

MASON COUNTY PLANNING ADVISORY COMMISSION

Minutes
September 22, 2003

(Note audio tape (#1) dated September 22, 2003
counter (#) for exact details of discussion)

(This document is not intended to be a verbatim transcript)

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1. CALL TO ORDER

The meeting was called to order by Chair Bill Dewey at 6:00 p.m.

2. ROLL CALL

Members Present: Steve Clayton, Mark Drain, Wendy Ervin, Bill Dewey, Diane Edgin, Terri Jeffreys. Bob Sund was excused.

Staff Present: Bob Fink, Darren Nienaber, Allan Borden, Susie Ellingson.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0015) Bill Dewey: On our agenda for tonight is a workshop on submitted rezone requests. Sorry for the delay in getting started. We were just having some discussion on the nature of the meeting tonight and whether it was a workshop or a public hearing and based on the input I've gotten as Chair is that it was not advertised as a public hearing and so we're not at liberty to take public testimony tonight so it will be held strictly as a workshop for the PAC. Allan, we'll begin our workshop.

(#0065) Allan Borden: I have a list of the requests that were submitted for your informational purposes that I'll hand out.

(#0078) Bill Dewey: It might be useful, Allan, as I understand that you have prepared a new calendar for dealing with these and if those are available it would help to understand what lies ahead.

(#0090) Bob Fink: My name is Bob Fink and I'm Planning Manager for the Mason County Department of Community Development. I'd like to apologize to everyone here for those who came expecting to have a public hearing. We had originally scheduled the PAC to have a public hearing tonight but in developing the reports on the rezone criteria we found it took a lot more time to respond to the detailed criteria that were included in the new codes than we had ever anticipated. What we thought would be a week or so of work is turning into almost a month of work trying to meet all the requirements and detail of those staff reports. That's why the delay. What we would like to do then is discuss the delay in rezone considerations of approximately two weeks over what you had expected to do. Essentially the first hearing would have been

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tonight and on October 6th we were looking at a second hearing, as necessary, to consider the rezones. What we would plan to do now instead is to have the hearing on the first ten rezones on October 6th and follow that up on October 20th with a hearing on the second ten rezones, plus whatever reconsideration from the previous hearing was necessary. This will give us time to finish the rezones, to distribute the copies in advance to the PAC and to the applicants and other interested parties so they have time to review them prior to the hearing. One thing about the criteria for doing these rezones is they are fairly detailed. We want to emphasize that it is the applicants responsibilities to meet the burden of showing that those criteria are met but we acknowledge that the new rezone criteria are new. Some of these applications actually predate the criteria that are in here just because of the history of the events so that sometimes the applications aren't really targeted at meeting those criteria. In other words, the information provided by the applicant and the rationale provided by the applicant was not targeted or directed at meeting those criteria. It made it very difficult for us then to review some of these and to try to figure out how the criteria applied short of simply saying they didn't meet the criteria and therefore we could not recommend approval. We tried to avoid that; we tried to work with the information we had to try to come up with a response. There are some of these, though, that the applicant, when they see the staff reports and the recommendations, then they'll have an opportunity to fill out their response or to address the concerns raised by the staff when we review these materials. So it is important that they have a chance to get these materials prior to the hearing so that they can give some thought as to how they want to address the criteria to make sure those criteria are adequately dealt with. Obviously since we've spent more time on the rezones than anticipated, we haven't gotten as much done on the text amendments as we had hoped. We would delay the workshop on the proposed text amendments until November 3rd, which I think was set tentatively as a hearing on those text amendments. Then the normal meeting date of the PAC on November 17th, instead of cancelling the PAC meeting and giving the PAC a break for work well done, we'll probably have to hold a public hearing on that day. That will still get you potentially finished before Thanksgiving. Our goal is to still try to get these done before the end of the year. I haven't set new meeting dates for consideration by the BOCC because I think I need to see how they proceed through this process first and when we get closer to doing that then we'll try to set those dates. Let me pass out these sheets that has those dates on it and then we can deal with any questions about the scheduling. What we'll do is include the names of the people that are in those ten in the public notice and we'll send those copies of the individual staff reports to those people as well so that they will have notice. I expect that they'll be in the same order as is on the summary sheet.

(#0278) Mark Drain: It's getting on short notice to have people respond with new information.

