

**MASON COUNTY
PLANNING ADVISORY COMMISSION**

**Minutes
August 16, 2004**

(Note audio tape (#3) dated August 16, 2004
counter (#) for exact details of discussion)

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

=====

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: Steve Clayton, Mark Drain, Tim Wing, and Diane Edgin.
Staff Present: Bob Fink, Darren Nienaber, Allan Borden.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0030) Steve Clayton: We'd like to give a welcome to our newest PAC member, Tim Wing. Tonight we have public hearings. We received tonight a letter from staff from Advocates for Responsible Development dated August 16th and we received a revised staff report dated August 16th on the front and the second page says edited revisions unlike the one that was sent in the mail to us. We have six items on the agenda and we have Mr. Diehl in the audience tonight and Mr. Graham representing Star Lake.

(#0095) Allan Borden: You received a staff report that had August 10th in the footer and August 16th on the front page. That's the old staff report. Several people in the department made some further revisions so I put together the staff report that was handed out tonight and it has August 16th in the footer. So the way the staff report is set up it takes q1), q2), and ll) as the first items and since they overlap I decided to cluster them together and that's why they're listed on page 2 of the staff report. The other hearings on items w), mm), and nn) are at the end of the staff report on pages 7, 8, and 9 and we'll deal with those after we deal with q1), q2), and ll). When packets were sent out to you last week there was an August 5th letter from Advocates for Responsible Development that you should have. I believe Mr. Diehl would consider that a part of his testimony as well as the material he faxed to me this afternoon, the letter dated August 16th.

In dealing with the first three items, q1), q2) and ll), as I state on page 2 there were no specific standards in the RO addressing piers, docks, boat ramps, boat houses, bulkheads, retaining walls, decks or stair towers so

Planning Advisory Commission Minutes, August 16, 2004

there was an attempt to include those as more specific standards so that the public could understand that they're covered in one section in the RO under FWHCA's. Previously on June 14th and June 21st there was a brief discussion on q2) and ll), the staff had submitted proposed standards that you were to consider. They're listed on page 3 and they have now been struck out and those are previously proposed process for dealing with small projects or development that would have been in previously disturbed areas and also for park and community recreation land use development. Both of those were proposed for consideration in F.2. Staff has realized that the proposed regulation F.2 was hard to implement and subject to a lot of subjectivity. The previous language has been deleted and the focus on F.2 has changed. First I'll talk about F.1. F.1, under the activities that do not require an MEP, back on April 26th the PAC had considered language having to do with a revision of the remodel, repair and change of use of existing buildings within an existing footprint. If you look at the proposed language on page 3 of today's staff report everything that is bold underlined was language that basically was reviewed and approved by the PAC but staff had proposed a couple of changes and that has to do with F.1.c.(1). The previous language said 'existing structures' in the sentence 'the combined footprint proposed shall be located in the site of the existing structure most distant from or less intrusive to the FWHCA or buffer'. The question we discussed is that existing structures may not be structures that were reviewed previously by permit or would have been approved by permit if the regulation was in existence at that time. We've changed that language to say 'legally established residences and garages' so that it really focuses on buildings that would likely be considered residential in nature. We wanted to actually limit the kinds of structures that could be used to combine a footprint. So that language was included. The last sentence in (1) 'For the purpose of this section, footprint does not include uncovered decks and patios' and that's to clearly indicate that those improvements are not considered a part of the footprint of the house.

The next part has to do with new language concerning certain activities in the buffer area.

(#0415) Tim Wing: Are you saying that there's a house and a separate garage and they want to combine those square footage of footprints they have to start where the garage is for the new house?

(#0420) Allan Borden: They could if it was the furthest from the resource.

(#0426) Tim Wing: What if they want to rebuild the house on the footprint that the house had? They could do that?

(#0432) Bob Fink: Yes.

(#0434) Steve Clayton: But as it's worded if they want to increase the size of the house ...

(#0436) Tim Wing: By combining the square footage of the garage then they have to move back to where the garage was.

(#0440) Bob Fink: Right. The removal of the other existing buildings is mitigation for the expansion of the one footprint. That's how the concept is. The mitigation is more effective if it's toward the structure that is furthest from the water. That could be where the garage is located currently. It could be any of the permitted structures.

