MASON COUNTY
PLANNING ADVISORY COMMISSION

Minutes
April 5, 2004

(Note audio tape (#3) dated April 5, 2004
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 Vice-Chair Steve Clayton at 6:00 p.m.

2. ROLL CALL

Members Present: Diane Edgin, Steve Clayton, Wendy Ervin, Terri Jeffreys, Mark Drain and Bob Sund. Bill Dewey was excused.
Staff Present: Bob Fink, Allan Borden, Darren Nienaber, Susie Ellingson.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0035) Steve Clayton: Tonight we have the review and discussion of proposed revisions to DR's, RO, etc. Let it be noted that we have no public in the audience tonight so we can start at the top and go down the list. We'll start with item p). Allan, Mark nor Bob were here last time around so you might review some of what we already talked about regarding this item.

(#0060) Allan Borden: The first item in our list tonight is p) having to do with consolidating or combining footprint areas in the buffers. What we discussed and reviewed on March 15th reflect the changes you see in the handout you were sent. The changes are in italics and when we started to discuss it, several questions came up about if you have several structures should we control which structures can be either used to consolidate footprints and is there any way we can minimize having development be even closer than it currently is if all the footprint that's in the buffer ... we don't want to make that intrusion any worse. So the question was can we add onto the regulation that would try to control that. Let me show you what I mean. *(Allan draws examples to further explain to PAC).* If you had a little roofed building here and it's 15 feet away from the water and you've got a cabin that's 28 feet from the water, the idea was to take the shed out and add it to the cabin. The question is, what's going to stop people from making the shed bigger that's more out into the buffer? That's the b) that I proposed here: 'The combined footprint proposed shall be located in the existing structure more distant from the FWHCA or buffer, and other structures nearer to the FWHCA shall be removed from the FWHCA or buffer'. The other point that came up was the original change that was presented on the 15th of March talked about combining footprints but under current application implementation

of even the current regulation, we've been allowing people to go to the 10% and add a second floor. We got comments from the Advocates for Responsible Development that maybe the regulation should somehow control how much square footage is added from the enlarged development. That's the current footprint plus 10%. So the first provision was an attempt at trying to control that combined square footage. So it reads 'The square footage of the structure in the combined footprint may not be increased more than 20% of the total square footage of the original structures'. *(Allan shows example to PAC).* Under current regulations, a person could actually put a whole new floor on top of this one floor cabin and in essence more than double the square footage of the original cabin size. The proposed regulation says you can combine the footprints but the expanded square footage can't be more than 120% of what the original footprint was.

(#0278) Bob Sund: But they could build a lot on the second floor.

(#0280) Allan Borden: The option is they don't have to increase the footprint; they could add the 20% upstairs.

(#0288) Bob Sund: Can they increase the footprint 20%?

(#0290) Allan Borden: No.

(#0294) Wendy Ervin: If they were moving one to the other then they could increase the footprint by the amount of the square foot of the structure but they're destroying the smaller structure.

(#0300) Allan Borden: Right.

(#0292) Mark Drain: Is the 20% additional kind of an incentive to remove structures?

(#0308) Allan Borden: The concern came up in this letter that the way the department is currently implementing it that they could allow a 10% increase in the footprint but 110% increase in the square footage or greater ... the principle we need to get past is, is the additional square footage that much of an impact on the critical area.

(#0328) Diane Edgin: So what Diehl is saying is that the more square footage, the more bodies in the house and the more impact on the septic system.

(#0332) Mark Drain: So the 20% is kind of a compromise from the historical.

(#0338) Allan Borden: Right, and that's just a proposed number.

(#0340) Terri Jeffreys: How did you come up with that number?

(#0345) Allan Borden: I did kind of grab it out of the air.

(#0365) Mark Drain: Why can't they add the additional percentage onto the existing as long as it's away from the buffer rather than having to go up?

(#0380) Terri Jeffreys: This is anything that's in the buffer. Not just the existing structure they're going to get rid of but if the main structure is ...

(#0384) Diane Edgin: What we're looking at is something that does not require an MEP so this is kind of a streamline process.

(#0386) Allan Borden: Right now a 10% increase in footprint can't result in further intrusion into the buffer so basically you can't add the 10% on the side of the critical area.

(#0400) Wendy Ervin: This says 20% of the total square footage of the original structures. So you can add one footprint to another and add 20% to that.
(#0430) Alan Borden: Right.

(#0435) Wendy Ervin: So you can expand that footprint as much as 20%; it's not required that you go up.

(#0438) Allan Borden: The square footage; not the footprint.

(#0440) Wendy Ervin: But it says the combined footprint may not be increased so you are allowing an increase of the footprint more than 20% so it can go up to 20% increase of footprint.

(#0448) Mark Drain: And under b) it says that it shall be located in the existing structure ...

(#0450) Allan Borden: It says the square footage of the structure in the combined footprint, not of the combined footprint.

(#0455) Wendy Ervin: If you're combining structures and you've combined all the structures into one structure, is your intention that the footprint not be enlarged; that you're talking more square footage in the building but more square footage in height rather than width? Or are you saying that that footprint can enlarge as much as 20%?

(#0478) Allan Borden: The footprint can enlarge 10% but the square footage of the structure can't increase more than 20%. *(Allan shows another example to PAC).*

(#0600) Diane Edgin: So this is the process that does not require an MEP. Let's say these individuals want something larger and they go through the environmental permit process and maybe they want to double the square footage by just going up.

(#0630) Wendy Ervin: Then that falls outside of this regulation and falls into another set of regulations.

(#0640) Diane Edgin: That's what I'm saying; they do have another option they might be able to do.

(#0650) Steve Clayton: Bill brought up the thought about what do we do when the smaller structure or the other structure is a non-permitted or a nonconforming structure?

(#0662) Bob Fink: These are all nonconforming otherwise they wouldn't be in the buffer area. They're all pre-existing, legal, nonconforming structures. We've already determined that people can't apply for a variance to build in the buffer and then come in and ask for a 10% expansion.

(#0700) Steve Clayton: In Title 15 there appears to be a conflict, then, in that it says the expansion of a nonconforming development is prohibited. So this is expansion of a nonconforming development.

(#0725) Bob Fink: This is under the RO. In many cases 15 feet is the setback under the SMP. So if you have a case where maybe this was 5 feet where it would be restricted under the SMP also then they would have to meet whatever burden they needed to meet under the SMP in order to expand. So it's a different set of regulations and although this is in Title 15 specifically only applies under the SMP.

(#0750) Wendy Ervin: Once you've been given permission to take that one building and add it to your larger building so that you're now further away from the buffer; does that then become a conforming structure?

(#0764) Bob Fink: No, this would still be a legal, nonconforming structure.

(#0785) Mark Drain: Why would they still be nonconforming?

(#0788) Allan Borden: In this example, the larger structure is 28 feet away and the setback is typically 35 feet.

(#0795) Bob Fink: You need to remember that there is a common line program on the saltwater. You might have a river system; this is a Type 1 through Type III fish bearing stream and any of the structures within that buffer would be nonconforming. If they were built properly to their time then they would be legal, nonconforming. So any expansion within that buffer area would be regulated under this. If it was the saltwater shoreline you might have a 35 foot minimum setback, which is actually a 20 foot buffer and 15 feet

of building setback, so if they were within that 35 feet they would continue to be nonconforming. Other development can be conforming if it's setback 35 feet or more and in line with other developments. So that common line was established based on the existing development and it can go in or out depending on the houses that are there. So it becomes a site by site determination based on the development that's already there.

(#0850) Terri Jeffreys: Why do you have a building and buffer setback?

(#0880) Allan Borden: The 15 building setback allows for drainfields and a yard next to the buffer instead of having the people put the house next to the buffer and eventually you don't have a buffer around the house.

(#0895) Bob Fink: It allows people to walk around their house and have a yard because you can't landscape the buffer and that's part of the reason why they originally had the setback from the buffer. That minimizes the encroachment issue.

(#0905) Steve Clayton: How do we define an existing structure as Bill brought up last time? Does somebody's carport from Costco count as an existing structure for this kind of consolidation?

(#0910) Bob Fink: Right now we would consider any covered structure as one that has a footprint. Let's say an existing house has a covered deck and an uncovered deck. The covered portion of the residence, including the covered deck, is part of the footprint that determines how big the house is. A deck, which might be quite extensive or it may be small, is not considered as part of the footprint of the house itself. So they can't then turn around and cover that deck or incorporate that deck into their living area but if they had covered it then they can incorporate that deck in the living area.

(#0955) Steve Clayton: How would you look at the sheds from Costco or Walmart and the covered carports? Those would apply ...

(#0962) Bob Fink: We don't have the provision here that it has to be a structure that requires a building permit. If it's a type of structure like a tool shed that's under 120 sf of drip line, that doesn't require a building permit in most cases. So how do you know if that's an actual pre-existing structure or not? When someone is applying to combine these footprints they would have a certain burden to show that they have legal, nonconforming structures. If we believe they're not legal and they can't show us any evidence that they weren't built last week then we would not approve that permit but we would have to have cause.

