THURSTON COUNTY PLANNING COMMISSION

Minutes
January 25, 2006

1. Call to Order

Chair Roper called the January 25, 2006 special meeting of the Thurston County Planning Commission to order at 7:03 p.m. Everyone provided self-introductions.

a. Attendance


Members Absent: Chris Lane.

Staff Present: John Sonnen, TRPC Planner Veena Tabbutt, and Cheri Lindgren, Recording Secretary, Puget Sound Meeting Services.

b. Approval of Agenda

Commissioner Ottavelli moved, seconded by Commissioner Cole, to approve the agenda as presented. Motion carried.

2. Approval of Minutes

January 4, 2006

Commissioner Lyman moved, seconded by Commissioner Cole, to approve the minutes and accept the tapes of the January 4, 2006 meeting.

The following corrections were requested to the minutes of January 4, 2006:

- On page 8, within the third sentence, change the word “reduced” to “adjusted.”
3. within the last paragraph, insert a ‘space’ between “a” and “desire.”

- On page 9, within the first paragraph in the last sentence, insert the word “controversial” between “any” and “issues.”

- On page 1, delete “George Darkenwald” under Members Absent. Mr. Darkenwald was not reappointed to the Planning Commission.

- In the first paragraph under item 5 on page 4, within the last sentence, insert the word “lands” between “agricultural” and “of.”

- On page 4 add the following sentence at the end of the motion, “The chair position transitioned at this point in the meeting.” Add the following sentence at the end of the fourth paragraph on page 6 stating, “Ms. Hayes suggested that there may be benefits including a minimum parcel size such as five acres.”

- Add the following language after the first sentence in the fifth paragraph on page 6 stating, “The Planning Commission recommended deleting criteria #5.”

- On page 8, within the first full paragraph on the eighth line, add a sentence following December 2006 stating “The Planning Commission accepted the offer and asked Mr. Sonnen to schedule a discussion for the next meeting.”

- On page 9 under Calendar, within the fourth line, the third sentence should be revised to read, “After identifying that a quorum is available on January 25, 2006, Commissioners agreed to cancel the January18 meeting and reschedule the meeting to January 25, 2006.”

- On page 12 within the second full sentence, the sentence should read “Commissioners suggested including written disclaimers since GEO data is not always accurate and actual impacts could be dependent upon an on-the-ground assessment such as a wetland delineation.” The last sentence of the paragraph should be deleted and replaced with, “Chair Roper asked that the approach and its risks be discussed with the County’s legal counsel.” The request should also be added to the Request for Information Summary Sheet.

- On page 12, within the second paragraph, amend the first sentence to read, “Chair Roper referred to the science panel and suggested staff should review comments and invite experts to serve on the panel based on the specific areas generating the greatest public concern.” The last sentence should be changed to read, “Chair Roper said that some people traditionally think of wetlands as an environmental concern and do not also realize it is a flood protection concern and that wetlands serve other functions that are in fact protective of people.”

**The motion carried as amended.**

Discussion followed about a definition list of acronyms used in the Critical Areas Ordinance (CAO) and the one-year anniversary of an issue/request followed. Mr. Sonnen suggested staff work with the Chair to prioritize the Request for Information Summary Sheet tasks. The Planning Commission could devote time during its meetings to address a particular topic. The Board of County Commissioners (BoCC) has directed staff to defer discretionary matters to work on the growth management compliance directive. Commissioner Cole said he is interested in providing the public with general guidance on where to go to obtain answers related to property development and the appropriate procedures. Mr. Sonnen suggested staff could review the materials and resources available to citizens with the Planning Commission. Development
Services is relying more on the County’s website to provide information to the public about projects and evolving issues. Commissioner Lyman commented that there are completed issues/requests that can be removed from the summary sheet.

There was general consensus for the Chair and staff to work through and prioritize the Request for Information Summary Sheet issues.

3. Public Communications

There were no public comments.