(#0460) Rick Mraz: Rick Mraz, Mason County Planning staff. We've had certain circumstances where people have had two or three manufactured homes on site and they were all 700 or 800 sf single wides. An individual wanted to replace one in particular and willing to remove the other two. He wanted to replace one that was larger than the allowable 10% expansion that one can pursue without a variance. We had no method or vehicle by which we could offer this person the opportunity to remove two existing manufactured homes out of the buffer, replace the third with a larger home. The third home was actually going to be placed farther from the stream than the two existing ones that were going to be removed. So that was one of the cases that caused this sort of opportunity to be suggested by planning staff. Another similar opportunity exists right now on Mission Creek whereby an individual has a manufactured home that is a small single wide about 13 feet from Mission Creek and they also have two existing garages on site that are probably 70 or 80 feet back. What they'd like to do is combine the footprints of the garages, remove the garages, remove the single wide, pull it back and in doing so because their expansion is going to be greater than 200 sf they're

Planning Advisory Commission Minutes, August 16, 2004

going to have to meet current environmental codes as well but the only opportunity for them to do this ... they could replace it right in the same footprint with another single wide, which seemed like a lost opportunity here as well, so that was another reason staff was suggesting there might be the opportunity in special cases where a house can be repositioned to the furthest or the least intrusive location to combine footprints on site.

(#0532) Tim Wing: Does the guy have to reposition the new house back to where the garages were?

(#0536) Rick Mraz: Assuming the garages have been removed and the existing home has been removed he's supposed to position the new construction in the least intrusive place or the furthest from the resource. If the garage is farthest back and it meets the criteria of being the least intrusive he does need to move it back. If he's going to incorporate additional square footage and bump up over 200 sf of the existing structure he will also have to meet current health codes.

(#0558) Tim Wing: Assuming if he wants to remove the mobile home right up by the river and the garages are 3000 feet back he could position the new home based on current standards a distance back from the stream whatever those standards are.

(#0566) Rick Mraz: That's correct. But he could also replace in the same footprint. This is an opportunity, really.

(#0598) Allan Borden: Since we're actually reviewing q1), q1) and II) the way we've made the revisions is they sort of overlap the different sections of the RO so I thought I would move on to F.2. It's more pertinent to q2) which has to do with small projects or development in previously disturbed areas but it's more on the theme of maintenance and use of landscaped area in the buffer. We define what a landscaped area is, we define what maintenance activities are; mowing, weeding, trimming, replacement of vegetation types, placing landscape walls no more than 2 feet in height, excavating or placing top soil or compost not exceeding 6 inches in depth or 20 cubic yards in total, the placing of play equipment. Maintenance does not include the removal of native trees over 6 inches in diameter at 4 foot height. Exposure of more than 200 sf of soil at anyone time requires stormwater precautions so that no contaminated runoff reaches the river, wetland, stream, or lake. Those revisions were in the staff report sent out to you. Staff also made an additional clarification stating that if such maintenance or use in the buffer area is abandoned or discontinued for greater than three (3) years, activities must conform to the provisions of Section 17.01.110.G.1. Those have to do with filling, vegetation removal, burning and things like that. Those are the changes that have been proposed in F. I did include under F.7 regarding the construction of trails and added 'associated with residential use' as this was language requested to be added by the PAC.

(#0750) Mark Drain: What would be a non-residential use?

(#0754) Allan Borden: Like an interpretative center trail. That's actually covered by another part of the F&W ordinance.

On page 5 starts section G., Development and activities requiring an MEP in the FWHCA's or their buffers. I've included on these two pages primarily where changes were referred to. The first one has to do with G.1. where an HPA must be prepared. Under G.1.c., we've made revisions under what used to be called New residential construction and Major development. Staff has struck out the term 'New Residential Construction'. It was confusing because Major new development does include new residential construction. In the August 10th version that was sent out to you a lot of that language is struck out because all the appurtenant structure uses are already defined in the RO to include retaining walls, shoreline stairs, and stair towers, building stairs, decks and balconies. That was deleted because it was basically repetitive. What we did add was the sentence 'Appurtenant structures not needing building permits, associated with residential development and located in the FWHCA or buffer shall be reviewed by an MEP and an HMP'. What we did is those structures that do not need a building permit do not need to get a variance to be located in the buffer but they do need to be reviewed by an HMP and an MEP. As it now reads, Major new development not permitted either has to qualify under other parts of subsection G) or seek and be granted a variance or a reasonable use exception. Those Major new development activities require building permits. So we added this extra provision for structures that do not need building permits such as, fences, retaining walls, structures that just don't require a building permit still need to be reviewed by an MEP and an HMP. Under G.1.e., the only change made

Planning Advisory Commission Minutes, August 16, 2004

under Bank Stabilization that was proposed was where it says 'Bluff, bank and shoreline stabilization and the new text added was 'by bulkhead or other means'. We discussed it and felt that nothing is accomplished by adding that because it pretty much includes every technique. There's no advantage to that so you may not want to even include that proposed change.