(#1055) Wendy Ervin: How many times is this situation likely to come up?

(#1080) Bob Fink: We have a had a few cases and also situations where people have had to get variances where this principle could have been used where there was more than one building on the site and they wanted to combine them rather than having to go through a variance to expand their living area. There was one where they had two houses on one property and they would be willing to have given up the one closer to the water to be able to build a larger cabin on the other footprint. That's why this regulation change was proposed was because of some instances like that. How often? It might be five or ten times a year or less than that.

(#1125) Steve Clayton: Would you be amiable to defining a date for an 'existing structure'?

(#1135) Bob Fink: The definition for 'existing' is that it was existing at the time the law would have made it nonconforming. For instance, before a few years ago on the marine waters, we didn't have any buffer requirements; the RO didn't apply there on the marine waters. Only when those buffer were adopted and enlarged, if you were in that area in 1998, if you preceded that then you were existing, nonconforming. If you built after that, say by a variance process, then you're not pre-existing. If you built after that without a variance you probably weren't legal.

(#1175) Steve Clayton: What about for the smaller structures you mentioned earlier that don't require a permit?

(#1178) Bob Fink: With smaller structures it becomes more problematic in the sense that there's not the documentation of them that you can rely on for residences, particularly for the ones that don't require a permit. That doesn't mean the property owner can't document when they built it. They might have an old photo or records of when it was built. The Assessor's office could have also documented it.

(#1210) Mark Drain: It talks about modification of an existing building. Then it gets down to the combining of existing buildings and to me that should be B); those two things should be separate and I think it would help clarify things.

(#1240) Wendy Ervin: I did a little editing. Down in b) I found that it wasn't as clear as I would have liked it to be so I edited it to read 'the combined footprint proposed shall be located at the site of the structure most distant from the FWHCA or its buffer, and all other structures shall be removed from the FWHCA or buffer'. I reworded it a little but I think it makes it more clear because when it says it should be located in the existing structure that's not actually what's happening.

(#1268) Mark Drain: I agree. I don't care for the way this is worded and I'm not sure you're is just right but it could be defined a little better. I don't see why you have to include 'all structures within the FWHCA'. Maybe they only have enough money to get rid of one because it's deteriorating and the other one is fine and so getting rid of the old deteriorating one they're going to remodel their house and add a little more space.

(#1332) Terri Jeffreys: Is 'at the site' an understandable term? To me that doesn't say that you're adding onto the footprint.

(#1335) Bob Fink: You're talking about the fact that it's the same footprint. You start with the same footprint and you add to that.

(#1310) Wendy Ervin: What you want is you're combining them and there may be two structures and you want to keep one but the structure who's square footage has been combined must be removed. The whole point is to move all these combinations as far away from the buffer as possible.

(#1340) Bob Fink: From the resource; they're still in the buffer.

(#1355) Wendy Ervin: Right. Move it as far out as possible from the area that you're protecting. If you're combining footprints; yes, you have a foundation but if you're combining things could that not be moved so that it was farther away from the resource and you've got the same square footage plus your additions but you're moving the whole thing a little bit further out.

(#1408) Bob Fink: To a new location?

(#1412) Wendy Ervin: *Wendy draws example.* It's essentially in the same place but you've moved it a little bit further away from the resource.

(#1432) Bob Fink: That's really kind of a separate issue. Just moving your footprint further away from the resource but not out of the buffer ...

(#1440) Wendy Ervin: Her question about this being 'at the site'; that's still at the site of the structure.

(#1450) Bob Fink: I think there's a presumption which may not always be valid that you're keeping the original structure and you're adding to it or building up ...

(#1455) Wendy Ervin: What about under B) regarding restoration. That's when something has been wiped out except for the footings.

(#1466) Bob Fink: I would propose that as a separate item. If you wanted to allow people to move further away from the resource ... if they were replacing a mobile home, for instance, you'd typically replace the entire structure ... you could provide an incentive or an allowance for them to move away from the resource and allow some kind of restoration of the buffer where they moved away from. Maybe give them an additional

20% rather than 10%.

(#1490) Wendy Ervin: I think that's a good idea and I would approve of giving them an incentive but I wouldn't approve of giving them a mathematical formula under which that incentive ... I think you could say something like 'if the structure is being moved a little further away from the resource area greater latitude can be allowed in increasing the size of the structure'. Then deal with it on a piece by piece basis.

(#1515) Bob Fink: It's hard for us to give greater latitude. Once you get into those kind of undefined issues then you're better off in a variance type process.

(#1525) Wendy Ervin: Then a variance can be allowed if they're moving the footprint further away from the resource area.

(#1538) Diane Edgin: I think the thing you've got to remember is that this is something that is not going to trigger an MEP; that's what we're trying to do here.

(#1540) Wendy Ervin: But if you're moving it further away, that's even more reason not to have to have an MEP.

(#1544) Diane Edgin: You're still going to have to have a building permit so that would trigger the variance.

(#1548) Bob Fink: If they're moving it then why aren't they moving all the way out of the buffer?

(#1552) Wendy Ervin: Maybe they don't own enough land.

(#1554) Allan Borden: That's where the variance comes in.

(#1556) Bob Fink: The issue you had with us putting a specific quantitative to it ... the reason for that is to give guidance to the Administrator. Otherwise you're open to arbitrary action.

(#1588) Allan Borden: This provision developed from the fact that establishing buffers along critical areas was going to result in nonconforming existing development. The idea was to add a certain amount of flexibility to allow people to make a change in a building on a modern basis.

(#1600) Bob Fink: Right. If you're building in a different footprint then you're not talking about a pre-existing structure anymore. You're talking about something new that you're doing.

(#1608) Allan Borden: People have had to apply for variances when they went to reconstruct inside the buffer.

(#1632) Diane Edgin: I think we're probably at a point where we could remand this back to do the tweaking we were talking about and bring it back to us.

(#1635) Terri Jeffreys: Couldn't we do that now?

(#1645) Wendy Ervin: I have a couple of other little suggestions. Under A) under the italicized 'to reduce the impacts of existing development, the footprint of existing structures withing the FWHCA or its buffer may be combined into one footprint area equal to or lesser than the original area of the separate structures'. Line out 'area within the FWHCA or its buffer'. I think it just reads smoother. Under B) 'Reconstruction of structures destroyed by fire or other means, provided that the proposed reconstruction is planned within the previous structural footprint.' 'And provided that reconstruction occurs within two years of the destruction. This provision applies only to that portion of the building which lies within the FWHCA or its buffer'.

(#1715) Terri Jeffreys: That might be problematic in that you're taking out a solid ... 'a completed application' is at least a touchstone. You said just 'planned'.

(#1728) Mark Drain: I have the same concern.

(#1730) Wendy Ervin: But what they're saying is the application occurs within the structural footprint but the application is not ... the application is on paper so it's the plan that the application covers that has to be within the structural footprint.

(#1745) Bob Sund: It says 'completed application for reconstruction'. That's the words that go together.

(#1752) Wendy Ervin: Right, but then it continues to say 'occurs within the previous structural footprint' so the completed application for reconstruction is still on paper filed in the county and the proposal that is contained in that application is what has to be within the structural footprint.

(#1770) Bob Fink: You could break it into two sentences but I don't think you want to lose the 'completed application within two years'.

(#1775) Wendy Ervin: Okay, then 'the proposed project ...

(#1800) Bob Sund: I think it should be broken into two sentences. It's 'the reconstruction of structures destroyed by fire or other means must be planned within the original footprint'. Then another sentence that says 'This completed application for reconstruction must occur within two years'. I think you've got an application and the reconstruction of structures both in the same sentence which if you were to diagram a sentence you'd have difficulty in putting what fits with what.

(#1850) Wendy Ervin: How about 'The reconstruction of structures destroyed by fire or other means must be completed within two years of destruction'.

(#1865) Bob Sund: No ... I even question the two years. There can be a fire and there may be an insurance hangup with that fire and that insurance hangup may go on for a couple of years itself before the person can really apply for ...

(#1890) Steve Clayton: Is the wording here intended to say the reconstruction has to be done within two years or the permit has to be done within two years?

(#1900) Bob Fink: A complete application has to be made within two years of destruction. So you don't have to rebuild within two years but you have to make an application that's complete.

(#1925) Allan Borden: I think the sentence could read 'Reconstruction of structures destroyed by fire or other means ... '

(#1932) Terri Jeffreys: Do it like you did it up on top. 'Provided that' and then a) the application is completed within two years ...

(#1937) Allan Borden: 'Provided that the planned reconstruction occurs within the previous structure footprint and the completed application is submitted within two years of destruction'.

(#1948) Steve Clayton: We still have Mark's concern, that is pretty well justified, that we've made the changes on combining footprint in section A) but we haven't done it in section B).

