THURSTON COUNTY PLANNING COMMISSION

Minutes
October 12, 2005

1. Call to Order

Chair Kohlenberg called the special meeting to order at 7:00 p.m. Members provided self-introductions.

   a. Attendance

   Members Absent: Craig Ottavelli.
   Staff Present: John Sonnen, Allen Miller, Jennifer Hayes, Diana Smith, and Recording Secretary Cheri Lindgren, Puget Sound Meeting Services.

   b. Approval of Agenda

   Commissioner Lyman moved, seconded by Commissioner Musser, to approve a revised agenda, adding topics to the attorney discussion under Critical Areas – Balancing GMA Goals. Motion carried.

2. Public Communications

There was no public communication.

3. Approval of Minutes

The Planning Commission deferred approval of the minutes and tapes for the August 24, 25 and September 21, 2005 meetings to a future meeting.
4. **Briefing: Critical Areas – Balancing GMA Goals**  
*Staff: Allen Miller*

Mr. Sonnen said there was a question about whether to proceed with another critical areas public hearing. There is a concern that approximately 17 people signed up to speak and for whatever reason didn’t testify. Staff suggests notifying the individuals and providing them with an opportunity to submit written comments within a short timeframe and to inform them there will be subsequent public hearings prior to action by the County Board of Commissioners. The Planning Commission agreed with staff’s recommendation.

Commissioner Lyman reported she spoke with Commissioners Oberquell and Macleod about how to proceed. What staff proposes is in line with what the Commissioners indicated they would like to see.

Mr. Miller stated that it is his understanding the question is whether the Planning Commission should balance the Growth Management Act’s (GMA) 13 factors with best available science (BAS). There are three appellate cases that address BAS, and a new fourth Supreme Court case called *Viking Properties vs. Holm* in the City of Shoreline, King County. Based on the *Vikings Properties vs. Holm* case, the Supreme Court says yes, the Planning Commission is required to balance and consider all 13 factors in adopting a Critical Areas Ordinance (CAO). The case does not specifically talk about BAS, but addresses the framework of the GMA and how the legislature developed the 13 non-prioritized factors to use in deliberations when developing both comprehensive plans and development regulations. The *Vikings Properties vs. Holm* case addressed both and actually dealt with restrictive covenants in a subdivision. A developer argued the restrictive covenants requiring large lots in an urban area was contrary to the GMA, and asked the court to overturn the restrictive covenants. The court said no, the restrictive covenants were part of the deed to the property and that the GMA does not trump restrictive covenants. The developer argued that the Central Puget Sound Growth Management Hearings Board came up with a rule that anything less than four units to an acre is not urban for the area. The Supreme Court said Hearings Boards’ do not have the power to come up with the rules.

Mr. Miller reviewed the three cases that speak about BAS:

- The HEAL vs. Central Puget Sound Growth Management Hearings Board case, a 1999 Division One opinion, City of Seattle (96 Washington Appellate 522).

Commissioner Cole said there are some individuals who have indicated the Planning Commission is not using BAS. Mr. Miller said the HEAL case stipulates that when there are different versions of BAS the courts will show deference to the Planning Commission’s decision of what constitutes BAS. Mr. Cole asked when the Planning Commission ceases to consider other BAS brought forward by the public. Mr. Allen said at the end of the public hearing process because the Planning Commission has to make a decision. The Planning Commission can set that deadline and shut the door.
Commissioner Lyman stated by nature, science continually evolves. Mr. Miller agreed that’s why there is a seven-year cycle to review the comprehensive plans and development regulations.

Commissioner Darkenwald stated there is pressure to adopt a CAO by a certain deadline. He asked what happens if the Planning Commission takes its time to carefully consider the CAO. Mr. Miller replied it’s within the Planning Commission’s discretion to do that. Commissioner Roper said the downside is that the County can lose funding from state agencies when not in compliance with the GMA.

Mr. Miller summarized the HEAL case and said if there are competing science reports that demonstrate equal merit and the Planning Commission shows compelling reasons for choosing one over the other, the court said the boards and courts will not overturn its decision.