(#0950) Diane Edgin: Are you suggesting just taking the words 'by bulkhead or other means' out of the sentence?

(#0954) Allan Borden: Yes, that could easily be done as a strike out.

(#0958) Bob Fink: So it would simply not be amended.

(#0964) Allan Borden: Under G.1.h., that was included and no changes were made in there and it was actually just included under G.1.c., there was a mention of G.1.h., which had to do with outdoor recreation trails so I just put that there so that a person could read it and understand what was in the staff report and didn't have to go to the RO. In G.2., what used to be called Marine Activities has been revised and it's under the section where an HMP would not be required except as specified. Since the whole section G., says that these activities require an MEP, an MEP would still be needed. So under the old section of Marine Activities, we revised it to call it 'Freshwater and Saltwater', and under G.2.f.1., Saltwater Activities we've included the text that was sent to you on August 10th saying 'Accessory uses to existing or new development, such as a saltwater pier, dock, or float; boat ramp, or boat lift will need to meet the additional review standards of the Mason County SMP, RO, and other development ordinances and require the submittal of an HMP'. So those saltwater activities require submittal of an HMP. Then it goes on with the old text that is currently in the RO talking about impacts to saltwater vegetation. The new section F.2.f.2., also states that 'Accessory uses to an existing or new development, such as a freshwater pier, dock, or float; boat ramp, or boat lift will need to meet the additional review standards of the Mason County SMP, RO, and other development ordinances'.

(#1110) Tim Wing: What other permits are required for those types of activities?

(#1114) Allan Borden: In the saltwater, typically a shoreline permit is needed for a pier, ramp, float, boat ramp and boat lift.

(#1125) Tim Wing: Is this redundant? Are we asking people to get a permit for something they've already had to get another permit for that covers the same kinds of questions?

(#1135) Allan Borden: It's not redundant; it's emphatic. It's the things that they already have to do but it's not clearly stated in the RO; it's stated in the SMP.

(#1140) Tim Wing: If it's stated in something else and they have to get a permit based on the other regulations, then haven't they already passed all those tests? Why do they have to get a permit through this process that seems redundant? If they have to get a shoreline permit don't they cover all these same issues?

(#1155) Bob Fink: No, they're not the same. The shoreline permit requirements were established in the 1970's and don't address all the F & W issues there are now. But there is some redundancy that is removed because with the Army Corp permits the applicant has to produce a Biological Assessment and elsewhere in this ordinance it says that the BA is acceptable in the place of an HMP so even though it says an HMP is required it's kind of like a safety net. Typically the assessment is done instead and that's acceptable. There's no provision in this existing ordinance that allows piers, floats or docks so the issue has come up as to what was the intent? If they're not stated specifically as being allowed how can we allow them? So part of the purpose of this is simply to be specific about allowing them. They could be allowed as an exemption, I guess. You could say 'piers, docks and floats that have to go through a shoreline permit are otherwise exempt from this ordinance'. But there are some other issues raised. This ordinance, like the HMP, they're not addressed to shorelines. They may be addressed by other agencies but that's in the judgment of those agencies; not in the evaluation of the critical areas regulation. That's why it's not really redundant; overlapping, yes, but not overly redundant. Rick, did you have anything to add to that?

(#1215) Rick Mraz: No, actually that's pretty accurate. I think that the real trigger, the value in this ordinance's jurisdiction, is the requirement for the special study; either the HMP or the BE. We won't get that

Planning Advisory Commission Minutes, August 16, 2004

through the SMP. It's not a requirement of the SMP and the SMP doesn't have as much of a detail of a review of critical areas impact as this document can and so our need and request for an HMP or BE is satisfied by the requirement for this permit. As Bob says, there is overlap but it's not redundant. It augments it in an important way.

(#1245) Steve Clayton: Rick, why are we exempting the freshwater from the HMP and not the saltwater?

(#1255) Rick Mraz: That's a good question and I have asked that question myself.

(#1258) Steve Clayton: Well, salmon don't go up to the lakes.

(#1260) Bob Fink: Part of it has to do with the fact that we didn't address it; that's a new requirement and I think there was oversight in the original ordinance when it was drafted because they did address many of the activities you would expect to take place on the water like bridges, bulkheads. Yet the ordinance was silent towards the piers, docks and floats. We wanted to address it so we would have clear authority to allow those things in these areas. The question was, 'what regulation should it have'? Because the section we were modifying is having to do with marine activities ... I think it may have been a matter of terminology. Marine activities were supposed to address them at least for the saltwater areas and then for the lakes it was an oversight. But they weren't explicitly mentioned in the marine areas. We wanted to make that explicit so 1) we had clear authority to issue permits for such structures, and 2) so that we had appropriate protections for those structures. Maybe the HMP should be required in freshwater. It's just that the placement of it was in an area that it was seen as not required.