(#1955) Wendy Ervin: This is just simply restoration of exactly what was there.

(#1960) Steve Clayton: We're talking about erasing this thing and rebuilding it, which is section B) but we don't have in section B) the ability to increase it by 20%.

(#1966) Wendy Ervin: No, because it's reconstruction not modification.

(#1972) Steve Clayton: So if we were to give it to Allan to wordsmith ... I think the point you were making was if we're going to total this thing out and start all over again then what we've gone through here doesn't apply.

(#1980) Diane Edgin: That's right. Let's say this person did this and now as soon as he built it say within six

months it goes ‘poof’, he’s limited to what he’s already done. It’s talking about an existing building.

(#1995) Mark Drain: Plus he can do 10%.

(#1998) Diane Edgin: No, I’m saying he’s already done that. We don’t want to give him anymore room because we’ve already done it.

(#2020) Wendy Ervin: I think this is an entirely separate thing. This one burnt down and this one has six little chicken sheds and a house and they want to put it altogether into one building. This one they had a nice house, it burnt and they want to replace it. I don’t think the two affect each other.

(#2035) Steve Clayton: Bob was explaining earlier about a mobile home; you have a mobile home and you want to get rid of it then that would be under B).

(#2050) Wendy Ervin: No, even a mobile home doesn’t fit under this. It says ‘destroyed by fire or other means’; I guess ‘other means’ means hooking up a mack truck to take it away is that another way of destroying it?

(#2060) Allan Borden: No.

(#2062) Bob Fink: What we had said that it’s typical for a mobile home to replace it rather than remodel it. We treat them the same. Anyone wanting to replace one mobile home with manufactured housing, they can do that in the original footprint or in the original footprint plus 10%. It’s the first paragraph there that applies to replacing a mobile home. If the mobile home burnt or was destroyed by fire and they wanted to replace it then you could use the other provision instead, although, the first provision would work about as well. Replacement is typical for repair.

(#2100) Steve Clayton: But the way it reads if the mobile was burnt down in section B) he wouldn’t be able to expand by the 10% and the 20% square footage because that’s included in section A) not section B).

(#2110) Diane Edgin: Unless you put in another section that pertains to something that has already been increased verus those that haven’t.

(#2115) Steve Clayton: I think our consensus is we want it to apply to both, be it a remodel or rebuild. We would like the 10% footprint and the 20% square footage to apply to both.

(#2125) Bob Fink: You could say that if it’s a replacement to a destroyed residence that it is considered the same as an existing; it continues to be an existing building even though it’s a replacement of an existing building.

(#2155) Terri Jeffreys: Or just reference section A).

(#2175) Darren Nienaber: You’re proposing substantial changes to B) and you haven’t done SEPA on that. They could make a final decision on A) tonight but B) ...

(#2195) Bob Fink: Darren’s concern is that this is not part of the proposed changes so it hasn’t been advertised; it hasn’t been reviewed under SEPA. Section B) is existing language; the only change proposed there was to title it as B) so it was not a substantive change.

(#2222) Terri Jeffreys: So on A), right before the italics put in a new section B) that would start with ‘To reduce the impacts’ ... do we want to go with Wendy’s changes about ‘at the site’ under b)?

(#2255) Wendy Ervin: I think you have to change that word ‘in the existing structure’ because you’re combined footprint is not in the structure.

(#2260) Bob Fink: It should be ‘in the footprint’

(#2264) Wendy Ervin: That's not what it says and that's why I made that suggestion. Or maybe 'within the existing footprint'.

(#2275) Bob Fink: That would be fine.

(#2277) Steve Clayton: Given that we're not going to finish tonight do we want to send this back for wordsmithing? It sounds like we're close.

(#2295) Bob Sund: We can't talk about B)?

(#2297) Darren Nienaber: You can talk about it.

(#2300) Bob Sund: It needs some grammar work. If you read this it says 'Reconstruction of structures destroyed by fire or other means'; what is the main thought there? It is reconstruction of structures that are destroyed ... what happens to them? You've gone to another subject.

(#2324) Darren Nienaber: I agree with your grammar analysis. The courts would look to the intent and purpose of it whether there's an ambiguity. I don't think legally it would necessarily be a problem but it never hurts to clarify it. B) would have to be brought back to you at a later date because it wasn't ...

(#2342) Bob Sund: The thought isn't completed in that first sentence.

(#2345) Wendy Ervin: Actually it is. If you start up your reading with 'Activities that do not require an MEP' and this is just a list ... but I had to keep reminding myself that that's what we were talking about and then it does make sense. However, it is written in a difficult way to understand because you've got a negative up at the top and then you've got basically a list of things which fall under this heading.

(#2380) Diane Edgin: Let's let them bring this back to us at a later time because we can't deal with B).

(#2384) Wendy Ervin: Right, we can't deal with B) but we can deal with A) and with her proposed new B) and then a) and b).

(#2395) Bob Sund: And b) is going to read 'the combined footprint proposed shall be located at the site of the original footprint', or ...

(#2405) Wendy Ervin: Or it could say 'the combined footprint proposed shall be located ...

(#2420) Mark Drain: Why don't you just say 'the combined footprint shall be more distant from the '...

(#2428) Wendy Ervin: Oh, okay.

(#2460) Terri Jeffreys: How about 'the combined footprint proposed shall be added to the site of the structure more distant'?

(#2500) Diane Edgin: How about 'further from the existing FWHCA than the existing structure'?

(#2520) Darren Nienaber: How about 'the combined footprint shall be no closer than any of the previously existing structures'? Maybe 'shall be no closer than the furthest one'.

(#253) Steve Clayton: So we're talking about A) not reconstruction? We're talking about adding to an existing.

(#2540) Wendy Ervin: Right.
(#2550) Allan Borden: How about 'the combined footprint proposed shall be located as part of the existing structure more distant from the FWHCA'? I think we need to capture the phrase that's in a) 'such expansion does not increase any intrusion into the FWHCA'.

(#2600) Wendy Ervin: Can we just take care of A) and Terri's suggestion for the new B) with the italics and then a) and b) and leave the rest for next time?

(#2650) Steve Clayton: We can't do a B) because it already exists.

(#2655) Bob Sund: Then move B) to C).

(#2658) Steve Clayton: We haven't advertised to change the existing B).

(#2662) Bob Fink: Just the title to B) is new, isn't it Allan?

(#2670) Allan Borden: The former text didn't have A) with that title or B) with that title but everything that's not italicized or underlined was the original text. Once the sentence that starts with 'The remodel, repair, or change', ended at 'aquatic management area'. It picked up with the next sentence 'Reconstruction of structures destroyed by fire or other means'; so everything in between there is an addition.

(#2700) Wendy Ervin: So she could put her B) in there.

(#2702) Allan Borden: Yes.

(#2704) Steve Clayton: So this was all section 1) before?

(#2706) Allan Borden: That's right.

(#2708) Steve Clayton: So where do we have trouble dealing with B), Darren, if it was all the same section before and that has been advertised?

(#2712) Allan Borden: Right, because before it wasn't divided so if you didn't read that whole paragraph you wouldn't see the sentence that starts with 'Reconstruction of structures destroyed by fire', etc.

(#2720) Darren Nienaber: So it was all part of 1)?

(#2724) Allan Borden: Yes. The problem with the current section noted as B) the first part of the sentence is not complete. It should say 'Reconstruction of structures destroyed by fire or other means may be approved provided', etc.

(#2740) Darren Nienaber: It's still a difference subject matter. B) deals with reconstruction by fire and A), regardless of where it was organized, deals with an alternative means of enhancing the habitat and providing structures.

(#2760) Bob Fink: Right. The proposed change was to combine the footprints; that's what was proposed and advertised.

(#2766) Steve Clayton: Right, combine the footprints, but we didn't say in the advertisement that it was only to provide footprints in existing structures, whereas we're looking to combine footprints in a burned down or replaced structure and that still fits under combining the footprints, doesn't it?

(#2784) Darren Nienaber: My impression from the road you were going down as a little bit beyond just that. It sounds like you really wanted to modify B).

(#2800) Bob Sund: I don't think we want to change it; we just want to make it grammatically correct.

(#2802) Terri Jeffreys: But there was the talk about adding the 20% bonus.
(#2804) Bob Sund: But the way it stands right now it's not grammatically correct. Allan said it should read 'Reconstruction of structures destroyed by fire or other means may be approved, provided', etc.

(#2835) Darren Nienaber: If you want to do just a simple clarification of prior intent I don't think there's a

problem with that. If you want to start altering the terms of where and when a reconstruction is allowed ...

(#2850) Wendy Ervin: We were also talking about ... Terri had suggested that the italicized words at the end of A) should be broken into a separate section labeled B) which then conflicted with B) down below.

(#2868) Darren Nienaber: How about going on to the next agenda item and then during the break Allan, myself and one of the members can hash out something and then we can bring it back to you.

(#2900) Mark Drain: Why not make the italicized portion C).