4. Briefing: Critical Areas/Buildable Lands Analysis

(Staff: Veena Tabbutt, Thurston Regional Planning Council)

Mr. Sonnen reported Thurston County Development Services asked Thurston Regional Planning Council (TRPC) to conduct an analysis to determine the effect of the existing and proposed critical areas regulations on buildable lands.

TRPC Senior Planner Veena Tabbutt clarified the difference between “buildable lands” and “residential land supply” as the terms relate to the proposed CAO. “Buildable lands” refers to something legislative. The briefing is related to “land supply.” A buildable lands analysis is due to the state in September 2007. Policy choices the Planning Commission will make on the CAO will be part of the buildable lands analysis.

Ms. Tabbutt reported the data layers are meant to provide an indication of the presence or absence of a particular critical area for planning purposes. The analysis is based on the best available mapped data on the location and extent of critical areas. Many of the critical areas overlap in location. The total area of critical areas and buffers is considered in the assessment rather than each type of critical areas as a discreet unit.

TRPC looked at how the county’s current CAO affects residential development and how it may change the effect. Table 1 shows critical area types (100-year floodplain, high groundwater areas, oak stands, and marine shoreline natural) where the current and proposed CAO are likely to have the same effect on residential development because the buffers have not changed.

Commissioner Lyman inquired whether a protective buffer around oak stands is provided in the proposed CAO. Mr. Sonnen said staff will double check and follow up.

Discussion followed about the difference between potential impacts of the CAO on private property and the Western Washington Growth Management Hearings Board (WWGMHB) decision that urban growth areas (UGAs) are too large. Chair Roper said the analysis provides a comparison between the current CAO and the draft ordinance. Commissioner Lyman added the Olympia Master Builders and Sandy Mackie asserted the draft CAO that went out to the public will significantly impact the amount of land available for residential development and affordable housing in the County.
Commissioner Lyman requested clarification of the term “Marine Shoreline Natural” as used in Table 1. Mr. Sonnen replied marine shorelines are designated in the Shoreline Master Program ranging from urban to natural. The current buffer for the natural environment didn’t change from 100 feet. He suggested the critical area type read “Marine Shoreline Natural Designation.”

Ms. Tabbutt reported the Washington State Department of Natural Resources (DNR) recently released a new data layer/water typing system for streams in the state. It replaces the previous water typing system. Commissioner Kohlenberg commented the new data layer includes more streams. The old streams had varying buffer widths. She asked if the change is attributed to the proposed ordinance or if mapping changes were called out first. Ms. Tabbutt replied TRPC staff did not call out the mapping changes. Staff could separate it if the Planning Commission wishes. A discussion of the difference attributed to the more detailed data layer versus the proposed CAO followed. Ms. Tabbutt said much of the difference is related to the shift as the stream typing is better mapped with elevation data. Commissioners Lyman and Ottavelli suggested applying the current regulations on the new maps to determine the difference. Ms. Tabbutt said staff should be able to determine the magnitude of the change.

Commissioner Strub referred to the executive summary. A portion states the proposed changes are unlikely to have much of an impact on development capacity in rural areas. Commissioner Lyman stated “very little change” is based on certain assumptions that she is not very comfortable with in generating the data. Commissioner Ottavelli agreed.

Discussion ensued concerning Type U (unknown) streams and related assumptions. Commissioner Lyman said she is interested in learning more about the assumptions. She referred to the note section for Table 4 and clarified the 200-foot buffer is required 500 feet from the merging point of the Type N to Type F stream. Mr. Sonnen said staff will rework the note language.

Staff and Commissioners discussed wetlands. Wetland indicators provide an indication of where wetlands are found, but do not provide a typing or rating for regulatory purposes. In addition, the rating system has changed. Table 5 identifies 30 wetlands and buffer widths within unincorporated UGAs under the 1993 rating system. Table 6 includes 19 wetlands in the UGAs that have been rated by the Department of Ecology (DOE) under the new rating system. A discussion of the wetland sampling followed. Mr. Sonnen explained there are fundamental differences concerning impacts of the proposed CAO in county rural areas versus growth areas in light of reasonable use exceptions. The impact of the width of a wetland buffer in the rural areas is negligible because someone can almost always find a building site unless the property is 100% within a floodplain. The focus was on the growth areas, because they usually consist of smaller lots and structures are required to be outside of any required buffer. Buffers in growth areas have potential to reduce the number of dwelling that can be built on a parcel.