(#0284) Bob Fink: We should have the first set of ten done next week and we will be able to send them out by the end of next week. The hearing is the 6th so that's another week out from that so hopefully that will be enough time for most people to respond. If people can't make either of these hearing dates there will still be a hearing date before the BOCC and they can make comments during any of that time up to the final hearing of the BOCC.

(#0308) Steve Clayton: Bob, if it's sent out at the end of next week then that gives them just a weekend to look at it.

(#0315) Bob Fink: Okay, I see that now by looking at the calendar. Shall we change it to the six that we have done and that way we can get them out by the end of this week. That would leave fourteen.

(#0336) Darren Nienaber: When was the last time that the PAC handled ten applications on one night? That's almost inconceivable to me that that could even happen. I remember maybe six.

(#0348) Bob Fink: We have six ready to go essentially. If we made it six, six and eight using the November 3rd for the final public hearing on the rezones and then push the workshop until November 17th and then we'll probably have to have a special meeting early in December for the public hearing on the text amendments and then you'd have a break through Christmas, assuming that you got done on the text amendments.

(#0370) Bill Dewey: That sound more reasonable to me.

(#0376) Bob Fink: I should be clear. We are trying to get these done. Many of these people have been waiting a considerable length of time for this consideration. We are trying to get these done, not only because people have been waiting for them, but the rezone limits are once a calendar year. So if we don't

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adopt rezones this year then there would be limitations next year on what could be done. Basically it would put people off a year so there's a good reason to try to get these done this year even though there may be a lot of work involved. Would the 1st of December be okay just in case you have to continue it and that would allow time before Christmas for that continuation. So the public hearing on the proposed test amendments would be moved back to December 1st and the workshop on the proposed amendments would be November 17th. Is that agreeable? Okay. So it's October 6th, October 20th and November 3rd for the rezones and then the workshop for test amendments on November 17th and then December 1st for the public hearing on the text amendments. Hopefully we'll finish by the end of the year.

(#0475) Steve Clayton: Could you read off the names of the first six names for the rezones?

(#0480) Allan Borden: The first six requests are 0201, Glen Sundstrom, followed by request 02-02, Cliff Rice, followed by request 02-03, Ken VanBuskirk, followed by request 02-04, Sarah Smyth McIntosh for Hoffert and JHC Liquidation, followed by request 02-05, Potlatch Partners, followed by request 02-06, Sheldon Properties.

(#0515) Bob Fink: We had thought that Allan would give a short walk through of what the structure is of the staff report but I actually don't know if that's necessarily something that you need to do. It might be better, since we're going to have extra meetings this year, that we keep this meeting short, give you a chance to go home and work your schedules out, and then we'll send off the staff reports early next week to all the parties. We'll provide maps showing all the surrounding zoning because that was a question that came up.

(#0560) Diane Edgin: I was thinking a map showing the general area of where these are would be helpful.

(#0572) Bob Fink: You're right; that's necessary. What we have is a vicinity map that shows the county roads that gives you the location and you will also have the legal description. In the packet will be a map showing the county roads, a map showing the surrounding uses and the surrounding zoning and a description of the site itself. Essentially the staff report will include the county staff recommendation at this point based on the information we have, it will include the application that came in, it will include a review of each of the criteria that's necessary for the rezone and then it summarizes the eight criteria so you can see what the basis of the conclusion is at the end. There will also be whatever attachments we feel are necessary, such as critical area maps because that's one of the criteria and there may be some other information that's particular to the nature of the request. Any other questions?

(#0632) Bill Dewey: How much reading material are we going to have?

(#0638) Allan Borden: Most of the staff reports themselves haven't exceeded six pages and each one of the rezone criteria itself is listed and then the responses are below each one of the criteria. Adding the application and relevant county maps, the staff report might be fourteen pages long but only five or six pages are the report.

(#0668) Tim Sheldon: Mr. Chair, would it be appropriate to make a comment?

(#0670) Darren Nienaber: It shouldn't be on any specific application.

(#0672) Tim Sheldon: Many of us came tonight expecting a public hearing. I was at the last planning workshop expecting a public hearing and tonight I've been preparing for a public hearing for six weeks. I met with staff several times about my particular proposal expecting a public hearing tonight. There are individuals here tonight as far away as California expecting a public hearing. If there was not to be a public hearing, why weren't people notified so they knew that? I think there's some problems with the staff work that's not being done here. I think you have to start with #1) There has to be an entrance to an office in the Planning Department. I know you're not the BOCC but you need a front counter, an office to come in and talk to people instead of going through and wondering if someone is there or calling and trying to get somebody to come out. It's very frustrating to deal with this. I was here at the last planning workshop and expected a public hearing tonight. If there wasn't going to be a public hearing, someone must have known that a week or two ago and could have notified people that there wasn't going to be a public hearing tonight. So it's just very frustrating to go through this process and it's going to take years to complete at this rate; literally. The first request I made for a rezone was February, 2002 and it was approved and I'm still here

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and these people are still here and it's supposed to continue to go, I predict, for another eighteen months unless the staff is told to get it's paperwork out so people can review it, respond to it, and we can move on. I'm sorry I'm frustrated but it's very difficult.