(#2920) Bob Fink: The new language you're adding, instead of adding it at the end of 1.A), you can add it to make a new subsection 1.C) so you're moving the location of the provision to combine footprints as its own subsection. So it's only a format change.

(#2950) Steve Clayton: So there would be C) and then a) and b) under that. By inference does C) apply to A) and B)?

(#2970) Mark Drain: No, they're separate; that's why we making it separate. There is no 20% incentive to rebuild your home. There's a 20% incentive to combine structures and getting one out of the FWHCA. For remodeling you get 10% and I think it would be appropriate to also apply that to B).

(#3002) Wendy Ervin: I don't think it's necessary to give them any size bonus.

(#3006) Terri Jeffreys: You're talking about little cabins that were built in 1940 ...

(#3012) Steve Clayton: We were also talking about mobile homes that are falling down. Somebody has two mobile homes on the property and they want to build one nice house.

(#3020) Wendy Ervin: That's covered under the top section not the bottom one.

(#3025) Steve Clayton: That's considered a remodel to completely remove the mobile home and replace it.

(#3032) Wendy Ervin: Right. It's a modification.

(#3038) Steve Clayton: Darren made a proposal. Anybody opposed to the proposal of waiting for some wordsmithing? Okay, we'll move on to s/t).

(#3085) Darren Nienaber: Let me review this process to remove drainage and utility easements with you. This happens a lot in large, pre-existing plats that have drainage and utility easements along property lines. The way we read the subdivision code is that it's a plat alteration and it requires a public hearing. That goes before the Hearing Examiner and the HE currently approves that. The HE has said 'what happens if you ... it's one thing if the county has absolutely no property interest at all in those drainage and utility easements but if the county did have some interest, if the easements were made for the benefit of the county, then you have this weird remaining thing of whatever happened to that property interest? There's never any official mechanism to get rid of that useless property interest and these are, as far as I know without exception, useless in the county's eyes. So what we've done is we have one process that says that if the county has no interest in it the HE can simply just delete that utility and drainage easement. This comes up because people will have two properties side by side and there's a drainage and utility easement right down the middle, they want to get rid of that boundary line and put a house right in the middle of that old lot line but we can't allow that with a drainage and utility easement right there. So this allows them to alter the plat and get rid of those drainage and utility easements. When the county actually does have a property interest in those utility and drainage easements, it's awkwardly written, it's long but it's working and we're using this currently as an interim ordinance that we adopted sort of a temporary measure so it's being brought to you now for more permanent adoption. Under B) on page 2, where the county does have an interest, that would just require that the BOCC dispose of it; it would be a consent agenda item. If the Utilities Director and Public Works Engineer say that in their opinion the county has no interest, then the BOCC on their consent agenda item can say that they're getting rid of the property interest in these easements. The HE can still make the

decision on the plat alteration.

(#3285) Terri Jeffreys: So basically the HE is bringing to the BOCC the request to remove the interest?

(#3292) Darren Nienaber: The HE acts on the plat alteration. If the county does have an interest in it then the BOCC would dispose of that property interest in that easement where it has no value.

(#3310) Terri Jeffreys: On page 3, second line, starting with the word 'such'; 'Such disposal itself shall not require a public hearing, provided that there was a public hearing on the review and action on the application for the removal of' ...

(#3322) Darren Nienaber: Right; before the HE. The HE would handle the plat alteration.

(#3325) Terri Jeffreys: And that's the hearing you're talking about?

(#3327) Darren Nienaber: Right.

(#3333) Allan Borden: So actually the HE's review proceeds the BOCC's disposal.

(#3342) Wendy Ervin: After reading this, there seems to be a chronology that needs to be spelled out chronologically so there's step 1, step 2, step 3, rather than 'such disposal shall not require this', 'if the application requires this', 'when the county', etc.; all of these things need to be set in a chronological list in order to make it more understandable. It appears to jump back and forth.

(#3440) Darren Nienaber: It gets complicated and there might be some redundancy in the latter sentences. Perhaps on B) we could just say 'County has an interest in any utility and drainage easement: The HE shall, with a public hearing, may act on the removal of the drainage and utility easements. The BOCC may dispose of any property interest in the drainage and utility easements', etc.

(#3500) Wendy Ervin: 'Provided in their opinion' and then I'd like to break it into a) the county has no interest in the easements and b) the easements are not needed, and c) the easements have no known present or future value.

(#3520) Terri Jeffreys: Did you want to keep in there about the letter from the Public Works Engineer and the Utilities Director regarding their statement?

(#3525) Wendy Ervin: Yes.

(#3535) Darren Nienaber: Okay so how about this 'County has interest in any utility and drainage easement:' The HE may act on applications for removal of drainage and utility easements. The BOCC may dispose of any county property interest in the utility and drainage easements' and if you want to break it down by a, b, and c that's fine.

(#0005) Wendy Ervin: I was just knocking off the 'in their opinion' which are repeated words and are unnecessary. If you bullet those things it just becomes clearer.

(#0010) Darren Nienaber: 'The BOCC may dispose of any county property interest in the drainage and utility easements' 1) when the BOCC is in possession of the statement from the Public Works Engineer and Utilities Director, or the County Administrator in their absence, that, in their opinion the county has no interest in the easements and that in their opinion the easements are not needed and are not likely to be needed'....I think that's fine. I actually hashed this out with Gary Yando and Jerry Hauth and that's exactly the wording that we thought would work best. Just to leave everything else from 'Such disposal itself shall not require a public hearing', etc. I'll read it again. B). 'County has interest in any utility and drainage easement: After a public hearing, the HE may act on applications for removal of drainage easements. The BOCC may dispose of any county property interest when the BOCC are in possession of a statement from the Public Works Engineer and Utilities Director, or the County Administrator in their absence, that, in their opinion the county has no interest in the easements, that in their opinion the easements are not needed and are not likely to be needed,

and also in their opinion the easements have no known present or future value to the county'. And then get rid of all the following text.

(#0082) Wendy Ervin: And if you put a colon after the first 'in their opinion' then just say 'the county has no interest in the easements, the easements are not needed and not likely to be needed, and the easements have no know present or future value to the county'. Then you've eliminated some other words.

(#0115) Darren Nienaber: That sounds good. Is that a motion?

(#0122) Wendy Ervin: I'll make that as a motion with your reading beginning with 'After a public hearing' that you previously read then following through to the second sentence 'The BOCC may dispose of any county property interest ', etc. and then the rest of the changes we've proposed.

(#0150) Terri Jeffreys: I second the motion.

(#0160) Steve Clayton: So we have a motion and a second for 15.03.060 B) Process to Remove Utility and Drainage Easements. Any further discussion? All in favor? Opposed? Motion passes. Okay, are we ready to move on the rest of the text?

(#0165) Wendy Ervin: I just wanted to line out some words in A) to make it easier. I suggest in the second line 'thereof' be removed. 'The HE may review and act on applications and plat alterations for removal of utility and drainage easements'. Then line out the next bunch of words and start with 'The HE may act on the removal of the easements without a public hearing, provided that all parties entitled to notice under RCW shall be given notice'. 'Providing an opportunity for a hearing upon request within 14 days of the receipt of the notice'. Maybe it should say '... entitled to notice under RCW shall be given notice which provides an opportunity for a hearing upon request within 14 days of the receipt of the notice'.

(#0218) Terri Jeffreys: I move we accept the new wording.

(#0220) Diane Edgin: I second the motion.

(#0222) Steve Clayton: Darren, do you have any trouble with removing that line 'When the county has not interest in any utility and drainage easement', etc. It seems redundant.

(#0224) Darren Nienaber: That's fine.

(#0230) Steve Clayton: We have a motion and a second. All in favor of adjusting 15.03.060 A)? Opposed? Motion passes. Any other changes on pages 1 through 3?

(#0260) Wendy Ervin: Other than the changes that we made under 15.03.060 I move that we accept 15.03.005, and .030, and .050 as proposed by staff.

(#0272) Terri Jeffreys: I second that motion.

(#0276) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes to accept t). Item s) is Public Participation and Notification on page 3 and 4 of our summary.

(#0288) Wendy Ervin: Under 2) 'Mailing at least ten (10) days before the date of a public meeting or public hearing to the owners of all property adjacent to the property that is the subject of the meeting or pending action'. That's my suggestion.

(#0300) Steve Clayton: I believe adjacent property owners is actually a defined term.

(#0302) Allan Borden: Yes, it's actually a defined term.

(#0304) Steve Clayton: And it's defined as not just physically adjacent but I believe it's within 300 feet.

(#0306) Wendy Ervin: Oh, I see. But the other thing here is 'Addressed, pre-stamped envelopes' is not necessary because over in 1.05.052 requires that the public notice requirements ... it provides for and who pays who for those self-addressed stamped envelopes is required under that other section so it's not necessary to repeat that.