- WEAN vs. Island County (122 Washington Appellate 156, 2004 case).

The court provided some guidance related to buffers for a Class V stream. Island County established a 25-foot wide buffer based on BAS. However, The Western Growth Management Hearings Board reviewed the science and determined the buffer should be 50 feet. The court stated the county relied and primarily focused on water quality functions rather than looking at the entirety of functions attributed to stream buffers, including protection of wildlife species other than fish. The court said since the science that looks at the broader range of functions shows wider buffers are needed, the court upheld the Board’s decision that a 50-foot wide buffer is needed for a Class V stream.

Staff and Planning Commissioners discussed the logic and facts of the case.

- Ferry County vs. Concerned Friends of Ferry County (121 Washington Appellate 850, 2004 case).

The Ferry County case is on appeal to the Supreme Court. The case looks at the Eastern Growth Management Hearings Board decision related to critical areas regulations for Ferry County. Mr. Allen said the county consulted with a credentialed biologist. However, the process the biologist undertook to develop his recommendations was inadequate. There was no evidence on the record that the consultant coordinated his recommendation with any other scientist with expertise in Ferry County such as the Tribe, U.S. Forest Service, or Department of Fish and Wildlife. There’s no evidence that any onsite field observations were conducted.” The court and board have looked at the competing science and felt the scientist had not done his homework to test his observations and conclusions regarding the CAO.

Commissioner Roper reported there are three other cases pending before the Supreme Court. Two involve Lewis County and King County and critical areas regulations.

Further discussion of the WEAN case as it relates to agriculture ensued. Mr. Sonnen said it sounds like the County balances all of the goals, but there is no court guidance with the
exception of long-term agriculture that provides the ability to go beyond the bottom range of what the science says.

Mr. Miller said it appears in the Viking Properties vs. Holm case the Planning Commission is required to balance all 13 goals. Commissioner Roper said the court was not looking specifically at the CAO, but the comprehensive plan, planning policies, and regulations as a unit when trying to balance the goals. Mr. Miller agreed the balance is to the overall plan. Mr. Sonnen said staff gleaned from the HEAL case that in the realm of critical areas, the County was giving greater deference to the science. He said he has yet to see a case where anything was upheld below the bottom end of the science.

Commissioner Lane asked if considering regulations that have less impact to buildable lands or agriculture is a good reason for selecting one science over another. Mr. Miller replied it is.

Commissioner Lyman said if there is a deviation from local generally accepted science there must be documentation to demonstrate all the rationale and information providing the basis to deviate from the science.

Mr. Sonnen said another piece of guidance is that the County is not to pick and choose science, but to consider the body of the science, find the prevailing range, and work within that range. Chair Kohlenberg said that is what the Planning Commission is attempting to do. Obtaining data from Thurston Regional Planning Council (TRPC) and the County’s geo-data relating to the impact of the ordinance on property owners go towards building the record to support the Planning Commission’s decision.

Discussion of what is meant by “best available science” ensued. Commissioner Darkenwald asked if “being conservative” means choosing the most protected policy. Several Commissioners responded that the Growth Management Act (GMA) requires that choice in the absence of best available science. Commissioner Darkenwald said many people testifying stated the County isn’t required to change its CAO. Commissioner Roper said the question is whether the current ordinance is based on BAS. If it is, the County can leave it alone. However, the information and input gathered from the subcommittee and Planning Commission meetings suggests the current ordinance is not consistent with current BAS.

Commissioner Roper asked if her personal notes are part of the County’s public record related to the CAO work and if the County’s retention schedules apply to her records. Mr. Allen said her notes are not part of the public record and she can dispose of them. Commissioner Roper stated she recently read that the City of Seattle’s planning commission may be subject to the city’s ethics act. Mr. Sonnen responded the County is independently researching the issue.