Chair Roper said the public is concerned about impacts the proposed CAO will have on wetlands.
not delineated by TRPC such as a wetland that is located in a pasture. Mr. Sonnen said that most wetlands, including small ones, have been mapped by TRPC. He asked Ms. Tabbutt if there is a way short of rating rural wetlands for providing more complete information. Ms. Tabbutt replied staff could develop a worst-case scenario. The rating system is very new and staff has taken it as far as they can to apply something in existence. Commissioner Ottavelli suggested applying an average rating to the wetlands that are not rated. The public will be quick to criticize a comparison between the 1993 and 2004 DOE wetland rating system on only 19 sites. He said he is interested in basing the comparison on identified wetlands not necessarily rated wetlands. Ms. Tabbutt added staff could develop a theoretical scenario. After further conversation, Ms. Tabbutt confirmed the 200-foot buffer was applied to each wetland in the GEO data. The buffer width came from the sampling.

Discussion of wetlands in the UGA and rural areas, potential habitat scores, whether the averages are “skewed and the 19 sites that compare the 1993 and 2004 DOE wetland rating systems followed. Mr. Sonnen said a year from now there may be more wetlands to look at. However, currently, this is the information that is available. GEO data is nothing more than an indicator. If a wetland is indicated on a piece of property, someone has to review it and confirm the location. Often, the location is off by hundreds of feet. It doesn’t affect the rating or recommended buffer. A brief dialogue suggesting a default to the maximum buffer followed. Mr. Sonnen explained to the extent the data allowed, staff attempted to provide a realistic assessment of the affect of the current versus the proposed CAO. The 19 sites were rated in 1993 and again in 2004 under the new rating system and verified with DOE. Table 6 reflects the best indication of the impact of the new regulations. Chair Roper suggested including an explanation to Table 6 stating the impacts could be different than represented.

Commissioner Kohlenberg suggested changing the word “select” to “convenient sample” or “delineated” in the title for Table 6. The report should be clear in the methods and reflect the County did the best it could based on the information available.

Chair Roper expressed a concern that the wetlands rating and buffers comparison is another target the public could use to point out erroneous assumptions. Mr. Sonnen said staff could articulate explicit assumptions contained in the report.

Commissioner Lyman says the “tone” of the executive summary concludes that the proposed CAO has very little impact. She said she is troubled releasing the report to the public without explicitly stating the limitations of the report. Commissioner Cole agreed. A short dialogue of CAOs as they relate to land supply and buffers followed.

Commissioner Ottavelli asked if wetland indicators with 200-foot buffers were used in determining the 42% figure on page 11 of the report. The response from staff and several Planning Commissioners was yes. Chair Roper added it doesn’t include additional wetlands that will be part of the new rating system that were not included before. Ms. Tabbutt explained the buffers under the proposed scenario include all wetlands in the GEO data center inventory with the caveat that small wetlands are very difficult to map accurately.
Commissioner Lyman suggested the report contain a reference to all data sources used. Commissioner Kohlenberg asked if there was a way to quantify the missing information for the public to shield the county from those wanting to discredit the report.

Staff and members reviewed Table 9 on page 9 of the report, Current and proposed CAO assumptions for other types of the critical areas. Commissioner Lyman commented that even though the second 100-foot marine shoreline buffer is a management zone and not a “no touch zone” there are impacts. Mr. Sonnen agreed it is not a “no touch” buffer but a restricted use zone. Chair Roper said a footnote should be added stating it is a management zone and include the reasons why it was not necessary to include it in the table. She referred to the prairie critical area type and questioned if the buffer is larger than 50 feet. Mr. Sonnen said he will verify the number.