(#0326) Terri Jeffreys: But that's under a different title and if somebody is just grabbing that title you don't want them to have to be searching back through everything else. I don't mind a little redundancy if it's in an entirely different title. I think it's three or four words that are okay to be in there.

(#0358) Mark Drain: I agree with Terri.

(#0360) Bob Sund: I do, too.

(#0370) Steve Clayton: It relieves the county of some of the responsibility. Previously it was the county's responsibility to mail it. By having this provision, if they miss somebody, then the county is not the one left holding the bag. It's the person who provided the envelopes.

(#0400) Diane Edgin: So someone gives you these pre-addressed stamped envelopes. How do you guys handle it? Where do you physically put those envelopes prior to stuffing and mailing them out?

(#0406) Allan Borden: They go in the application file. It just like part of the application. I can provide you with some information on the changes on page 4. Without the proposed changes, there really isn't a very good explanation of how the county will handle requests for either rezones or Comp Plan / DR changes so Bob and I thought this would be an appropriate time to include this. Basically it says that there will be standard forms and fees for rezone requests and that they will be composed as a list of proposed. In the Comp Plan and DR's people can submit proposed requests and then those requests are evaluated for merit by the staff and BOCC to determine which ones will be moved on or whether they're duplicates of previous requests and then there is a list formulated of proposed Comp Plan / DR's changes.

(#0476) Terri Jeffreys: Is that the process we followed this last cycle?

(#0478) Allan Borden: For the most part that's what we did but it was never written down anywhere.

(#0482) Darren Nienaber: I think it's important that we learn to distinguish between rezones and other Comp Plan amendments. Someone could come in and say that they're proposing to delete Title 15; I've paid an application fee and I'm entitled to a hearing and decision and discussion by the PAC. Because there's an application form and a fee we just wanted to clarify that rezones are a lot like development applications and probably do warrant a discussion and a fair hearing before you. You could easily see a whole bunch of frivolous applications for amendments to the county code where they've already been litigated in front of the GMHB and shouldn't automatically be given a right to a hearing before you; that would fill your docket for decades.

(#0515) Terri Jeffreys: But there's no process for the public to bring text changes to the staff? If a citizen wanted to bring in suggested text changes to the Comp Plan that were not rezone requests ...

(#0528) Allan Borden: Yes, it's under b) on page 4. Darren and I put together an actual application that separates the rezone requests from the other Comp Plan / DR's requests.

(#0545) Terri Jeffreys: Some counties just call it changes to the future land use map for rezones.

(#0554) Allan Borden: It's actually a two step process; you go through the public hearing on changing the zoning and the decision is made whether to change the zone or not and then that approval is then reflected on the change in the Comp Plan development areas map so it's a Comp Plan map amendment change.
(#0590) Bob Fink: Currently the future land use map only shows urban areas as one uniform area. If when we adopt, for instance, the Belfair plan, the Belfair plan actually shows subareas. If we modify the future land use map to show those subareas as proposed in the plan then the future land use map would have those subareas shown on them and any amendment to those boundaries would require both a change to the plan

and the zoning maps. So it all depends on how it's adopted.

(#0624) Bob Sund: I wanted to clarify the last sentence or two under 1). 'The request will be evaluated for merit by DCD staff and BOCC'. How does that work? So the BOCC are going to evaluate something for merit and they recommend that to you people and then there's a comprehensive list that comes back to the PAC?

(#0640) Darren Nienaber: That's the way it is.

(#0650) Bob Sund: So something can come up to the BOCC that they would feel should be discussed and so they would recommend that to DCD ...

(#0656) Darren Nienaber: Right. They're the boss of DCD.

(#0658) Bob Sund: Then eventually that list then comes back to the PAC to hold hearings?

(#0662) Darren Nienaber: Right.

(#0664) Bob Sund: I did also want to ask about 6). What I'm wondering about it. It says 'The PAC holds public hearings and optional workshops and formulates and transmits its findings and recommendations to the BOCC'. Along with that recommendation that comes from this group does DCD also make a recommendation?

(#0692) Darren Nienaber: Yes.

(#0694) Bob Sund: And sometimes that recommendation can be different from this, right?

(#0696) Darren Nienaber: Right.

(#0698) Bob Sund: It doesn't say that here.

(#0700) Darren Nienaber: It doesn't need to.

(#0705) Bob Sund: Well, it doesn't say that DCD can also make a recommendation.

(#0708) Wendy Ervin: It says 'formulate and transmit'; actually, I would like to add an 's' to 'formulate' and 'transmit' to bring them in conjunction with 'holds'. Whatever the PAC determines is sent to the BOCC.

(#0725) Terri Jeffreys: He's just saying that this notice also ought to indicate that the staff makes a recommendation.

(#0728) Bob Sund: What would be confusing to me is that ... I guess I worry about ... it's kind of unsettling that we make a recommendation and DCD has another recommendation. That would be confusing for the BOCC.

(#0742) Bob Fink: That's part of the planning departments authorization under the Planning Enabling Act. The planning department is the governmental body that advises the BOCC. You are an appointed body and you also advise the BOCC.

(#0755) Bob Sund: Okay, but should the PAC be knowledgeable that the planning department has a different final recommendation?

(#0765) Wendy Ervin: Don't we generally know what the planning department ... like when we were going through all those applications we got the staff recommendation and then we had our discussion. Sometimes we did not go with what the staff recommended; we went with what we believed and sometimes we didn't agree so I don't think you can put a guideline to the final results of our decisions.

(#0780) Darren Nienaber: Sometimes the planning staff will see your final recommendations, think about it,

and agree with some of it maybe change their mind part of the way; do you want to have that whole batch come back to you?

(#0788) Bob Fink: It would be a never ending cycle. It's not meant to be a perfect process but just meant to get it through the pipeline.

(#0795) Wendy Ervin: In the final analysis isn't the whole thing to give the BOCC the benefit of all our thinking? The staff as well as the PAC?

(#0800) Steve Clayton: The BOCC's minutes are posted on the web and the last ones posted have been very interesting to read their discussions and staff has done a good job in the few occasions of saying the PAC recommended doing this and staff doesn't agree. That is a very fair process.

(#0815) Bob Sund: I guess I'd like to know when there's a major disagreement with the final recommendation that goes to the BOCC.

(#0828) Bob Fink: Your recommendation always goes to the BOCC as your recommendation. We never alter your recommendation. If we have a comment regarding it, either in supporting it or some additional changes we would like to see, then we make that recommendation separately.

(#0880) Steve Clayton: Any other thoughts on item s) on pages 3 and 4 of the summary?

(#0884) Wendy Ervin: On B) Content of Notice. I think that should be made into a list. That way the people can check off to see that they've got everything.

(#0900) Allan Borden: The staff does that; the public doesn't do that.

(#0910) Wendy Ervin: Okay, alright. In the wording that you have inserted under 1.b) it says 'Those requests found of merit' etc. If you say 'Those request found merititious' *(sic)* sounds better.

(#0935) Mark Drain: I had to think twice about what made a proposal 'merititious' *(sic)* and who was the judge of that?

(#0948) Darren Nienaber: You leave that for the BOCC to decide. That's what you elect them for.

(#0960) Mark Drain: But we may never know their decision because this is where things begin and if they don't think it's of merit no one will ever hear about it.

(#0970) Wendy Ervin: But you've got the DCD and the BOCC so you do have two bodies in there evaluating.

(#0978) Diane Edgin: If the request is not found of merit those people that make those requests, then they can make a squawk.

(#0985) Darren Nienaber: They can go to the regular BOCC meeting and they have time for open citizen input.

(#0990) Terri Jeffreys: Are people notified if their request is not found to have merit?

(#0995) Allan Borden: I can answer that question. Nobody turned in a request from the public on a DR change.

(#1005) Bob Fink: That's a little bit misleading because actually several of the amendments were proposed by letter or verbally by different parties. For instance, the amendment that addressed cemeteries was proposed by a church. An amendment to allow churches in the rural area to be larger than 3,000 sf was also requested by a church verbally. There were several examples that actually came from the public not by a formal application but verbally.

(#1028) Allan Borden: I'm not aware of one that was suggested that was not carried through.

(#1040) Diane Edgin: I don't have any problems on this section 15.07.030 or 15.09.060 the language there.

(#1048) Steve Clayton: Is that a motion?

(#1050) Diane Edgin: I'll make that a motion.

(#1060) Terri Jeffreys: I second the motion.

(#1065) Steve Clayton: We have a motion and a second. Any further discussion?

(#1068) Diane Edgin: I would take a friendly amendment to put in 'merititious' *(sic)*.

(#1086) Steve Clayton: So we have a motion and a second and a friendly amendment. Let's vote on the friendly amendment first. All in favor of 'merititious'? *(sic)*

(#1092) Allan Borden: How about the letter Wendy wanted to add under Content of Notice on page 3? Wendy had suggested that each one of the items under that section be listed out.

(#1110) Wendy Ervin: You said that the county people were the ones who do it so I was just presuming that maybe it's not necessary to give them a list. I can withdraw that.

