion is held between Depee and Knutson on HTC zoning and how this would be affected by the changes.

Chair Foritano opens the Public Hearing

William M. Palmer: I object to the Planning Commission taking action on this Use Table. One I haven’t seen any evidence that there has been a study of how many instances the County will make uses non conforming by converting industrial zone to rural industrial I think you need to have that information available to you the same goes for commercial. Are we changing the zoning to make things non conforming? Does the commission know that answer? I don’t think so. The other reason I object to the commission taking action on this particular item is the table the x, the CUPS, the ACUPS and that all this hasn’t really been vetted by any of the organization that have reviewed ordinances in the past. Practically all of the other ordinance changes that have come before the Planning Commission and the Board of County Commissioners have been through a pretty rigorous process where questions could be asked ahead of time. This table is somewhat deceptive because it doesn’t show you what is in the current Industrial Zone so you can see what is being taken away versus what is being allowed. You should have that information directly before you and it should not be a hard format. You shouldn’t have to go back in the zoning code to find it. It should have been presented in a convenient layout so you could see it and ask the questions. Maybe it was during the work study portion but the public does not have that. I have made a good comparison and I have serious questions that I have not presented on each individual item. To me that is one of those issues that should have been vetted through one of those groups to go through these proposed ordinance. To me this is very premature and the Commission should not be taking any action on this tonight. Until that kind of vetting process has occurred. Maybe staff has tried, but there is at least three different Committees that I have been a part of in the past that we have had at least a chance to review the ordinance changes. None of those committees that I am aware of have even looked at this before it comes to the Planning Commission for adoptions. I can not believe the
Planning Commission would even adopt it tonight without serious reviews. One of those reviews should be to find out how many instances are you making something non-conforming. I want to tell you something that just because a person can still operate their business because its non-conforming does not solve all the problems that person has if something happens to that business he has to go through a separate process to expand it a process he doesn’t have to go through now. If a property burns down, I have been through that with a client and he lost the right to use it because he couldn’t rebuild it in a timely manner. Making things non conforming is not just a palpable answer its something that requires serious study and I have not seen the results of that. I know that there are several people at least one of whom is in this room who are going to be made non-conforming and this particular individual as you will hear spent a lot of time in another set of comprehensive plan amendments to get back his permitted use right because he was made non conforming from an action like this. This is just premature.

**Depee:** I don’t see this as changing anything to non conforming. Its giving permitted uses, changes or upgrades but not to existing uses. If someone wanted to go into there building and expand it 5000 feet they would be subject to fire code. You are losing me when you say that this is non conforming.

**Palmer:** You don’t have the Use table for the Industrial Zone in front of you. If you had that to compare you would see that self storage is allowed in the current Industrial Zone. We have instances of self storage in our Rural Industrial Zone when this goes into effect all those self storage become non-conforming.

**Chair Foritano makes clarification of Mr. Palmers standing on the issue that he is requesting the Planning Commission to not make a decision on this matter tonight.**

**Gene Sherrard:** Refers to a handout that he gives to the Planning Commission. The first thing I would like to state is I am a retired Attorney I practiced law here in the county for about 25 years. I retired and develop mini storages and I have 6 in the county. Point is I have them now and what Bill Palmer is talking about is my 10 acre property down on Mullenix that I bought back in 1996 and started to develop according to the then zoning rules. The County came along and allowed me to put storages in that industrial zone that was there. I said fine I will do it and I walked away from about 300,000 dollars worth of infrastructure that I had to redo to go to mini storages. Two years later you are taking this property back from me I’m about ready to do the dirt work to take the next step into putting the storage units on this site and now I am going to be a non conforming use. I practiced law when I started taking law classes at the University of Washington in Zoning we heard about non conforming use and we understood it non conforming use is not good for property owners. Fire is the one thing you fear unless it’s a certain percentage. You did it to me up in Kingston and it took me 26 years to get my mini storage back in conforming zoning. This is not good planning this is not fair to property owners. Zoning should be stable. I love this county and I have lived here for 45 years and one of the only things I don’t like is the constant change of zoning. I think you are in very serious jeopardy of not having a legal process. There are 158 other owners of Industrial land and virtually none of them know what is going on with their land. I have shown you what the changes are and they are major. I have only known about this for a week and I have been trying to prepare a decent presentation. You are doing major elimination of function and use and down zoning most of this Industrial property without notice. You have a
subsidy problem the latest map makes no distinction from one or other use from Rural Industrial. You are going to lose jobs and properties devalued.

Taylor comments on how there seems to be two different perspectives, one side is telling us that it doesn't cause all these properties to be non-conforming and other people say it does. We certainly need some clarification on this.

Depee: So your suggestion is more public notification take place prior to us acting on this?