Commissioner Ottavelli said the formula for calculating buffer widths for steep slopes is complicated. He asked if data is not available to include average buffer widths under the current and proposed CAO for steep slopes. Ms. Tabbutt said staff provided the assumption. Mr. Sonnen said he will confer with staff and identify the assumptions in the body of the text. Commissioner Ottavelli said he would rather overstate rather than understating the results. Commissioner Kohlenberg said the assumptions should be clear and a mid-range approach used. Chair Roper suggested incorporating a range of average buffer widths. It is critical the report is credible. The range of buffer widths should be explained.

Commissioners and staff reviewed the Critical Areas and Land Base section and Table 10, Thurston County land base (including critical areas) categories. Commissioner Lyman asked why long-term forestry was included but not long-term agricultural. Mr. Sonnen replied the county does not have regulatory authority over forestry but it does over long-term agricultural. DNR regulates long-term forestry. Commissioner Lyman requested staff check the county’s purview regarding residential development in long-term forestry. Ms. Tabbutt conveyed that the state, Weyerhaeuser or Simpson generally owns long-term forestry land. Discussion of potential development on long-term agricultural lands ensued. It has been included because the county manages critical areas in long-term agricultural. The issue is whether a distinction should be made between long-term agricultural land use and hobby farms in the regulations. Commissioner Kohlenberg asked at what point long-term agricultural is not considered buildable land. Ms. Tabbutt said she believes the density is one unit per 80 acres. A person could build a farmhouse or accessory structures at a very low density.

Commissioner Kohlenberg asked if areas the county purchased development rights from are included. Ms. Tabbutt replied the areas are considered developed. Commissioner Kohlenberg said the assumptions should be clear in the document and that she will craft a list.

Ms. Tabbutt reviewed Developable Land Base – Unincorporated County. She described the four categories: vacant land in residential zoning; vacant land in mixed use zoning; partially developed land in residential zoning; and partially developed land in mixed use zoning. She referred to Figure 1 on page 11 as an example of an area with many types of critical areas. Staff and the Commission reviewed Tables 11, 12, 13 and 14. Commissioner Lyman inquired if it’s
possible to create another table that provides a total picture of both current and proposed conditions. As an example, Table 11 includes a column called 100 Year Floodplain. Table 13 does not because the table is only looking at the change. Commissioner Ottavelli suggested a bar chart would provide the average citizen a visual picture of a “small” or “no change” scenario. Mr. Sonnen reminded Commissioners that there is a fee attached with each change to the report.

Discussion of the wetland buffers figures for Rural County ensued. Chair Roper said it appears the wetland buffers are more than doubling. Ms. Tabbutt said staff can create a table showing each feature separately rather than wrapping the information into two tables.

Commissioner Cole referred to the fourth paragraph in the Executive Summary and asked if it is possible to quantify the impact of the proposed CAO changes. A conversation related to cluster zoning and placement of homes in upland areas followed. Commissioner Kohlenberg said she interprets the paragraph to mean the development capacity doesn’t change that much. Commissioner Ottavelli asked if the statement “The proposed changes are unlikely to have much of an impact on development capacity in rural areas” is true. Mr. Sonnen replied yes. Chair Roper said there are property owners who want to further develop their lands and are being told they will not be able to densify as much as they thought because of the wider buffers in the proposed CAO. Mr. Sonnen said there are more restrictive requirements for subdivisions in the proposed draft ordinance. Roads generally have to be out of the floodplain and minimized in other buffers. The lots have to contain a building site outside of the critical area and buffer.

Discussion followed about cluster zoning and density bonuses. Commissioner Lyman referred to the last paragraph on page 16 that states “Through density bonuses or cluster zoning, density can be transferred from the “undevelopable” piece to the developable area.” She clarified the county does not have density bonuses for cluster zoning.