(#1122) Steve Clayton: So for 'merititious' *(sic)* We had three yes. Opposed? We had three no. So the motion dies. We also have the original motion to approve item s) in it's entirety. All in favor? Opposed? Item s) passes.

Break in meeting.

(#1184) Allan Borden: During the break we did some editing on item p). What we did was we shuffled what was there.

(#1190) Wendy Ervin: I like B); that's very clear.

(#1192) Bob Sund: That sounds a lot better.

(#1198) Steve Clayton: Is 'and application is made' is that adequate or should we have 'completed application'? As I understand it, there's sometimes problems with complete applications.

(#1205) Allan Borden: It wouldn't be that difficult to add that in there.

(#1218) Bob Sund: That is a technicality that could make a problem for someone. Maybe someone gets their application in but they omitted something and they're told they didn't get their application completed on time.

(#1232) Wendy Ervin: Is somebody likely to be that vindictive and small?

(#1234) Bob Sund: I think if the process is started that should be good enough.

(#1242) Wendy Ervin: Most people if their house has burnt down will be wanting to get it done.

(#1248) Bob Sund: I watched the restaurant on the canal and there was permitting going on and I think there was an insurance problem there and they really couldn't do an application until they got the insurance and fire inspection done so sometimes there can be complications.

(#1265) Wendy Ervin: And there may be complications that they have no control over especially if there's a court case.

(#1270) Bob Sund: And the bottom line is you want to be able to help the people. You don't want to throw roadblocks in their way.

(#1278) Wendy Ervin: Right. So the wording is better as it is.

(#1282) Steve Clayton: On the other side of it is someone that destroys a mobile home and says they plan to reconstruct and they put in a tentative application and then they wait for years and years in order to resell it and somewhere 10 or 15 years down the line when our DR's have changed they're still grandfathered in under the old one. I understand your concern but I'm also concerned about someone who might abuse the system.

(#1306) Wendy Ervin: You've made an application within two years of the destruction and even though that application wasn't finished would it not be that you deal with that application according to the regs that were in place at the time the application was made? You can't just keep changing the rules; you make the application and there's a set of rules under which you've made that application whether you've finished it or not.

(#1330) Bob Sund: Even a building permit is only good for so long. You can get a building permit but if you don't act upon a building permit it expires after a while.

(#1334) Bob Fink: A building permit can be extended but what the courts try to do is balance the interest of the applicant and the interest of the community. The reason the community has regulations is that they feel this is important public interest being served and these are the minimum regulations to serve it. When someone is applying to do something and then the rules change that wouldn't allow them to do it they do recognize vesting as long as they pursue their due diligence to complete the project and then they're allowed to be grandfathered in. That's the trade off to the individual as opposed to the public interest. On the other hand if they don't pursue their due diligence then they loose that special privilege that they had from acting prior to the regulation.

(#1366) Wendy Ervin: So his scenario where somebody makes an application and leaves it go for twelve years before finalizing it, they don't have any standing under that application because they've allowed it to rest for twelve years.

(#1378) Bob Fink: Under law, building permits are vested from changes of regulations but they're only vested so long as the building permit is kept active or the building is completed. There are building permits that have been kept alive for five or seven years by people who perform work on an ongoing basis so that they manage to meet the conditions to keep it alive. That does happen but it's the exception rather than the rule.

(#1400) Steve Clayton: We put in here that just an application is made within two years. Is it significant that that's a change from a completed application?

(#1406) Bob Fink: It should be 'a completed application'. An application doesn't mean anything unless it's complete. Someone could theocratically take a napkin and draw a box on it and say it was their application.

(#1432) Bob Sund: You give someone an application form and they fill it out and they didn't fill out one section right or they omitted something and then the deadline came along ...

(#1436) Bob Fink: The county has to determine if it's a completed application within 28 days. If it's not complete, we have to notify them and usually we do that in less than 28 days when we notify them. If we don't notify them within 28 days then it is deemed complete and we can't then send it back and say you haven't completed the application.

(#1452) Bob Sund: What would happen, Bob, where there was a delay because of insurance and they want to put the house back on the same footprint and two years is the 15th of April. I come in today and get the application and I fill it out and I give it to you before the 15th but after the 15th you deem that I omitted something in that application. What would you do about that? Say your two years are expired?

(#1480) Bob Fink: I would say that the applicant has a responsibility to pursue it with due diligence. Knowing that an application might not be complete they shouldn't wait until the last day of the two years to apply. Even

if the insurance company hasn't paid on the claim they can still apply for the building permit and they can make a complete application with a site plan. If for some reason it doesn't work out for them, then they can either get a partial or full refund on the application or they have a chance to keep it alive for some time without major expense by beginning construction. I don't know that we've ever run into a case where people couldn't at least submit an application before their time ran out. There have been times when people haven't submitted or made any attempt to submit an application and the new purchaser came back five years later and said there used to be this mobile home here but it burned down and now can I rebuild there? We have had at least one of those cases that I know of.

(#1540) Steve Clayton: So per our discussion under item B) of this revised one, third line down, it should say 'planned reconstruction occurs within the previous structural footprint and completed application is made within two years of destruction'.

(#1554) Wendy Ervin: I would like to make a motion that the rewritten 17.01.110 be accepted with the addition of the word 'completed' in section B) and accept all other changes as proposed by staff.

(#1568) Mark Drain: I second that motion.

(#1570) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion carries. On to item u).

(#1600) Allan Borden: This is revising both the DR's and RO to meet Title 15 code standards. The way it's presented here starting on page 5 of the staff report I've just printed out the relevant sections that have to do with permit review first in the DR's and then in the RO. I did a lot of strike out and made a cross reference to the relevant Title 15 section. I handed out to you earlier some comments that Steve had. I'll follow those concerns from the handout and the first one earlier in relation to the SMP. I'll move on to the second point that Steve brings up that's on page 7, sections of Title 15, 1.05. The first one is .054 which has to do with Rules of Conduct: Hearings. What I've done on the 2nd and 3rd page of the handout that has Steve's comments on it is I've addressed those and I agreed about 95% with the comments he made. Section .054 the first sentence should include the Type III Review Shoreline Master Program and not just the regular Type III review.

(#1720) Bob Fink: Why did you agree to that, Allan?

(#1722) Darren Nienaber: It's in the DR's now and you want to get it out of there.

(#1725) Bob Fink: Right. The SMP review is not applicable to the DR's. This section you're amending is actually in the DR's so now you're saying you're going to apply the SMP review to it and what you really want to do is just apply the other hearing requirements.

(#1750) Steve Clayton: But in the Title 15 development code we do have a Type III review that refers to the SMP.

(#1755) Bob Fink: Right, but you won't find that Type III in the DR's.

(#1760) Darren Nienaber: The DR's is a zoning code; Title 15 is the uniform process and procedures and enforcement that applies to all the titles. The goal here is to get rid of anything that's redundant in terms of procedure in the DR's. You might also delete .054; I don't know if there's any need for it. Also get rid of .056 because it's already provided for.

(#1785) Wendy Ervin: That's your legal opinion?

(#1788) Darren Nienaber: Yes.

(#1790) Wendy Ervin: Then I make a motion that those two sections be struck out.

(#1796) Darren Nienaber: I think we can also strike out .050, .052, .056, .060, and .062.

(#1845) Wendy Ervin: I'd like to expand my motion to include all of those numbers that Darren has advised are unnecessary.

(#1866) Steve Clayton: So instead of saying in particular where in the development code people need to go to, we're just saying specifically go to Title 15 and from there you have to figure out the sections; it's pretty basic.

(#1875) Bob Fink: So you'd keep .044 for the criteria and .046 to refer you to Title 15.

(#1912) Bob Sund: We just seem to keep skipping around with this. You have to go back and read the whole thing to see what we've done on this. How does what we do fit into the whole picture? Unless you do what Steve did and go back and forth and cross reference all the sections. I don't have that kind of time to do that.

(#1940) Mark Drain: I'm with you.

(#1945) Bob Sund: In the final analysis we should have the whole title and what we've done.

(#1985) Wendy Ervin: Are you talking about Title 1 or Title 15?

(#1990) Bob Sund: I'm talking about any of them.

(#2000) Darren Nienaber: The problem is there shouldn't necessarily be any cross referencing. All the process should be in Title 15.

(#2005) Steve Clayton: I found things that were crossed out as being changed, say on page 13, that were not included in the new wording and the only way you found out about it was to cross reference between the two codes. On page 13, under c) under contiguous property and also under d) where written notice shall also be provided to any organization or individual who has requested it; we deleted that from our entire process. I was under the impression that if it was crossed out it was going to be transferred from one title to the other and those sections were just lost.

(#2042) Allan Borden: But it already has.

(#2044) Darren Nienaber: It's already there.