(#0740) Bill Dewey: I appreciate your comments, Mr. Sheldon, and I can understand because I was here also at the last meeting and had the impression that we were coming to a public hearing until this morning when we received reminder calls about the meeting and that it was just going to be a workshop and not a hearing and we just learned today. I suspected something was up because I didn't get a packet of materials last week to review. It's unfortunate, particularly where we've got people who have come from long distances anticipating a hearing.

(#0767) Wendy Ervin: What exactly is the reason why we're not having a public hearing?

(#0768) Darren Nienaber: It wasn't advertised.

(#0770) Wendy Ervin: But it had been advertised before. It was a date projected and scheduled for tonight. Doesn't that constitute advertising?

(#0778) Darren Nienaber: It was scheduled but it was not legally advertised in the newspaper. Anyone who gives testimony would be considered an ex parte contact on that particular subject matter. It's a prohibited act.

(#0787) Wendy Ervin: Even though there are verbatim notes being taken of people's comments? Those verbatim notes could then be brought up for rebuttal later?

(#0795) Darren Nienaber: I considered that, too. It would violate the Appearance of Fairness Doctrine. It prohibits ex parte contacts. Sometimes you can cure that in order to achieve a quorum but ... for example, if three commissioners are hearing a public hearing and two of them ran into some applicant in the store and say they have to talk to them about their permit ... they say they really can't talk about it. That might be sort of a technical ex parte contact and is fairly harmless but one of them should take themselves out but if you even take two out then the commissioners would be incapable of rendering a decision on that matter. That's a little bit of a different circumstances. Here we know in advance that the entire thing is an ex parte contact and unfortunately it could open you up to legal challenges that are truly a hassle to defend and I'm the one that handles those appeals. What they may allege and have alleged is official misconduct by public officials; that could be you or it could be the BOCC. Then I have to defend the fact that it wasn't official misconduct but it opens up everybody's liability risk. That's why it would be a lot simpler and cleaner to start fresh. Unfortunately, it's an extremely unfortunate situation.

(#0890) Bill Dewey: I'm not sure what my role is as Chair but I'm echoing Senator Sheldon's concern. I feel like staff had a responsibility here that people were anticipating a public hearing and they should have been notified that it wasn't going to happen. A lot of people have been inconvenienced tonight and I think that's very unfortunate. I think that's probably a mistake by staff for not having done that.

(#0904) Diane Edgin: Is staff short handed?

(#0912) Bob Fink: This is really my mistake in the sense that once I knew this wasn't going to happen we really put our emphasis into seeing what we could get done. We didn't know how long it was going to take, we didn't know how we were going to deal with it and we kind of focused on the subject matter of how we could get the reports done and make them acceptable and we put our effort into that instead of notifying people that it was just going to be a workshop. That was my call and I just didn't give it the emphasis I should have and I agree, unfortunately, that that should have happened.

(#0955) Wendy Ervin: I wonder if there isn't something we can do to accommodate these people who want to speak.

(#0965) Allan Borden: Does anyone have written testimony?

(#0975) Darren Nienaber: I think the applicants and whoever else is here if they're interested in the rezoning

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they would really want to see the staff report before they respond. You can hardly give meaningful testimony because you're really operating in a vacuum and staff's recommendations are based on their position with the rezone criteria and that's where you've got to make your pitch. If you don't know which way staff is going to come out on any of those rezone criteria it's pretty hard to give it your best in terms of how you want to come out on the issue.

(#1048) Bill Dewey: There's a lot to be said for testifying in person and the message that gets transferred through your body language and so on and perhaps for this circumstance we could provide for a VCR and a tape if someone wanted to record their testimony. I know it would be hard to have the question and answer back and forth.

(#1058) Darren Nienaber: That's a possibility.