Chair Roper asked members to send additional comments concerning the report to Mr. Sonnen by February 8, 2006. The Planning Commission will revisit the report at a future meeting. Chair Roper said a number of the Critical Areas and Development Potential examples are not representative and perhaps should not be included. Mr. Sonnen asked Commissioner to make their comments as specific as possible.

5. Critical Areas – Identify Information Needs (for overarching issues, flooding, and geologic hazards); Begin Discussion Overarching Issues
   (Staff: John Sonnen)

Mr. Sonnen suggested a review of the Overarching CAO Issues matrix page by page to identify information needs. Chair Roper said one need is a matrix that includes what other counties (King, Whatcom, Kitsap, and Pierce) have established for critical areas. Commissioner Ottavelli said he is interested in knowing which counties have made it through the challenge process. Mr. Sonnen conveyed staff can develop a matrix showing what counties have adopted CAO amendments and if there have been appeals.
Mr. Sonnen said another component is whether the Planning Commission would like experts to attend particular meetings to answer questions.

Chair Roper said that a good explanation of how the Shoreline Management Act and the CAO interact with each other, the cases that have been brought to the Growth Management Hearings Board and courts, and an explanation from legal staff are additional information needs. Mr. Sonnen reported the Department of Community Trade and Economic Development (CTED) and DOE co-wrote a memorandum based on an Everett case that clearly defines the differences between the Shoreline Master Program and critical areas regulations. Chair Roper said having work products supporting the Commission’s decisions is key. Commissioner Lyman reminded everyone that the Commission is forwarding that type of information to the County Commissioners for use in its process.

Commissioner Lyman conveyed that she skipped the legal questions because she assumed they will be addressed by legal staff. She referred to a comment from Sandy Mackie that there is no science that says building 600 feet in the rear of a building opposed to 500 feet will solve water quality issues. She asked if those types of statements can be satisfied with policy direction or will the Commission be in need of studying the impacts or its legal question. Mr. Sonnen said the comments compel the county to rethink its approach; i.e., traditionally, expansion of nonconforming uses is limited to protect critical areas while trying to allow some reasonable use of the existing structure. One of the criticisms and overarching issues is the county doesn’t provide for mitigation. There may be a way to set a standard with criteria based on science that would allow a property owner some options. Commissioner Lyman said another alternative is eliminating the 500 square foot regulation if it is not supported by science. Commissioner Ottavelli asked if there is a way to structure the document that places the responsibility on the applicant to provide scientific information to support the request.

Commissioner Cole said he is interested in knowing whether the 600 feet versus 500 feet is a valid statement as well as “… development in the critical areas is not absolutely prohibited under the GMA, so long as the functions and values of the critical areas are protected.” Mr. Sonnen said it is a fair statement and staff can obtain a legal opinion. Legal staff is only responding to the specific items under the category of legal issues.

Commissioner Lyman suggested the Commission could visit mitigation possibilities under each of the chapters. Commissioner Cole agreed. The public expressed significant concerns about nonconforming and retroactivity issues. Perhaps the concerns could be categorized by associated health and/or safety risks. Chair Roper said learning how other counties have dealt with similar issues will be beneficial to consider whether the proposed CAO is really that far out of line. Mr. Sonnen asked Commissioners whether there is interest in staff preparing a matrix focused on regulatory and basic buffer approaches for existing uses and agriculture that has been implemented by other jurisdictions rather than a matrix discussing each policy.

**There was consensus by Commissioners for staff to develop the matrix.**
Commissioner Kohlenberg said Commissioners should identify what regulations are not retroactive and describe how it only applies to uses in a few situations.

Commissioner Lyman referred to Sandy Mackie’s *Best Available Science and New Beginnings* paper dated April 22, 2002 that contains a good legal analysis on existing and nonconforming uses. Mr. Sonnen said he will check with Mr. Mackie’s office to see if the document has been updated. He indicated will provide copies to the Commission and legal staff.