(#2046) Allan Borden: In the particular section you're referring to it was already made previously in the July 2003 version of Title 15, under .040 and .050. When you do a notice of application you don't know who the people who wish to be notified are. You only have a list of adjacent property owners. During the permit review, you get phone calls or letters from people and then when the decision is made you notify them and you also notify people who want to be notified.

(#2098) Steve Clayton: Section .040 refers to appeal hearings. Not the initial public review and determination.

(#2120) Allan Borden: My thought is the way it operates in the department is if you have an application you put a notice of application up and someone calls you and asks you to send them more information about that request they saw posted. The planner does that. Prior to the notice of application you can only notify adjacent property owners.
(#2150) Steve Clayton: My concern was, and back to where Bob brought it up, in both sections c) and d) on page 13 are items that were in the sections that have been deleted and there hasn't been any notice to us to even to look that those were deleted and that's what Bob is saying that we have to cross reference and figure out what went away and you haven't brought it to our attention that you're deleting these procedures.

(#2165) Allan Borden: Well, c) is the adjacent property owners section that is in Title 15.

(#2170) Steve Clayton: Correct, but also this has a provision for 'or within 300 feet of the contiguous property owned by the applicant'; I'm not even fighting for that as a cause but that is an item that you dropped and

nobody is aware of and the only way you find out is to go in an actually cross reference and is that really something seven of us should be doing? I assume that if you crossed it out and said that you were transferring it from one section to another it got transferred. These are examples of things that were crossed out and never got transferred.

(#2200) Bob Fink: Actually you're right in the sense that we should have told you when there were substantive changes because the intent of this is not to transfer the language from each ordinance into Title 15 but to have a unified procedure to the extent possible for all these processes so that when the hearing process, whether all have the same notice requirements or the same procedural requirements, even though they might come from different ordinances or different regulations. That's not always true in the particularity of each of these ordinances there were little quirks in the language as it was drafted and so some of that was not captured and so what we should have done was to inform you where the substance of this notice requirement was changed. That should have been brought out better in the discussion.

(#2260) Bob Sund: We need the title in it's final ...

(#2262) Darren Nienaber: You need Title 15 in its final version. It has been previously submitted to you. It should have been brought to your attention that you needed to reference Title 15 because Title 15 is the standard. All this other stuff is not only redundant but potentially conflicting.

(#2278) Bob Fink: We're actually trying to remove those little quirks.

(#2286) Steve Clayton: I agree with the concept but my thought is that if there's little quirks here and there we should at least recognize them.

(#2296) Bob Fink: And I agree with that. We should have done a better job of identifying them.

(#2300) Steve Clayton: So Bob was saying that he doesn't have time to cross reference and Mark is saying he doesn't have time to cross reference and that's where this discussion started out.

(#2320) Bob Sund: In reading this I saw that we were deleting some things and my thought was 'didn't we redo that section?' And we left that in for some reason and now we're taking some more out so what is the total package that we're ending up with? That was my concern.

(#2350) Steve Clayton: So let's get back to item u) on page 5 and that's an attempt to delete things out of the DR's and refer it to Title 15. We've deleted several sections of 1.05, Procedurals, on page 6 and 7. A motion has been made.

(#2400) Wendy Ervin: Yes, I made a motion to follow Darren's recommendation to eliminate .050, .052, .054, .056, .060 and .062.

(#2450) Bob Sund: On .060, we talked about this section regarding Appeals. So if you eliminate .060, what happens to the Appeals section?

(#2462) Darren Nienaber: It's already in Title 15.

(#2472) Bob Sund: We had quite a discussion about Appeals and about the BOCC ... The BOCC does not serve in any capacity now in the Appeal process?
(#2480) Darren Nienaber: For permits. They're out of the permit process.

(#2488) Bob Sund: Is that the only thing they're out of?

(#2490) Darren Nienaber: They now act in a legislative capacity in all these changes.

(#2500) Steve Clayton: The Appeals process on these items, the HE hears it and makes a decision and then it gets appealed. In Title 15 does the appeal go back to the HE because that's the way the original wording here was and that didn't seem logical. We are now going to refer to Title 15 for DR's. The HE hears it the

first time through; does it appeal back to the HE?

(#2532) Darren Nienaber: The appeal would be to court after the HE.

(#2540) Steve Clayton: In here it would appeal to State Review Board, wouldn't it?

(#2542) Darren Nienaber: Or applicable State Review Board. If it's a shoreline permit it goes to the Shorelines Hearing Board.

(#2555) Steve Clayton: I just want it to be clear that decisions on things that the HE hears goes somewhere else and not back to the HE.

(#2568) Bob Fink: That's the intent. What it should say is something to the effect that the HE decision is the final decision of the county.

(#2615) Steve Clayton: Here it's saying he would hear it the first time and then it would come back to him.

(#2640) Bob Fink: That's for an administrative appeal. They're not HE decisions; they're done at an administrative level by staff.

(#2675) Bob Sund: And so that decision can be appealed to the HE?

(#2680) Darren Nienaber: That's correct.

(#2682) Bob Sund: Then if you want to appeal his decision then you go to court.

(#2686) Steve Clayton: You go to the State Review Board first.

(#2688) Bob Fink: It depends on the nature of the regulation. Some regulations go directly to court and some go to the Shorelines Hearing Board or the Board of Health.

(#2700) Bob Sund: So the BOCC really is out of all of the loop. I guess my concern is we are removing things like this further and further away from the people, aren't we?

(#2724) Darren Nienaber: Absolutely not. You're reducing redundant and conflicting regulations.

(#2728) Bob Sund: But the BOCC is out of the loop as far as making any decisions.

(#2732) Darren Nienaber: That's true but that doesn't have anything to do with this amendment.

(#2736) Wendy Ervin: We had quite a discussion over why the BOCC were out ...

(#2745) Bob Sund: What I'm concerned about is have we gone a little bit further?

(#2750) Darren Nienaber: Not at all. I'd also like to point out that now you can personally lobby your commissioner on land use permits and you couldn't do that before because it would be a violation ...

(#2760) Bob Sund: What good does that do?
(#2762) Darren Nienaber: They may or may not have an influence over staff.

(#2770) Terri Jeffreys: Could they submit to the record their opinion on it?

(#2772) Darren Nienaber: Staff has to act according to the law.

(#2780) Bob Fink: The commissioner can't instruct staff on how to decide on a permit.

(#2786) Darren Nienaber: That's right.

(#2788) Steve Clayton: But a commissioner can help lead a person with a problem through the process.

(#2792) Bob Fink: A commissioner can investigate if someone says 'They won't issue me my permit; what's going on'? They can ask staff or myself regarding those issues. If there's a problem with the regulations or a problem with the policy then that's discovered in that process. The permit has to be issued according to the regulations that are adopted. Whoever is making that decision they're using their judgment to apply the law to a particular case.

(#2830) Bob Sund: The law can be interpreted differently by different people; the laws aren't always black and white. This person may interpret the law this way and somebody else may interpret it much more stringently.

(#2850) Bob Fink: If staff is misinterpreting the law then people can take a hearing to the HE. The HE will then be able to overrule the staff ...

(#2900) Bob Sund: But who hires the HE?

(#2902) Bob Fink: The county does. But if the HE makes a bad decision or it's a decision you disagree with then you go to court or you go to the Shorelines Hearing Board. That's the legal decision making process. Permit decisions have to be made according to law and this process is set up to do that. The HE is an expert just as staff are experts in the application of the law to permitting. The BOCC are not elected to be experts on land use law. They're elected to represent the public to make sure that policies are followed.

(#2950) Bob Sund: But they may interpret something with common sense ... sometimes the law is not interpreted in a common sense way.

(#2980) Darren Nienaber: Before it was entirely inappropriate for the BOCC to be getting personally involved in permits that would be before them. Potentially that activity could invalidate the permit.

(#2995) Steve Clayton: Okay, we were on Appeals on page 7 and we've proposed to delete that per the motion. Do we have a second on the motion?

(#3010) Diane Edgin: I'll second the motion.

(#3025) Steve Clayton: So we have a motion through .062 on page 8. Any further discussion? All in favor? Opposed? Motion passes. We're still on item u) and let's back to page 13 under Public Review. Under c) we used to be required to give notice to anybody within 300 feet of any contiguous property the same owner owned. So if you owned several large parcels you'd have to give notice to the next guy down the line. That's not in Title 15 so if we approve this then that goes away.

(#3100) Terri Jeffreys: And that's not under the definition of adjacent property?

(#3102) Steve Clayton: That's correct. The adjacent property definition they're using is 300 feet within the parcel, right?

(#3125) Bob Fink: Let me give you an example of why that doesn't work well. Let's say you get an application from Simpson Timber. Simpson Timber may own 50 square miles, all contiguous. If all around that boundary, which isn't regular, there are property owners. You could end up notifying a third of the county on something that may be ten miles from the nearest residence. You have to look also at the other provisions for notice. Notices are also published in the paper and posted on the property. It's not just direct public notice.