Sherrard: If I were putting out a motion I would move to continue this for a month and put out a Public Notice that identifies Industrial Use owners have some serious changes coming.

Depee: I appreciate what you are saying but I am going to bring up another subject for you any comprehensive plan changes or UGA changes those notices are put out over and over again and people never show up until after the fact. Even though I am agreeing with you. If you can come up with a better way system then just saying stall this until more notification

8:08:25

Russ Robinson, Business Owner: I have been in Chico for over 20 years and I paid to get the zoning done from a professional and it's worked out very well. Chico is an urban area; I think there are around 30 businesses in the area. Questions what exactly his rural zoning is and if someone could explain what happens when it turns to Commercial. I am probably not a lot different then a lot of people who really don’t know how this works. We just see the end results. I had a piece of property in Silverdale that was rezoned without me knowing it and Fred did mention earlier that there are notifications but a little blurb in the back of the newspapers really doesn’t do the job for the local tax payers that are the backbone of this area. You could probably improve on that. That was an investment I made and I believe the value was cut in half because of somebody wanting a different zone. I did not find out until a year later. I don’t know if saying that the notifications come out consistently is really an answer that is going to go over well with guys that are not doing this everyday. Questions if something was to be adopted tonight?

Foritano clarifies that this is just the Public Hearing and Deliberations. Foritano suggests to Robinson that he meet with staff sometime after the meeting.

Discussion is held on what noticing was done and that notice was sent to the North, Central and South papers and that individual notices were not sent.

Mark Eisses, Map, LTD: I would like to ask that you continue this also. I had cancelled the monthly meeting for August but we have called an emergency meeting for Thursday. The first notice I got of this was while I was doing a Site Specific that they sent out June 16th. It took a couple of weeks to figure out what it was and how they were going to interpret it. At your last Planning Commission meeting I received a new copy of it. This morning I got a new copy off of the web page where it has changes that you have made to it. We really haven’t had a chance to even look at it. It would be nice to have some of
the stake holders take a look at this before you guys make a recommendation. There are just some funny things that just don't make any sense to me as far as when you go through the table. You are going to create non conforming uses out of people. You take the twelve trees area where you have moving and storage. If they went out of business a year later you would end up with a huge building and warehouse and distribution in this chart would only allow for Agriculture uses or Forestry uses. How are you going to fill that building back up? Maybe you would put farm and garden equipment sales, but that is not allowed. If you go to a job in the industrial area you can't buy a cup of coffee, you can't buy a beer and you can't buy a sandwich. You would have to get into your car and go somewhere else. Does that really make sense when we are trying to make it pedestrian friendly in these industrial areas? I just don’t think there has even been a chance for the stake holders and citizens to address these concerns yet. It seems like there is some reason they are trying to push this thing through quickly and it doesn’t quite make sense. I would encourage them to take a look at the Twelve Trees area its Industrial. Why did the county zone commercial property as Neighborhood Commercial and Highway Tourist Commercial if they think they can lump it all into one zone. All of those different zones all have different uses and appropriate for their little communities.

Jeff Coombe, Silverdale: Also, would like the Planning Commission to table this for a month or two. I always worry about process times not just for applicants and developers but for staff. Making changes creates time problems. There are only 79 working days left in Kitsap County to process anything in the year 2009. There are just a couple of other procedures I am confused on. I am involved in a Site Specific Application that I submitted on February 13, 2009, on March 13, 2009 I received a technically complete letter and then on June 16, 2009 I received a letter saying we have changed the procedure and we have come up with a new zone and a new zoning table tell us how you want to proceed. I received an email on July 1, 2009 saying since we didn’t hear from you and if we don’t hear from you by tomorrow we are going to just proceed. I just think that procedure might be a little off. I only received 3 use tables and I am on a site specific and I have only had 1 of them sent directly to me. I think we need to work on this. I cannot stress this enough that when a use table gets changed what it means to the applicant. Non conforming uses will be created. Gives an example of what could happen to business owners like Russ Robison when their property is made non-conforming. He hands out a flier to the Commission showing an analogy between a permitted use submittal and an ACUP submittal. I can not stress enough that there has probably been 300 or 400 Land Use actions in Kitsap County since 2004 either ACUP or Hearing Examiner decision and by code I would really like to move a percentage of those application where the Department met the timeline as by code. I just worry about adding more process. Notices of Site Specific application I received one. I was involved in Russ’s application on Silverdale Way it was zoned Highway Tourist Commercial to Mixed Use with no notification. One way to change this is twice a year we send out tax notices to property owner twice a year we should include something in with the tax notices.