(#1335) Tim Wing: Did you say that there was no place in here that specifically says that these things are allowed? I don't see this paragraph as being real clear that they are allowed provided they meet certain standards.

(#1350) Rick: It says an MEP shall be obtained.

(#1355) Tim Wing: It talks about it but why doesn't it say that these structures are allowed provided they meet certain standards?

(#1358) Rick Mraz: It does if you reference back to the beginning of section G). You have to start at G). That basically states that the permit shall be obtained before undertaking the following activities.

(#1385) Steve Clayton: If I follow Bob's train of thought wouldn't this be better done in section G.1? That is that an HMP shall be prepared and put this whole thing under that? Then we don't have negatives and positives mixed in the same paragraph.

(#1400) Tim Wing: So what if you get into the situation that you mentioned earlier where the other permit covers all the issues that concern you and you accept that and then you have a rule here that somebody can say you can do this?

(#1420) Rick Mraz: That's an interesting thing about freshwater lakes is they don't necessarily have to provide a BE to get a pier on a freshwater lake. The Corp doesn't necessarily require that. Quite frequently they don't have to get a shoreline permit to do a dock on a freshwater lake. It has to have a value greater than \$10,000.00 if it's associated with a single family residence; \$5,000.00 if it's not. Freshwater docks are usually pretty modest structures. I can't remember in the time I've been here where I've issued a shoreline permit on a freshwater dock greater than \$10,000.00. So they don't need a BE and as a rule, they don't need a shoreline permit on a freshwater lake.

(#1460) Tim Wing: My concern is that if you are able to accept an analysis from another permit and it covers all the issues and concerns then it needs to say in here that that's a possible way to deal with the situation. Otherwise all the people who want to stop everything use the words that you have here that says that this analysis will be done and now you're doing it twice and the homeowner is having to pay for redundant work and it slows the process. It's not what we ought to be doing.

Planning Advisory Commission Minutes, August 16, 2004

(#1490) Bob Fink: If I hear Rick correctly it's his evaluation that the freshwater docks typically do not have significant impacts associated with them. That's why it may not be appropriate to require an HMP to be done and that's why he had no objection to leaving it in the section because that's his evaluation as a planner and a biologist that that was okay given the situation. The question you said you could repeat the provision in there that an HMP is not required if a BE is done but that's elsewhere in the ordinance and you get real wordy if you start cross referencing everything too much. The planner will tell them what the regulation is. Getting these permits is a very involved process and it takes a fairly long period of time to do it and there's a fair amount of consultation in the process of getting them done. It would be my guess that everyone is informed pretty well by the time they get down this road.

(#1560) Rick Mraz: If you want to focus on the freshwater docks, for example, the process of review is an inter agency review. These docks will require a Mason County building permit in almost every instance which gives the county authority to review the proposal under SEPA, which is the State Environmental Policy Act. We obtain from the applicant an environmental checklist which describes the impacts of the proposal to the near shore and to the habitat so in the freshwater dock situation we're going to distribute that SEPA checklist to State Fish and Wildlife and Army Corp of Engineers and DOE and whatever tribe is in the watershed. We've had the discussion as to whether HMP's were worth while with freshwater dock emplacements; rarely are they displacing aquatic vegetation but where they would we require that they be located in such a way as to not displace aquatic vegetation. Most of the freshwater docks in the near shore environments and lakes around here have very little near shore aquatic vegetation. That's quite frequently why we defer to the State Fish and Wildlife and the biologist for DOE and their issuance of their approval, which is the HPA or Hydraulic Project Approval. So we often times have felt that we get satisfactory review of the environmental impacts by deferring to Fish and Wildlife and their issuance of the HPA and obtaining and using those conditions ourselves in our permit. So we do coordinate inter agency wise but at times we've had the discussion whether their would be value in getting an HMP for freshwater docks.

(#1648) Tim Wing: In my mind I'm not separating the freshwater from the saltwater; to me it's an issue of if you have an adequate analysis to protect the shoreline with one permit or one study I don't want to put the homeowner in a position where some neighbors who are simply trying to stop his use of his beach give them the opportunity to say that this requires this other study even though it would be totally redundant.

(#1670) Rick Mraz: I'm not sure the neighbors would have the leverage that you're describing simply by pointing out the lack of a study.

(#1674) Tim Wing: Well, if it says in here that under these conditions you have to do this study and you're saying we don't always require that because sometimes the other study ...

(#1680) Rick Mraz: We always accept the BA in lieu of the HMP on saltwater docks. It's not a sometimes; it's not subjective ...