Commissioner Lyman said it would be helpful for the Commission to have legal counsel support during public hearings. She questioned the level of support available to the Planning Commission from the Prosecutor’s Office. Mr. Allen replied he has attended public hearings when he was requested to attend. If Commissioners have questions, he suggested they route them through Mr. Sonnen who will forward the request to legal staff.
Chair Kohlenberg recessed the meeting from 7:51 p.m. to 8:05 p.m. for brief break.

5. Briefing: Rural Rezoning
   
   Staff: Jennifer Hayes and Diana Smith

Ms. Hayes introduced new Associate Planner Diana Smith.

Ms. Hayes reported the briefing is to provide an overview of the project and its timeline, staff’s preliminary analysis of potential rezone areas, and public involvement strategies. Staff and Commissioners reviewed the Variety of Densities/Rural Rezoning Project Flow Chart dated October 5, 2005. The project is divided into two phases. Phase 1 covers the creation of study areas for rural rezoning to create a variety of densities. The goal of Phase 1 is to submit a progress report (including identified rezone study areas) to the Western Washington Growth Management Hearings Board (WWGMHBB) by January 18, 2006. Phase 2 covers the definition of rezoning districts and the determination of zoning, allowed uses, and other mitigation measures, with a final draft to the Board of County Commissioners (BOCC) by fall 2006.

A brief discussion of the WWGMHB expectations ensued. Ms. Hayes added the BOCC has appealed the WWGMHB decision, and staff is not aware of the status of the appeal. The Limited Areas of More Intensive Rural Development (LAMIRDS) and changes to the agriculture lands designation will be presented to the Planning Commission later in the year. Staff will brief the members on the LAMIRDS at its November 17, 2005 meeting.

Staff provided a PowerPoint presentation previously reviewed with the BOCC. The purpose of the project is to identify potential rezone study areas. The study areas are alternatives and are not the final study boundaries. The study areas are based on objective criteria from adopted County policies and plans. The project assumes further refinement will be needed after defining the study areas. The project does not rezone any property, identify lands that may come out of the urban growth areas (UGAs), does not identify lands that may also be rezoned as part of the LAMIRDS study, and does not determine specific densities for the rural areas.

The Growth Management Act (GMA) requires the County to create a variety of densities in rural areas that does not include resource lands. The County has to examine its one unit per five acre (1/5) zoning and from that create lower density zoning districts. The process used to identify study areas included surveying local studies and plans, reviewing of hearings board cases and GMA guidance documents, interviewing local and state agency non-profit experts, internal staff, and consulting with the Planning Commission subcommittee. Potential criteria were mapped using the geographic information system (GIS). The mapping was refined to prioritize land and create alternative rezone study areas. Staff reviewed a color-coded rural lands map. The areas in “pink” are 40 acres or more in size, “blue” parcels are between 20-40 acres, and “green” are between 10-20 acres. The first criteria includes lands that are physically constrained or hazardous to development, lands with public HEALth value, lands of high habitat and/or environmentally service value, and lands of rural character value. The combination of the
different lands and the base map of the parcel sizes begin to point to areas that could be considered as study area alternatives.

Physically constrained or hazardous to develop lands include 100-year floodplains, geographic hazard areas, limited groundwater, lands already owned or designated for non-residential use, and lands dominated by wetlands and high groundwater areas. Staff presented a “raw data map.” The “raw data map” was combined with the parcel map. In the analysis, staff is only considering parcels that are greater than 20 acres in size.

Lands with public HEALth value include wellhead protection areas, shallow aquifers, the McAllister Springs zoning district, known areas of groundwater contamination, and shellfish protection districts. Staff presented an aggregated map of parcels greater than 20 acres in size showing public HEALth value lands in the County.

Lands of high value for habitat and/or environmentally service value include those that are unique to habitats for imperiled species, salmon bearing streams, shellfish growing areas, the Black River corridor, lands enrolled voluntarily in the County’s Open Space Open Space tax classification, natural shorelines, and basins with low impervious surfaces and high forest cover. Staff provided a corresponding map for parcels larger than 20 acres in size.