(#1070) Mark Drain: I don't think you're going to make anything happen that's going to be fair without proper public notice and everybody being aware of it. I think we should plan on making the future hearings go as smoothly as possible. That's what we should focus on now. I think there should be someone in the county I always presume it's Bob Fink, that I can call and get ready access to and find out what stage the county is at and what's happening at the next meeting and I would hope that all of the petitioners receive the criteria and the planning departments comments as soon as possible. Are these listed in the order that they were applied for?

(#1115) Allan Borden: Pretty much.

(#1117) Mark Drain: Here we have Sheldon Properties as #6 and I would hate to see our next public hearing run out of time to give that property consideration. I think that if we state we're going to cover six hearings, we have to make it happen. If those six people show up with neighbors, council and whatever preparation and come some distance, we have to hear them and render some kind of judgment.

(#1140) Darren Nienaber: You can't necessarily bind yourselves into making a decision because there's been plenty of times in the past where the PC needed many, many meetings.

(#1150) Diane Edgin: I think the main thing that we're all concerned about is to make sure the list here is accurate as far as applying; the order of application. If these other properties came in after Sheldon Properties then they should be after Sheldon Properties but if Sheldon Properties is 6th in line then that's where they need to stay.

(#1170) Allan Borden: You're going to review all twenty applications before you make any recommendations. Keep that in mind. You should be taking notes as you go through reviewing them. You'll hear all twenty of them and then you'll have to deliberate decisions on them.

(#1185) Diane Edgin: I think we need a criteria on how we're going to do this and we stick to it so everybody has some idea as to the amount of time involved to consider each one of these. We want to make sure we give the same consideration the first six as we would the last six.

(#1206) Mark Drain: You understand that those people who are petitioning, they don't even have the criteria yet.

(#1212) Diane Edgin: I'm not talking about so much the criteria we get on paper but as the approach that we take on them.

(#1216) Bill Dewey: The process we take. Bob, because of the annual cycle we need to finish with our work and we need to get this on the BOCC's desk for them to make a decision before the end of the year?

(#1252) Bob Fink: No decision has to be made by the end of the year but the cost of not making a decision this year is that the caps to the rezones, a RR rezone to a RT or RC, there's five of those allowed in the calendar year so that means if this decision isn't made until January, then the next decision won't be made until at least January of the following year.

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(#1270) Bill Dewey: So it doesn't necessarily follow a calendar year?

(#1275) Bob Fink: If these decisions, for whatever reason weren't made until January of 2004, then the total five rezones couldn't happen until January of 2005. It's within a calendar year but it's not necessarily at any given point in a calendar year.

(#1290) Steve Clayton: Do we have any crunch time on the Comp Plan amendments?

(#1294) Bob Fink: We're in crunch time. Most of the amendments have not been drafted yet in the sense of text. At this point the intent behind them is understood but the language that would implement has not been written. That would have to be done in a timely way so it could get routed through the system if there's a lot of debate over the exact language. Most of the amendments are fairly small in scope and probably the majority of them are intended to improve the process and they're not particularly substantive in intent. I don't expect that most of them will be controversial. There may be a few controversial ones that do cause a prolonged discussion. I think the intention is that this action would be taken as one action if possible but I don't know that it necessarily has to be a single action by the BOCC. On the schedule we have now, if we can keep to it, the BOCC will have time to give it consideration prior to the end of the year.

(#1350) Steve Clayton: Our priority would be the zoning requests because we have a deadline of December 31st and with the Comp Plan amendments, if we ran over into January, it wouldn't be good but there's not an ultimate deadline for us on that.

(#1356) Bob Fink: Right.

(#1365) Steve Clayton: So we do have a little bit of extra time for the zoning if we have to ... it sounds like we'll hear six on the first, six on the second, eight on the third and then we need to make a decision on the whole package but we haven't dedicated a night to make the decision on the whole package.

(#1380) Bob Fink: No.

(#1382) Steve Clayton: Do we have any current limitations as far as a quantity of rezones that we cannot accommodate? Last time we talked roughly that we weren't going to have any numerical limitations.

(#1394) Bob Fink: There's a cap on the acreage and on the number of rezones. It's my understanding that we didn't seem to be over those caps in either case so there would be no need to prioritize ... if all the requests were approved, it would still be less than the caps. There's no telling what next year will bring and so you want to try to avoid extending it into next year so that it would be more of a problem.

(#1440) Peter Overton: Can I ask a procedural question? Staff is going to come out with a report. Will the applicants receive that say ten days before their hearing so that they will have adequate time to respond to it? And will those reports be public well before the hearings so that the public can also respond?