(#1685) Bob Fink: And it's stated elsewhere in the ordinance.

(#1688) Rick Mraz: It's in a separate section of the ordinance under HMP requirements.

(#1690) Tim Wing: Alright.

(#1692) Steve Clayton: Getting back to my question, would it make it clearer reading if the saltwater activities portion was shifted to the appropriate section where the HMP is required? It sounds like right now we're at a point where we're not requiring it for freshwater but ... we have a section for that.

(#1725) Allan Borden: I don't want to go onto pages 7, 8, or 9 yet because they're not really addressing q1), q2) and II). Just as a synopsis of what staff is proposing to address q1) Standards in the RO, I'll direct you to G.1., on page 5, and G.2., on page 6. For q2) and II) The exempting of certain projects, basically staff has proposed to delete that provision to allow an outright provision exempting those activities and has proposed additional text about describing what activities, maintenance and uses in the landscape areas in the buffer will be permitted.

Planning Advisory Commission Minutes, August 16, 2004

(#1800) Steve Clayton: On page 2, you're saying staff recommends deleting q2) and then on page 7, it says that you're going to address it. It that just because we have two different dates on things?

(#1825) Allan Borden: That's the old language from June 14th.

(#1830) Steve Clayton: So that's just the old date so that isn't relevant?

(#1832) Allan Borden: That is correct.

(#1840) John Diehl: When you say under G.1.c. about certain structures not needing building permits shall be reviewed, you've still got that under 1., where it says an HMP shall be prepared for these activities. So is an HMP required for appurtenant structures?

(#1855) Rick Mraz: Yes.

(#1860) Allan Borden: Yes, that's really sort of an affirmation that those kinds of proposals not needing building permits that are associated with residential development that are in the buffer will be reviewed by an MEP and an HMP.

(#1886) John Diehl: Just as a matter of clarification, don't you think it helps to add that it shall be reviewed by an MEP and an HMP when you have a heading that says that an HMP shall be prepared for these activities?

(#1905) Allan Borden: Maybe we should just revise it so it says instead of shall reviewed by MEP ...

(#1915) Bob Fink: After the word 'buffer' just put 'may be allowed'.

(#1920) John Diehl: My thought would be to take the first part of the stuff that's italicized and put that at the start of c., and delete the part of that that follows the word 'buffer'. That's the category where they require an HMP. Then put this other qualification underneath that that says 'Major new development'. That's not what the paragraph is really about. That's just a footnote, if you like. The paragraph is supposed to be a partial listing of projects that require HMP's, right?

(#1955) Rick Mraz: No, I don't see it that way. The major emphasis of c. is that major new development is not permitted except by variance or reasonable use exception and that's the way the planners have always interpreted it. Those things that are definable in the back of the ordinance as major new development that that is what triggers a variance and that the second sentence regarding appurtenant structures not needing building permits, which are by definition not major new development, are going to be reviewed through an MEP process.

(#1990) John Diehl: I don't mean to minimize the significance of what is now the first sentence of that paragraph but it doesn't seem to me to belong there. Maybe just yank it out entirely and put it in some other part of the RO. It seems to me where you have this heading under 1., what you expect to follow that are a list of activities where you require it and here you're saying that here are some activities that we don't require it but we don't allow anyway except as a variance.

(#2020) Rick Mraz: But we expect HMP's for variances and ... if you just struck out the language 'and Habitat Management Plan' in the italicized version you would by default ask for an HMP with a variance request and with the MEP associated with appurtenant structures.

(#2038) John Diehl: So you're saying where a variance is sought you will be requiring an HMP. Maybe that's appropriate under the part of the ordinance that deals with variances. This is not a matter of earthshaking importance but I do think it's written in a way that's confusing.

(#2070) Steve Clayton: Rick, would that be an appropriate place for the saltwater accessory uses? Under c? You're talking about accessory structures on the water or not on the water.

(#2090) Rick Mraz: I take your point about needing to have that in the HMP required section. It could be added as whatever the next letter is.

Planning Advisory Commission Minutes, August 16, 2004

(#2105) Steve Clayton: As I understand in c., now it says appurtenant structures not needing building permits. So essentially that needs an HMP, right?

(#2115) Rick Mraz: An HMP and an MEP.

(#2118) Steve Clayton: So that's appurtenant structures so we had also in that section about accessory structures ...

(#2124) Rick Mraz: I worry about the notion of a dock, a pier, a ramp as an appurtenant structure. They're an accessory use. There are certain connotations associated with residential appurtenances that it may give them a standing that might not be appropriate. A garage is an appurtenant structure. I don't know that a dock is. I would identify that as an accessory use.