Lands of rural character value include cultural/historic sites, lands enrolled voluntarily in Open Space Agriculture or Timber Tax programs, potential gravel areas, buffers to long-term resource areas, buffers to urban areas, and the Nisqually Valley. A map showing the rural character lands was presented.

Staff developed three alternatives for consideration by the BOCC that are focused on lands with multiple benefits, lands that best represent the GMA and locally adopted plan goals, large connected blocks of land, and parcels greater than 20 acres in size. Ms. Hayes presented an Alternative I, “Rural Character” map and reviewed the legend. Approximately 7 to 30 percent of rural lands would be included in the study. The advantages are that other counties also focused on these types of lands, and the GMA guidance documents highlight the lands. Negatives include the likelihood that the map misses lands that may have other important public benefits and it targets lands that may be in transition to other uses.

Staff presented Alternative II, a “HEALth and Safety” map, which is a narrower alternative. Only 6 to 10 percent of rural lands are included in the study. The advantages are that it includes a relatively small number of properties and captures lands that already shouldn’t be zoned 1/5. However, it may be too limited based on court cases, it does not address habitat values except by default, and the alternative targets lands already covered by other regulatory programs.

The third alternative, “Public HEALth, Safety, Environmental Benefit, and Rural Character” map was offered. Lands include the Black River corridor, McAllister springs/aquifer, McLane Creek basin, mid-County area containing a rural character mix of designated forestlands etc., resource land buffers, peninsulas, and the Bald Hills area. Up to 45 percent of rural lands are included. However, the Planning Commission can focus on smaller areas for rural rezoning.
This alternative maximizes all public benefits, is a good starting point for the public, is easier to identify patterns and blocks of lands, and it has the best integration of all GMA goals. However, the negative aspect is that the alternative includes more properties (which may also be a benefit) and needs more work to define the rezone study areas. The challenges overall are that it is difficult to draw logical rezone boundaries without further analysis and public input. The Planning Commission may want to include smaller parcels and additional information will not be available for several months.

The decision points were reviewed with the BOCC to help determine the public involvement process. The BOCC decided to forward the alternatives to the Planning Commission in an effort to guide the public input process. The BOCC envisions the public involvement piece first. The Planning Commission can then consider the public input in its process.

Commissioner Lyman asked whether staff considered areas that could potentially be designated as future long-term agricultural lands in its analysis. Ms. Hayes replied while that was not a focus of the analysis, the criteria used to identify buffer lands around long-term agricultural areas, lands already enrolled in Open Space agriculture, and designated forestlands can be used when and if the County designates additional agricultural lands. The WWGMHB supported the County’s basic methodology for how it classifies agricultural land and indicated the County can also look at lands that could potentially be used for agricultural purposes. The decision requires the County to amend its long term agriculture designation criteria. The County will not designate additional agricultural lands at this time.

Staff and Commissioners reviewed a Rural Rezoning Public Involvement Process Proposals for TCPC Review and Discussion. Current and ongoing public involvement projects include website and corresponding press releases, ongoing contact with press and staff’s response to questions, and staff working to create an umbrella public outreach strategy. The public involvement process consists of two phases. Public involvement in Phase 1 is targeted and more specific to defining the rezone study areas, whereas Phase 2 deals with the ordinance elements. Staff reviewed the goals of Phase 1, Public Input on Rural Rezone Study Areas. Ms. Smith reviewed staff’s recommended approach:

- Focus on obtaining geographically specific public input on where rezoning should be considered
- Engage the public by asking what their vision is for rural Thurston County in the future
- Inform the public about the process used thus far

The recommended public involvement format is a workshop divided into two parts. The first includes an information fair and the second entails workshop groups. Staff envisions several workshops throughout the County. At the meeting entrance, a greeter provides those attending with a handout explaining the project process and purpose of the workshop. The handout includes an area for comments. Another component includes a “how to parking lot” available for attendees to submit ideas throughout the workshop.