(#1466) Steve Clayton: Sounded like for the first round, Allan, we're having a meeting two weeks from tonight and you're not intending on putting it in the mail until the beginning of next week on the first six?

(#1475) Allan Borden: I think that the first six will probably go out by this Friday.

(#1490) Bob Fink: They would be available ten days before the hearing and be mailed that same day. For the general public, they're available upon request.

(#1520) Diane Edgin: Does the county have the capability of putting the reports on the web?

(#1522) Bob Fink: We could post them on the web. The accompanying materials probably could not be included but the text could be.

(#1555) Bill Dewey: Is there any requirement with rezone requests to notify adjoining property owners?

(#1565) Bob Fink: It depends on the type of rezone. Individual rezones are considered quasi-judicial

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processes and so there is a requirement that they be notified. Most of what we've been doing the last few years have been area wide rezones and those do not require individual property notice but I think the individual requests do.

(#1588) Wendy Ervin: Is there a structure set up to notify the surrounding properties?

(#1592) Bob Fink: Yes. We have a standard notification process. Property owners within 300 feet would be notified.

(#1598) Bill Dewey: So have I just complicated your staff load?

(#1600) Bob Fink: No, you made it much easier. It's something that needs to be done.

(#1610) Steve Clayton: If we're going to get under the crunch here and Allan will have the first six done by this Friday, is two weeks enough time to complete the next six?

(#1630) Bob Fink: The expectation is that now that we've figured out the format and how to deal with the criteria the rest should go more quickly. It was a struggle to respond substantively to the criteria.

(#1648) Bill Dewey: Hopefully we've learned from this experience that if we see we're falling behind and we're not going to meet that objective that people are notified accordingly so we don't have a similar situation that we have tonight.

(#1660) Bob Fink: I think that was a lesson that was learned. It was unfortunate and I sincerely regret that but it was simply a misfocus on our part. Since we weren't quite sure what schedule we were going to come up with we hesitated to contact people. We just knew that things weren't going according to plan.

(#1720) Ken VanBuskirk: I have a question regarding public notification. Doesn't the property have to be posted as well?

(#1735) Bob Fink: I'll look into that. I would expect so. This is not a process we've been used to going through.

(#1750) Bill Dewey: If the schedule outline changes please let us know as soon as possible.

(#1800) Wendy Ervin: Am I understanding that for each one of these requested rezones that there needs to be a sign posted on this property to be rezoned announcing to the surrounding area that there is a hearing ...I've seen these things that are orange that says there's to be a hearing and it's written in there and posted on a tree. Do we need to supply these people with a thing to hang in the tree that has the date and time?

(#1830) Bob Fink: The county usually posts those.

(#1836) Wendy Ervin: Wouldn't it be a little faster if we handed it to them and they posted it?

(#1840) Diane Edgin: What if somebody didn't get it posted?

(#1842) Bob Fink: There's an affidavit of posting that the staff traditionally signs that they posted the property on such an such a date. I need to look at the code to be sure and assuming that it would be the same as other quasi-judicial processes, the property would be posted and the nearby property owners would be notified and a public notice is put in the paper.

(#1865) Wendy Ervin: It seems to be that we've gotten behind the eight ball a little bit and maybe if we gave them the materials to post and then they could do it. It just seems to me that we could cut out a few steps rather than having a county employee driving from here to here to here.

(#1882) Bob Fink: We usually have county employees going in different parts of the county on a daily basis so usually we can get them posted.

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(#1915) Wendy Ervin: It would just seem to me that if I went and made an application I could be given the filled out thing and told to place it in a prominent location and then I would sign an affidavit saying I did what I was supposed to do. It seems to me that would save a little county employee time.

(#1935) Bob Fink: We'll look at the codes and if that can be done we'll certainly consider your suggestion as something to save time and effort.

(#1942) Wendy Ervin: I like saving time and money.

(#1944) Mark Drain: If you thought your rezone was going to be contentious with the neighbors you might be reluctant to post the sign.

(#1948) Wendy Ervin: And just about the time that those neighbors got a letter from the county saying there's going to be a hearing then they would all be up in arms about why it wasn't posted. You cut your own throat by not following the law. I don't think anybody with any sense would do that.

(#1975) Bill Dewey: I think if there's no further questions we'll go ahead and adjourn the workshop and look forward to the first hearing on October 6, 2003.

Meeting adjourned.