(#2160) John Diehl: Why is it that you're thinking that way if you're acknowledging that the whole point of this is to protect habitat and we recognize that if there's potential damage to habitat from a boathouse or some such appurtenant structure then why don't we recognize that they might also be appropriate for a pier, float, and such other structures?

(#2190) Rick Mraz: I guess there's no differentiation in the ordinance between the requirements. One needs the MEP and HMP for either.

(#2200) John Diehl: Maybe I misread the proposed language here but in the case of saltwater ...

(#2210) Rick Mraz: But even the SMP doesn't consider a dock or a boathouse as an appurtenance. They consider them accessory uses.

(#2220) John Diehl: Let's say we're talking about development on a freshwater lake. As I understand what you're proposing here if you were to build a boathouse or deck or stairs down to the lake all that is going to require an HMP, correct? But if you build a dock out onto the lake you're not going to require one. Where's the logic in that?

(#2250) Rick Mraz: I'm not saying we shouldn't.

(#2255) Steve Clayton: But the staff report is recommending that we do. That's what John is saying.

(#2258) Rick Mraz: You mean on the freshwater.

(#2260) John Diehl: So you do agree with my reasoning. The distinction you're making is between freshwater and saltwater.

(#2275) Rick Mraz: Let me offer a frame of reference based on my experience. The near shore activities in the upland buffer on shorelines are reviewed by Mason County staff and nobody else. State Fish and Wildlife's authority and jurisdiction stops at the water. They don't look at 2 feet up the hill and we do and so that's where the HMP and the MEP comes in. State Fish and Wildlife on freshwater dock is all over it with the HPA; they go through a very detailed review regarding placement, piling stops and location of displaced vegetation. It's not that we're totally throwing away what we feel is an environmental review we're pretty much deferring on freshwater lakes.

(#2310) John Diehl: I hear you but I don't think that's to say that the need to include BAS is satisfied by that because my experience with State Fish and Wildlife is that they put blinders on, if you like; they have a very narrow scope of review when they do address freshwater development. They don't have the larger scope of what are the impacts on wildlife, for example.

(#2345) Diane Edgin: On freshwater lakes, where does the Corp of Engineers come in?

(#2355) Rick Mraz: Those activities are exempt under a Nationwide exemption. That's a recent policy development.

Planning Advisory Commission Minutes, August 16, 2004

(#2364) Bob Fink: But there would be conditions associated with that exemption.

(#2366) Rick Mraz: Yes.

(#2395) Steve Clayton: Allan, are you through with the summary?

(#2397) Allan Borden: Yes, from the recent discussion I just wonder ... I thought that on page 5 under G.1., we separate the text in c. so the title of c. is called 'New Construction and 1., is 'Major new development is not permitted within FWHCA or its buffer' ... 2., would be 'Appurtenant structures not needing building permits associated with residential development' ... and 3., would be saltwater activities and we would take that and move it up to G.1.c., and delete the italicized 'and require the submittal of an HMP' because it would be under that section.

(#2455) Steve Clayton: And as Bob mentioned, you might do with f....

(#2462) Allan Borden: And f., would just become 'freshwater activities'.

(#2470) Steve Clayton: So under c., you're truncating on the appurtenant structures but you need to add 'permitted' after 'buffer'. Then you'll have to renumber. Any other questions for Allan? I had a question. On page 3, we're allowing the new text to replace ... we're dealing with FWHCA's and here we're allowing replacement of vegetation types with no permit and no HMP and no review. So it appears we're allowing people to take out salal, all native vegetation, put grass in and mow it without any review. So somebody builds on a FWHCA or has a current building, they mow down all the salal, take out all the alder that's less than 6" in diameter and make grass all the way down to the water ...

(#2565) Allan Borden: That's not existing landscaping. These provisions are for existing landscaped areas.

(#2570) Steve Clayton: It doesn't say existing.

(#2572) Mark Drain: I understood the intent but I agree with Steve that it needs to be established right up front. This is maintenance of existing landscaping.

(#2580) Steve Clayton: How do we document what's existing?

(#2584) Rick Mraz: Technically speaking, a landscaped area is one that exists. This doesn't say creation of a landscaped area.

(#2610) Bob Fink: I think it would be fine to put the word 'existing' in there.

(#2625) Steve Clayton: If you agree to the concept that the word 'existing' is going to cover it then on the worst case we should say existing as of a particular date.

(#2680) Diane Edgin: I'd like to ask where did somebody come up with 20 cubic yards total of compost or topsoil? That's a huge amount of space at 6 inches deep. I think I'd base that somehow on the amount of land involved.