A goal of the information fair is to provide the public with information about the project,
process, workshop, and how information will be used. Staff will provide a short presentation focused on the project process ending with the three alternatives. Those attending will break into smaller facilitated workshop groups. Ms. Smith explained how the workshop groups will function. Chair Kohlenberg commented the workshop piece is a complex small group. Ms. Smith replied it can work as long as the small groups are strongly facilitated and there is structure. Staff is receptive to suggestions for changing elements of the workshop design. The idea is to promote discussion between attendees, obtaining ideas and feedback as well as informing the public about the different options.

Commissioner Lyman asked if staff will provide relevant geographic information specific to where the workshop is held. Ms. Hayes said that is a decision point for the Commission’s discussion. The focus of the workshop is not a visioning exercise on the future of Thurston County. The focus is to draw lines on a map of where the rezoning should occur, with the map as the ultimate product. Commissioner Roper suggested providing two maps - one should pertain to a specific geographic area and one should focus countywide. Ms. Hayes added the goal is to have the public engage with each other rather than with staff or the Planning Commission directly.

Discussion of effective public communication, educating the public as to why the project is required, and public notification ensued. Commissioner Cole suggested prior to the workshops the Planning Commission should first provide a briefing to the newspapers, television, Master Builders, Farm Bureau and other interest groups. Ms. Hayes said staff has the ability to mail a flyer to property owners with more than 10 acres, which includes approximately 5,300 parcels, as well as other interested parties and groups. She said the BOCC wants to manage the information that will flow to the public rather than having information that has been filtered initially through special interest groups. The public can also request to be part of the mailing list via the County’s website.

Chair Kohlenberg said a critical question involves the impact to property taxes when land is downzoned. Commissioner Lyman reported the property tax issue is entirely up to the Assessor’s Office and is not within the realm of responsibility of the BOCC. The Assessor’s Office bases the tax valuation on actual sales. Until actual sales occur that demonstrates a lower property value, the assessor cannot address the property tax question. Ms. Hayes responded that staff could also provide succinct information and a talking point to address property tax inquiries at the workshops. However, it should not be a major focus.

Commissioner Strub expressed concerns about potential disruption of the workshops by some members of the public. Chair Kohlenberg suggested those attending should be assigned a number for a specific workgroup rather than having attendees determine which workgroup they will join.

Staff and Commissioners reviewed the decision points.

_How does the Planning Commission want to be involved in the workshops?_ Staff envisions
several Planning Commissioners attending each of the workshops and involved in facilitating the workshop groups. Several Planning Commissioners conveyed that from the public’s perception, facilitation by the Planning Commissioners is not effective. It may be more effective to have staff facilitate the groups.

**How many workshops should be held and in what areas of the County?** Staff envisions four workshops in the areas of Griffin/Steamboat Island, Nisqually, Rainier and/or Yelm, and Rochester. Commissioner Cole conveyed that the public needs to be aware the County is required to do the rezoning project regardless of what may happen in the future. Commissioner Roper added all input should be brought forward. Commissioners discussed the importance of providing accurate information to the BOCC.

**When should the workshops be held – what hours on what days?**
- Griffin/Steamboat Island: November 29, 2005 at the Griffin school gym
- Nisqually: December 1, 2005 at the Nisqually middle school commons
- Rochester: December 7, 2005 at the Rochester high school commons
- Rainier: staff is working on a date other than Friday, December 9, 2005. Staff anticipates additional rezoning briefings on December 14 and 21, 2005.
- Yelm: December 5, 2005.

**Should the workshops focus on the geographic area where the workshop is being held or on the entire county?** The Planning Commission suggesting both maps would be beneficial.

**What should be the theme of the workshops in order to attract constructive discussion and remain focused on the goal of refining rezoning study areas?** Ms. Hayes said staff can present information stating the rezoning project is a requirement. Chair Kohlenberg suggested letting the public know they can weigh in on the values they want represented. Commissioner Lyman added that specific geographic area issues should be identified.

**How will information provided by the public be returned to the public? What outcome/feedback will they receive?** The final report could be posted on the County’s website and/or copies available at key locations, such as libraries.