Tim Mathis, Citizen: I encourage you to get more information on this particular issue and do a little more fact finding before you make a decision. You know one of the things that strikes me and has always seemed a little odd about Community Development here at Kitsap County whenever anyone goes for a rezone or a variance in a zoning that person is required to notify the surrounding property owners. You are suppose to go through the tax records and you have to notify them and DCD has a check off list to make sure this is done. On the other hand DCD is telling us that it cost to much money
to do that and it’s to difficult. I would encourage you to recommend to DCD that they
send out 160 notices to 170 notices of anybody’s property that is in the Rural
Commercial or Rural Industrial area informing them that there might be a change in their
zoning. That should be the minimum of what we should be doing. Otherwise you are
going to have people come back time and time again saying hey I was blind sided here.
So I think do diligence just requires you to do that tonight. Please consider tabling this
and go ahead and do the process at this level.

Art Castle: If there are any concerns about notifying, we can go to a title company and
get a spreadsheet of all the Commercial and Industrial property owners.

8:28:56

Foritano closes the Public Hearing and moves on to deliberations

Diener discusses the legal aspect of notification. He also states that we were not
required to notify each property owner.

Foritano: Did you and Shelley discuss the issue of Stakeholder group
notification?

Diener comments that Shelley Kneipp, as well as staff, believe that the legal
process, public process starts with the Planning Commission. We did try to reach
out to the sub committees of the Permit Advisory Group. That effort was
unsuccessful. We are under some immense time pressure to keep this moving
along. This process needs to precede the site specifics.

Sommerhauser: Was the intent of this process ever to change the zoning in
those enclaves for Commercial or Industrial that were created either by the Comp
plan itself or the update to the Comp plan that were outside the UGA. Was the
intent of this process to change those zonings?

Diener states no, there was no intention by this process or staff to change any of
the existing rural commercial or rural industrial zone designations out there.

Sommerhauser: This was strictly a process to recognize that in the course of
the comp plan and its update there were a number of properties that had existing
uses out there that were non-conforming and to create an avenue for those to
come in to conformance. Is that correct?

Diener explains that back in 2007, DCD had a number of applicants come to them
and want to do a rural commercial or rural industrial rezone. Policy RL-8
precludes them from being able to do that process.

Clarification is made on how this policy will affect property owners and if it will
make all properties non-conforming. Diener explains that it will affect some
property owners but not all.

Discussion is held between Depee and Diener regarding the time frame that is
being pushed based on the need to pass this policy for the site specifics to go
forward by the end of the year. Depee feels that a lot of property owners are being
affected and there is a need to slow down and notify people a little more.

Diener discusses the possibilities of taking a look at the non conforming section
and making some changes to do that.

Baglio clarifies that the Rural Commercial and Rural Industrial currently do not
exist in our Land Use Table and in our Zoning code. Also, clarifies that this affects
far more properties than originally were thought. He also suggests they take a
closer look at this change and would like to take a side by side comparison of the
changes.

Diener: It is clear that the side by side comparison that was made by Mr. Sherrard was
comparing Urban Commercial and Industrial uses against Rural Commercial and
Industrial uses. Those are two distinct different classes of uses.

Baglio: Mr. Sherrard has commercial and industrial uses outside of the UGA. So
even though they are what you are saying, urban in reality they are not urban
because they are outside of the UGA. You are continuing to refer to them as
rural but they are commercial uses and even though right now they are being
interpreted with the Urban Land Use Tables in reality because they are not in the
UGA you are calling them Rural.

Diener: I would go so far as to state is what we are seeing is urban level uses occurring
in rural commercially zoned and rural industrially zoned properties and that’s because
we are deficient. Kitsap County is the only county like this. We are deficient with our Use
Table.

Baglio states he felt that by passing this we were actually avoiding what Mr.
Palmer talked about if something burns down and they might lose that use. So
there was a little misunderstanding with the terminology.

Depee gets clarification on what is being created.

Diener responds with we are creating classifications that do not exist. If you are in
a rural area and you have NC (Neighborhood Commercial), HTC (Highway Tourist
Commercial) the official designation in the future for that area will be Rural
Commercial.

Paralez clarifies that Mr. Sherrard’s property that he has been referring to is in a
rural area. Paralez also clarifies that the table that Mr. Sherrard has been referring
to is an Urban Use Table.

Sommerhauser would like confirmation on if the existing uses are legal. Also, he
would like to know if Mr. Sherrard’s property would become non-conforming.

Diener explains that if it is a commercial use on top of an industrial zone and it
burns down under today’s code and it is not reestablished within one year then
the owner does not have a right to reestablish it. If it’s an ACUP or a CUP they can
reestablish at anytime because they are not non-conforming.
A motion is made by Commissioner Taylor to extend the Public Hearing to September 15, 2009 and any written comments to September 8, 2009.