(#2715) Steve Clayton: We'll come back to this. We need to at least get through the initial part. So those were the thoughts I had on that particular section. To move the initial sentence back to where you had it in 6., and then I had big concerns about people increasing the amount of area that would be landscaped and removing existing vegetation.

(#2745) Rick Mraz: You could change the sentence that says that 'maintenance does not include the removal of native trees' to have it say 'maintenance does not include the removal of native vegetation'. They are allowed to remove certain amounts in the buffer.

(#2760) Mark Drain: You mean right in the buffer you're able to do that?

Planning Advisory Commission Minutes, August 16, 2004

(#2770) Rick Mraz: Yes, buffer alterations for view corridors, it stipulates a certain percentage of removal.

(#2782) Bob Fink: The intention of this provision ... there was an earlier provision that was a little bit differently targeted. The intent is the same is to try to layout fairly specific guidelines both for the public and the planners who are trying to implement these ordinances, the kinds of activities that can go on without having the county come out and review it in these areas that are already impacted and converted, even though they may be in the buffer. You've got a lawn so you can mow the lawn, you've got a hedge of rose bushes where you can trim those ... if you want to move a rose bush from one location to another location you don't have to call the county up and have them come out and do an inspection and have a biologist write an HMP so you can move your rose bush. The purpose was to try to limit it to that developed area that was already converted that wasn't serving its functions as a buffer. Admittedly there's always going to be a little bit of interpretation there as to how much it's converted. The intention is to give people some freedom and confidence in what they can do within the area that's already impacted that won't cause environmental issues. We want to allow some flexibility but to not have it abused within these guidelines. One of the differences between this draft and the draft you got a few days ago is fences under 6 feet in height were stricken from this and that's because when we ran this language by the full planning staff there were a couple of people who raised the issue that fences ... like if the disturbed area did happen to run to the shoreline or close to the shoreline then you may be interfering with wildlife corridors; you may be fencing animals off from their habitat. Or you may be creating problems that should be reviewed and that's what we're trying to avoid. We're trying to provide as much flexibility as we can without allowing things that may cause environmental problems. So that's where it came from. If you want to craft that according to your own understanding that's certainly appropriate.

(#2990) Mark Drain: If a house burns down and a garage burns down does the house have to be ... and if the garage was further away from the resource does the home have to be relocated?

(#2010) Rick Mraz: They have two years to build in the same footprint. That's listed elsewhere in the ordinance. That's the repair or replacement of structures. That's in F.1.b.

(#3030) Steve Clayton: The change of use of an existing building, if we have current regulations such as in the frequently flooded areas where you have an approved agricultural building or a barn and somebody wants to do a remodel or call it damaged and put a residence on that, that's a change of use that's permitted under this but not permitted because it's in a frequently flooded area. Are we skirting that issue? Or allowing residential use in what would otherwise be a place where you couldn't build?

(#3065) Allan Borden: The Flood Damage Prevention Ordinance is more restrictive and would apply.

(#3072) Rick Mraz: They still have to meet current code by whatever regulations are on the book.

(#3082) Steve Clayton: It says change of use of an existing building.

(#3085) Bob Fink: Right, but you still have to meet the zoning that's allowed there. You have to meet the flood plain regulations where if there's a restriction on the flood plain that would keep you from turning an existing structure into a residence, for instance, then you still have to meet that code requirement. This doesn't give you total freedom to do what's allowed here. This simply allows it. If it's prohibited or limited somewhere else then you still have to live within those limits otherwise stated. You can't turn it into a residence if you don't have a septic system that meets health department codes. You can't turn it into a residence unless it meets the building code requirements for ingress and egress but we can't say all that here because it would become very wordy.

(#3140) Steve Clayton: So the change of use would be a similar use only. It seems here that we're talking about nonconforming buildings. We have a residence that's in a habitat area and shouldn't be there in the first place. So now ...

(#3175) Tim Wing: What do you mean shouldn't be there?

(#3180) Steve Clayton: Under current standards it wouldn't be allowed because it's in a FWHCA.

(#3192) Bob Fink: It's legal nonconforming.

Planning Advisory Commission Minutes, August 16, 2004

(#3200) Diane Edgin: We're talking about somebody who wants to replace a home in a FWHCA and we're saying that they can have the combined footprint but then it also says 'may not be increased more than 20% of the total square footage area of the original structures'. That's an unknown and when you combine the structures and then you add 20% to it they could actually have a very large building. Where did the 20% come from?

(#3250) Allan Borden: From previous discussions by the PAC.

(#3300) Diane Edgin: We're talking about somebody who's already got a structure or structures on this buffer area and I'm saying that when you add them altogether they may exceed 2,000 sf. Now we're talking a fairly large structure and then we're saying they can increase it by another 20%. We don't know what the unknown is so I'm thinking we should have some sort of ceiling in the buffer area as to how large these structures can be.