(#3265) Wendy Ervin: So you're saying that the 300 feet is not a necessary measure take?

(#3280) Bob Fink: It's not the only form of notice provided. Posting the property is often the most effective way to notify people.

(#3300) Darren Nienaber: Seattle will have these big boards that say 'Notice of Proposed Land Use'. They're

big and prominent.

(#3335) Steve Clayton: The wording also says that they can be posted at a local access point such as a post office.

(#3370) Allan Borden: It says to be posted in a public place like a post office and at least two notices on the subject property.

(#3385) Wendy Ervin: So the question is the two notices on the subject property ...

(#3390) Bob Fink: Before you have a hearing you have a development application. The notice of development application includes posting the subject property and sent to adjacent property owners. It doesn't in itself require the publishing of it in the paper. When you have a public hearing you add to that publishing it in the paper and posting it at other sites as appropriate. You're not going to have a public hearing on a permit unless you have an application in. So the application requirements are a little bit different. On top of the application notice requirements they have public hearing notice requirements which are additional to the basic application notice.

(#3500) Steve Clayton: I don't know about the rest of you but item c) as far as the contiguous property, I really don't have a problem with it being deleted. I would just like it to acknowledged that it is. Item d) on the same page; I believe it's a good idea to have item d) and if we need to include it in Title 15 it would be an appropriate place under 15.07.030.

(#2550) Darren Nienaber: That's good; that should be in there.

(#3600) Steve Clayton: On page 14 under 2) some struck items toward the end. I sent this to Allan and he agreed that it wouldn't be a bad idea to have it in there. "At least seven (7) calendar days prior to the hearing the report shall be mailed to the Planning Commission and copies mailed to applicant and other interested parties ...' We struck out the Planning Commission but there should be a requirement in Title 15 that the report is made available at least seven (7) before the hearing. Allan inserted that under 15.09.050. Question on page 16 under O). I couldn't find 15.09.057, Allan.

(#0010) Allan Borden: That's the variance criteria. You reviewed that at your last public hearing.

(#0016) Darren Nienaber: You created a uniform variance provision. It's now set forth in Title 15 so is just referring to that. It goes before the BOCC on the 13th.

(#0030) Steve Clayton: Those are all the questions I had on that particular item.

(#0035) Terri Jeffreys: Steve, thank you very much for all the diligent work you did on this. We're all benefitting from your hard work.

(#0045) Allan Borden: On page 13 we were talking about Public Review L). The end of that first paragraph that's not struck out, in response to Steve's comment, I had proposed to add a sentence after 'shall be followed'. "Notice of application and public hearing shall follow Title 15 Development Code Section 15.07 Public Notice Requirement'. I'll review what we've talked about. Your discussion on u), the changes to the DR's include deleting sections .050, .052, .054, .056, .060, and .062. The RO changes you made, other than what I had presented, goes all the way to Public Review. We're adding the sentence I just stated under Public Review. The last change you made was to retain the language on page 13 under d) and move it to Title 15, Section 15.07.030 (6).

(#0200) Steve Clayton: You also had the change regarding the Staff Report requirement.

(#0210) Allan Borden: That's a change in Title 15. That change is 15.09.050 Type III Review under the A) section on Staff Report.

(#0230) Steve Clayton: Those are all the changes I had. Did you have something, Darren?

(#0232) Darren Nienaber: Yes, on page 9 under B) (2) and (D). I think you can strike out all of D) Hearing Examiner Authority because that's all currently provided for under Title 15, right?

(#0255) Allan Borden: That's right.

(#0288) Bob Sund: I was wondering why (D) was struck out.

(#0292) Allan Borden: We eliminated the Planning Commission.

(#0310) Steve Clayton: I have a question under Title 15. The HE has the right to grant variances; it doesn't say he has the right to deny them. Is that significant to you? The wording here says he has the right to grant or deny. Under Title 15 it says he only has the right to grant it.

(#0322) Darren Nienaber: It should say grant or deny. It's implied but you should say that explicitly.

(#0334) Bob Sund: I'd like to have a whole set of these regulations once they're done.

(#0348) Steve Clayton: You can have this copy of Title 15 that I have.

(#0350) Bob Sund: Will it include this stuff?

(#0352) Allan Borden: No.

(#0354) Bob Sund: I want to see what we've incorporated.

(#0356) Darren Nienaber: One of the problems of getting the resulted product out to you is that staff would be sending you about 250 pages of text. You'd have the entire RO, the entire DR's, and Title 15.

(#0365) Bob Sund: That's all in Title 15?

(#0368) Darren Nienaber: No, we're only amending the process and moving it ... essentially using what we're currently using which is Title 15 and cutting out all the redundant and conflicting sections from the RO and zoning code.

(#0385) Allan Borden: I can do the portion of the RO on permit review, which is what you're looking at, and then there's about twelve pages out of the DR's that are permit review that I can get you. Title 15 would just be a matter of reassembling it.

(#0398) Diane Edgin: I think we've forgotten that we were actually in the middle of a motion.

(#0400) Wendy Ervin: Yes, we were. Darren had started out talking about (D) but he also implied something about (B) (2) at the top. So I'd like to hear what you had to say.

(#0410) Darren Nienaber: You could probably cut and paste that into Title 15. That's explicitly provided for.

(#0424) Steve Clayton: If you hand somebody the RO and this is Development Review Process it might be nice to have the Administrator and the HE as part of that process.

(#0428) Darren Nienaber: Maybe you should delete .120 except you do have Environmental Permit in there. In terms of Permit Process, the goal is to move everything into Title 15 as much as possible so that when you're dealing with Permit Review Process you look to Title 15 and only to Title 15.

(#0444) Steve Clayton: Would it be acceptable to you if we passed the rest of it and give you a chance to come back with the revision on that particular section?

(#0448) Darren Nienaber: On (B) (2)?

(#0450) Steve Clayton: On (B) (2) and (D) ...

(#0452) Darren Nienaber: (D) is completely redundant. I would just recommend deleting it. In the interest of moving things along, you can either leave (B) (2) or add it to Title 15. Either way is fine by me.

(#0475) Allan Borden: You also have to understand that there's duties (a) to (i) and (k) to (m) that are not listed here. Item (a) has to do with establishing procedures; (b) advising interested citizens ...

(#0500) Steve Clayton: What Allan is saying is that under this Administrator, he's just given us item (j) and that there's a lot of other stuff under that section.

(#0504) Diane Edgin: I think I'd leave it alone, then.

(#0506) Wendy Ervin: I think I'd leave it here because there's nothing written anywhere that we can't delete this at some future meeting.

(#0512) Darren Nienaber: That's right. That's fine.

(#0516) Steve Clayton: Terri, we have a friendly amendment from Darren what was formerely section (D) on page 9, Hearing Examiner. Is that acceptable to you?

(#0522) Terri Jeffreys: Yes, it is.

(#0524) Steve Clayton: Do we have a second for Terri's motion?

(#0526) Diane Edgin: I second the motion.

(#0528) Steve Clayton: We have a motion and a second. Any further discussion? All in favor?

(#0555) Bob Sund: I wanted to ask you something on page 11, 93) Administrative Determination of Applicability. There's been a slight change there but it's changed the meaning of that paragraph 180 degrees. Was that the intent?

(#0578) Allan Borden: The intent was not to change the intent but to make it standard with every other ordinance.

(#0582) Bob Sund: The way it originally read was 'without a fee' and now you've taken that out and 'may request in writing with a fee set by the Board'.

(#0600) Bob Fink: We have started charging for administrative determinations which we obviously don't charge for things like zoning requests or simple questions but if someone asks how would this regulation apply to this example then we reserve the right to charge for some things that take a considerable amount of time to respond to. To be able to respond to their question we may require them to pay for a site inspection so we charge money for that. If they actually apply for a building permit, there's a fee built into that which would pay for us to go out and inspect the site. This is a case where someone is just making an inquiry, hasn't applied for any permit and wants to know if there's any critical areas on his property. That's when this ordinance would apply and in that case we do charge a fee to go out to the site because that's the only way for us to determine what's there.

(#0676) Terri Jeffreys: Are you fairly confident that a person could find that information out on their own by doing some inquiring?

(#0680) Bob Fink: I don't think most lay people are qualified to determine if there was wetland on the site or not. It might also be difficult to identify what type of stream might be there.

(#0790) Steve Clayton: Let's vote. All in favor? Opposed? Motion passes.

(#0800) Allan Borden: You have a special meeting coming up next in Belfair on the 19th.

(#0845) Bob Fink: We had talked about scheduling some additional special meetings. One for the 26th of April and one for May 3rd. If we are able to get through those items we may cancel the regular meeting in May and give you a break.

(#0888) Allan Borden: The 19th of April will be a public hearing in Belfair on the sub-area plan. The 26th you could have a meeting here to do your deliberating on the plan, and whatever other things you want.

(#0895) Bob Fink: We have one more packet after these of additional amendments.

Meeting adjourned.