Discussion is held on the motion prior to a second being made.

Keeton suggests that the Commission recommend that the Department be allowed to take this back and meet with the groups that are affected by this.

Clarification is made if we should continue this hearing or will we re-notice for the next meeting.

Discussion is held on why the Stakeholders were not involved in this change.

Motion is restated

A motion is made by Commissioner Taylor to extend the Public Hearing to September 15, 2009 and seconded by Commissioner Sommerhauser.

The vote:
6 yes
1 no
The motion passes

A motion is made by Commissioner Taylor to give notice to all affected property owners.

No second is made

Motion fails

Keeton states that he will talk to the Board about whether or not to notice.

Break

8:55:45

Reconvene

9:03:51

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

Diener: Staff would recommend continuing this Public Hearing until September 1, 2009 because of noticing requirements. Diener gives an overview of the changes made to mediation with the addition of hearings. We did hear from a member of the public that they felt that we were deficient by not allowing for discussion of appeals and that is why you see the full draft ordinance.
Foritano questions the chart and how it flows from the Hearing Examiner decision to the applicant not accepting the decision and it going straight to Superior Court. Foritano expresses concern over the public testimony from the last meeting regarding cutting out the Board and going straight to Superior Court.

Sommerhauser requests a flowchart on how appeals flow today.

Diener goes over the current process for the appeal process.

Foritano and Taylor discuss that the last public hearing on this subject the public was very direct in how they felt about the Board taking themselves out of this process.

Sommerhauser asks for clarification that the Hearing Examiner is excluded from mediation but is it also his ruling that is also excluded.

Discussion is held on this subject and Diener will get back to the Planning Commission with a definite answer.

Chair Foritano opens the Public Hearing

Art Castle, Home Builders Association: I would like to just reinforce what Teresa testified to last time. The one thing I would encourage and we all know that the County Commissioners are very interested in going the direction in taking themselves out of the appeal process. Regardless if they are not going to be the appellant body for the Hearing Examiner, there needs to be some other entity in place. We will probably have some more details or suggestions in September.

William M Palmer: I have kind of mixed emotions about the whole mediation process to begin with; it could have saved me if it happen been in existence a year or so ago around twenty-five to thirty thousand dollars in expenses that I have had to occur to challenge a Board of County Commissioners decision. Even though I can see the benefits of going directly to court after a Hearing Examiner decision, I am more persuaded that the Board of County Commissioners need a forum in which they can see the affects of the ordinances that they pass. They don’t see the entire affects of ordinance in the appeals process, but on the other hand they are elected officials that represent the people in this County. The people of this County should have a venue to get in front of the Board of County Commissioners for grievances over Land Use. Taking advantage of their public hearing agendas on Monday’s and speaking in the open forum section of that hearing is not enough. They need to hear some of the struggle of what some of the people of the county have trying to comply with ordinances. I am concerned that when you get some egregious decision out of a Hearing Examiner like the Farm House Montessori School. Why should that have to go to court when the County Commissioners have an opportunity to set the record straight. I can be persuaded to go with the mediation process because of my own experience. However, I think it is a disservice to citizens of the county not to have their Commissioners available to them. Not have struggle with I believe the Commissioners need to c the effects their ordinances that they pass.
Sommerhauser discusses that under the current system you only get 10 minutes in front of the Commissioners but with the new system you can have unlimited time.

Palmer states that the problem is you only can see one Commissioner at a time.

9:23:40

Public hearing is continued.

Nevins has a request for some additional language changes. Refers to top of Page 11 lines 1 thru 5, he would like to see staff make a small change. Nevins refers to line 3, suggest eliminating the words in the course of and replacing them with the word during and after the word mediation add the word session.

Sommerhauser discusses the interpretation of this paragraph and his discussion with Shelley Kneip and what this exactly means.

J. For the Good of the Order: Chair Foritano

Taylor requests clarification on the August 18, 2009 meeting on the exact time.

Knutson informs the Commission that on August 29, 2009, the Manchester Citizen Advisory Group is having a Celebrate Manchester Day.

A motion is made by Commissioner Paralez and seconded by Commissioner Sommerhauser to adjourn the meeting.

9:33:04

EXHIBITS

A. LID Guidelines
B. FOF, Proposed Kitsap County Stormwater Design Guidelines Revision
C. Draft Changes to Kitsap county Code Title 17
D. Table 17.381.040 (E)
E. Executive Summary- Proposed amendment to KCC Chapter 12.04
F. Ordinance amending portion of KCC chapter 21.04

MINUTES approved this _______ day of _______ 2009.

_________________________________________
Lou Foritano, Planning Commission Chair

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Mary Seals, Planning Commission Secretary