ISSUE:

The language in the Comprehensive Plan and the four Thurston County zoning ordinances is out of date and needs to be amended to be consistent with state law, recent case law, and amendments to Chapter 2.05 of the Thurston County Code (TCC) enacted in 2011.

BACKGROUND:

The Board of County Commissioners included an item on the 2009-10 Comprehensive Plan Amendment Official Docket to review and revise Chapter 2.05 TCC, Chapter 11 in the Comprehensive Plan, and the four zoning ordinances. The revision of Chapter 2.05 TCC was completed in 2011.

The Board of County Commissioners included an item on the 2013-14 Comprehensive Plan Amendment Docket to complete the task from the 2009-10 docket. In summary, the amendments in Attachments A and B include the following:
• Amend Comprehensive Plan Chapter 11 Plan Amendments to remove language referring to quasi-judicial comprehensive plan amendments, and to make the chapter consistent with the 2011 amendments to Chapter 2.05 TCC. Amend the Comprehensive Plan glossary and Chapter 12 to ensure consistency.

• Amend Chapter 2.05 to include current provisions for site specific land use plan amendments and their associated rezonings from the four zoning ordinances. This includes mailed notice, and that the published notice for the three urban area zoning ordinances needs to be published in a newspaper of general circulation in the Olympia, Lacey or Tumwater Urban Growth Area (UGA).

• Amend Title 20 Zoning to remove the quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

• Amend Title 21, the Zoning Ordinance for the Lacey Urban Growth Area to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

• Amend Title 22, the Tumwater UGA Zoning Ordinance to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

• Amend Title 23, the Olympia UGA Zoning Ordinance to remove references to quasi-judicial language for site-specific rezones that require a comprehensive plan amendment, and make the amendment process consistent with Chapter 2.05 TCC.

• Add a conflict of interest section to Comprehensive Plan Chapter 11 Plan Amendments based on the current conflict of interest provision in the Planning Commission rules of procedure.

PRELIMINARY ANALYSIS:
In most of Thurston County, a Comprehensive Plan land use plan amendment is required to make a zoning map change. The land use designation in the Comprehensive Plan is the same as the zoning designation, except in a few limited circumstances and in the unincorporated area of the UGA for the cities of Yelm, Tenino, and Rainier where the zoning remains Rural Residential One Unit per Five Acres until the property is annexed by the city. Keeping these areas at a 1/5 zoning is consistent with the policies in the plans.

Zoning changes where there is no corresponding comprehensive plan amendment are classified as a project permit under state law (RCW 36.70B.020(4)), and are appealable under the Land Use Protection Act (LUPA) (Chapter 36.70C RCW) which governs appeals of project permits.

Amending a Comprehensive Plan and development regulations are legislative processes governed by Chapter 36.70A RCW, the Growth Management Act, and for Thurston County, Chapter 35.63 RCW, Planning Commissions.
The Growth Management Act requires that development regulations be consistent with the Comprehensive Plan. Zoning district designations are considered development regulations. The Comprehensive Plan land use map and the joint plan land use maps determine the land use designation for each property. Any time the land use plan maps are amended, the official zoning maps must be amended to be consistent with the land use map changes.

Recent case law has shed some light on the ongoing question on whether or not a site-specific rezoning that requires a comprehensive plan amendment is a project permit subject to Chapter 36.70B RCW and LUPA, or if it is a legislative action to make the zoning map consistent with comprehensive plan land use map amendments.

In an August 2013 decision for Kittitas County v. Kittitas County Conservation Coalition (No. 30728-0-III), the Court of Appeals reviewed a Kittitas County decision on a site-specific comprehensive plan amendment and rezoning. The requested rezoning was not consistent with the current land use designation in the comprehensive plan. Kittitas amended the comprehensive plan to allow the requested zoning district, and amended the zoning map to change the zoning district so it would be consistent with the comprehensive plan.

The decision was appealed. A contested point in the appeal was who had jurisdiction to hear the appeal. Was it appealable under the GMA or under LUPA? Under the GMA it would be appealed to the Growth Management Hearings Board, under LUPA it would be appealed to Superior Court. The analysis is in “Section A. Jurisdiction” of the decision which is located in Attachment C.

The Appeals Court found that the decision was appealable under the GMA. While it was a site-specific zoning change, the zoning change required a comprehensive plan amendment in order to be approved. LUPA only applies when a zoning change is already authorized by the comprehensive plan. In the instant case, the zoning change was a development regulation amendment because it implements a comprehensive plan amendment.

In a September 2013 decision for Spokane County v. Eastern Washington Growth Management Hearings Board (No. 30725-5-III), the Appeals Court reached the same conclusion. This was the second decision on the same case. The first decision was issued in 2011 by the Appeals Court for Spokane County v. Eastern Washington Growth Management Hearings Board, 160 Wn. App. 274 P.3d 1050. The second more recent 2013 decision includes a more robust analysis than the 2011 decision. The analysis is in “Section B. Jurisdiction” of the decision.

Under state law, comprehensive plan amendments are not considered quasi-judicial actions. Comprehensive Plan amendments and other legislative actions are specifically excluded from being classified as a quasi-judicial action in the Appearance of Fairness Doctrine (Chapter 42.36 RCW). The Appearance of Fairness Doctrine in RCW 42.36.010 reads as follows:

“RCW 42.36.010 Local land use decisions.

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning
adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.”

Consistency with Countywide Planning Policies

The proposed amendments are consistent with the Countywide Planning Policies, and do not affect the current joint planning process in the joint planning agreements with the Cities of Olympia, Lacey, and Tumwater.

SEPA:

A State Environmental Policy Act determination is expected to be made in February 2014.

NOTIFICATION:

Notice was published in The Olympian on December 21, 2013 per TCC Chapter 2.05 Growth Management Act Public Participation. A notice was also sent out to the Planning Department’s email list. A press release was prepared and distributed on January 3, 2014.

PUBLIC COMMENT:

Public testimony will be taken during the public hearing. There have been no written comments received at the writing of the staff report. Public testimony received after the close of the public comment period will be forwarded to the Board of County Commissioners for their review.

THURSTON COUNTY PLANNING COMMISSION RECOMMENDATION:

A recommendation by the Planning Commission is expected at the conclusion public hearing.

THURSTON COUNTY STAFF RECOMMENDEDATION:

Staff recommends approval of amendment of the Comprehensive Plan and associated development code and the removal of language and removal of the language in the Comprehensive Plan referring to the term “quasi-judicial”; and amend the associated development code to be consistent with the changes and changes enacted in 2011 to Chapter 2.05 TCC.

ATTACHMENTS:

Attachment A Comprehensive Plan Amendments
Attachment B Code Amendments
Attachment C Court Case Decisions

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