Commissioner Strub conveyed that she has three concerns - claims that the county is creating nonconforming uses, retroactive regulations, and mitigation. She said she does not want to create hardships for property owners. She asked if it’s true the proposed CAO will create nonconforming uses. Mr. Sonnen replied it would and noted staff will respond to the legal and practical implications of those types of policy decisions. Commissioner Lyman said the public is using the word “retroactive” in a different context. The county is not passing retroactive laws. The current proposal could affect existing uses and it is in that context that the public is using the term “retroactive” in some instances. Ms. Strub countered it is an inappropriate use of the word “retroactive”.

Commissioner Kohlenberg referred to the legal issue on page 11 of the matrix, “Does not meet the requirement to balance all.” The county’s comprehensive plan and development guidelines should be balanced. She said she would like a one-page summary outlining the different pieces of the county’s comprehensive plan and generally how the Planning Commission has addressed the GMA goals.

Commissioners and staff discussed the process to identify issues that can be resolved without investigation and identifying issues requiring further investigation by staff. Chair Roper said the immediate task is for the Commission to identify issues that warrant further investigation by staff. Once that task is complete, the Commission will address the issues individually.

Chair Roper said there are quite a few comments related to options to compensate property owners by giving additional transferable development rights. It would be helpful to know how the programs work. Mr. Sonnen said staff could outline programs currently in effect, as well as find out what programs other jurisdictions are using. Commissioner Lyman asked if staff could also investigate the “public benefit rating system” used in King County to adjust property taxes that is above and beyond open-space, open-space programs.

Chair Roper referred to page 10 of the matrix that speaks to developing a system of non-regulatory programs that complements the CAO. She said she is interested in what DOE is referring to. There are comments on page 21 that address alternatives to buffers. She asked about the alternatives. Commissioner Kohlenberg said a standard option is to have an engineered option.

Commissioner Ottavelli commented there will be a trend to use reclaimed water in the future. The public expressed concerns about using reclaimed water and suggested there is science available that addresses the issue. Mr. Sonnen replied a representative from the Washington
State Department of Health is willing to attend a meeting and discuss reclaimed water. Commissioner Ottavelli said he would like documentation in advance to determine whether a speaker is necessary. It is incumbent upon the Commission to review the issue.

Commissioner Lyman referred to Sandy Mackie’s letter and said it appears Mr. Mackie is looking at the riparian habitat area as the stream buffer. She said she considers the riparian habitat as an independent critical area and believes the Commission is justified in its belief that the riparian habitat area is a unique habitat that is supported by science. It is not a stream buffer. Mr. Sonnen confirmed staff can document the issue. He noted that Commissioner Lyman is interpreting the riparian habitat area correctly.

6. 2006 Draft Work Program
   (Staff: John Sonnen)

Mr. Sonnen referred to Attachment 1 – Draft Summary – 2006/2007 Preliminary Comprehensive Plan Docket dated January 25, 2006. Staff will submit the proposed docket to the BoCC later in the week. Staff is briefing the BoCC at its January 31, 2006 meeting at 2:30 p.m. Staff proposes to address “mandatory” proposals in the next six months. Staff is asking the Board to defer “non-mandatory” matters to 2007. If Commissioners have comments they would like to relay to the Board, Mr. Sonnen asked them to forward them to staff.

Commissioner Lyman reported the Board has scheduled a hearing on the moratorium for January 30, 2006. Mr. Sonnen added the moratorium expires February 2, 2006. Many parties have submitted letters to staff requesting release of properties from the moratorium.

7. Staff Updates

Mr. Sonnen reported any emails transmitted to or from the county are subject to public disclosure information requests.

A brief discussion ensued about options for delegating some tasks to staff so that Commissioners can focus on other issues.

8. Calendar (Tentative)

   • February 1: Critical areas (Identify Information Needs); discuss overarching issues; three open space applications
   • February 15: Rural rezoning study areas
   • February 22: Critical areas (Geologic Hazards)

9. Adjournment

There being no further business, Chair Roper adjourned the meeting at 9:44 p.m.