**How will people be notified about the public involvement meetings?** The Planning Commission supports the mass mailing strategy proposed by staff, including publishing notice in local newspapers, radio spots, etc. Commissioner Musser suggested posting the notice at local post offices.

6. **Staff Updates**
   *Staff: John Sonnen*

   - Staff provided additional CAO public hearing written comments to the Planning Commission. Staff hopes to organize the comments by topic and provide a summary by October 26. This will position the Planning Commission to discuss a strategy to move forward.
- Staff will contact members regarding a weekend worksession that was discussed at a previous meeting.
- For the next meeting staff asked members to consider an option forming task forces to focus on key topics such as agriculture, mineral extractions, etc. The task force could consist of two or three Planning Commissioners and those with technical expertise to help address issues raised by the public. Additionally, consider examining how other jurisdictions have addressed similar issues. The task forces could make recommendations to the Planning Commission. Commissioner Lyman said she is concerned about how the subcommittee will receive input. The public hearing on the CAO is closed. There could be a perception by the public that those who spoke the loudest are the only one able to provide further input into the County’s process. She would prefer the entire group address decision issues. If substantive information is received that could affect the Planning Commission’s decision-making, she would like to ensure it is part of the record. Mr. Sonnen replied that he was using agriculture and mineral extractions as examples.

Commissioner Lyman asked staff if Sue Davis and Scott Clark could attend the next meeting if the Planning Commission is scheduled to discuss the Grand Mound water system service area.

Commissioner Lyman reported on September 7, 2005, she met separately with Commissioners Macleod and Oberquell. The purpose was two-fold. The first was to gain a sense of the public comment BOCC is receiving. Based on that, she said she wanted to know how the Board wants the Planning Commission to proceed from this point forward. She informed the Board how staff attempted to include some key interest groups in the subcommittee process because from the public’s perspective, it appeared there was no invitation to participate. The BOCC wants the Planning Commission to rework the draft and forward it to them. The Board is also interested in the Planning Commission working with staff to develop an abbreviated user’s guide to the CAO. The deadline of the end of 2005 is off. The Board is not opposed to the Planning Commission holding additional workshops to provide a fundamental understanding of what is included within the document without taking additional public testimony. There will be an opportunity for public input at the Board level. Discussion followed about providing a clean version of the ordinance, a strike out/underline version with gray shading for tracking the changes, and an executive summary of text changes in response to comments received during the public hearings.

Commissioner Lyman said Commissioner Oberquell has requested a letter from the Planning Commission about the CAO process so she can provide answers when she receives queries. Commissioner Lyman offered to work with staff and draft a letter to Commissioner Oberquell. The draft will be circulated to the Planning Commission before it is forwarded to Commissioner Oberquell.

7. **Calendar**

*Who will be attending the following upcoming Planning Commission meetings?*

*October 19 - H/W/A on Comprehensive Plan amendments, discussion of Mineral Lands Task Force*
and Surface and Stormwater Advisory Board (Commissioner Darkenwald unable to attend)
November 2 – W/A Comprehensive Plan amendments (if needed); W Critical Areas
November 16 – Briefing: Rural Rezoning and LAMIRDs (Commissioners Lyman andStraub unable to attend)
November 29 – Workshop: Griffin/Steamboat rezoning
December 1 – Workshop: Nisqually rezoning
December 5 – Workshop: Yelm rezoning
December 7 – Workshop: Rochester rezoning
December 9 – TENTATIVE Workshop: Rainier rezoning
December 14 – Briefing
December 21 – Briefing

Commissioner Lane reported he may not be available for meetings beginning in mid-November depending on the birth of his twins.

NOTE: No additional Parking Lot Issues were added at the meeting.

8. Adjournment

Chair Kohlenberg adjourned the meeting at 10:13 p.m.

Liz Kohlenberg, Chair
Tom Cole, Vice Chair

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services
Amended on January 4, and January 24, 2006 by Cami Petersen.