(#3350) Bob Fink: Allan, was the original proposal just to allow them to transfer the square footprint without a 10% or 20% increase?

(#3360) Allan Borden: Yes.

(#3365) Bob Fink: Okay, so the original proposal we brought to you was to not have the 20% increase. The idea was that it was a win - win situation for the environment and for the applicant to remove those other structures and to transfer that to the furthest away site. By removing those structures they would get the benefit to them of being able to have a larger structure. You can debate whether that means it should be 1 to 1, or should they get ½ foot for every sf they remove, or 20%? That's a matter of what you think is a reasonable incentive and then you raise another question which is should there be an overall cap? That's really a separate question than the 20%.

(#3450) Diane Edgin: Well, it also would depend of what the size is of that particular lot. We do have that in our regulations. There is a limit to the size going on a lot.

(#3460) Bob Fink: Right, but it's basically the setbacks and other restrictions that might be on it. The floor area ratio we apply to commercial property but we don't apply it to single family property.

(#3475) Rick Mraz: The single family provision only shows up in the SMP. There can be 60% of site coverage with impervious surfaces.

(#3500) Bob Fink: Rick, do you have any comment on her proposal of a building size cap?

(#3510) Diane Edgin: I'm not actually proposing it; I'm just saying that I think you better think about it.

(#3515) Rick Mraz: I'm curious as to how it went from zero to 20%.

(#3518) Bob Fink: The Planning Commission suggested it.

(#3520) Steve Clayton: If my recollection is right, we were talking about the ability to combine structures and we put it in the same section that allows a 10% increase. So what we did is we allowed combining the structures but they didn't get a 10% increase. Then we got a comment from Mr. Diehl's group who said now you've got this parcel but also they can build a second floor and you have dramatically increased affects on how many people that will enhance. You can combine them together, you don't get any extra 10% in footprint, but if you want to go up you could get a significant increase.

(#3585) Bob Fink: You're right in the sense that 20% doesn't count in the footprint; it counts to the total square footage of the building.

(#0014) Frank Graham: Out at Star Lake we have a lot of manufactured homes that are around our lake and a lot of them are single wides. I've had two occasions where people that have single wides who wanted to upgrade to double wides. They went to the planning department and were told they can't do it. Your double

Planning Advisory Commission Minutes, August 16, 2004

wide is going to be extending 10 feet further near the water. So one fellow is going to do away with his single wide, do away with his garage, and build a stick built house and go upstairs. Now you're saying that 20% is all they go upstairs, right?

(#0060) Bob Fink: The current language, which is not being significantly changed, allows for keeping a footprint, replacing a building, and expanding the footprint on the ground up to 10% as you remodel or rebuild the residence. It doesn't address the total square footage of the house so if you put a second story you could do that effectively doubling the size of the house. My understanding is this new language would still allow that for existing houses. In addition to that, there's a special provision that allows you to take two or three existing houses on a lot and combine those footprints. If you combine those footprints you get a combined footprint in the farthest site. You can also build a second floor but the total square foot area is only 20% greater than the original footprints.

(#0125) Frank Graham: I'm here from Star Lake and I'll read the following statement to you: 'The Star Lake Community is located in southern Mason County. We have a membership of over 200 families on 304 lots. Our community consists of one community clubhouse, two workshops, one bathhouse, three parks and a 6-hole golf course. The community surrounds a private lake of about 40 acres. One park is an improved park with playground equipment for kids and a bathhouse for families that camp. The second park is an unimproved park on the lake where members and guests may fish and swim, mainly used by families that don't have lakefront property. The third park is our pavilion park. That's our subject. The park has a boat launch, no gas engines, a dock for swimmers, and our pavilion shelter. Our pavilion shelter currently consists of a cement pad about the size of a two-car carport with a tent like cover for shelter. Our purpose today is to address the pavilion shelter. We want to put a permanent roof over the shelter in order to enhance the appearance and provide additional protection and safety for the people using it. Currently our pavilion shelter is used three times a year for the community. We use it twice a year when we stock our lake with fish and we also have a community potluck and fireworks in this park on the 4th of July. The roof on the shelter would provide protection from the elements and for these events. The pavilion shelter is also used by individual families having picnics. We have also started a youth group that meets every Monday at our clubhouse and the young people have plans to use the pavilion for some of their events. We have been using the cement pad for about 7 years and the environmental impact has already occurred and all we want to do now is install a permanent roof over this pad. We estimate the roof to cost about \$2,500.00 and use volunteer labor to complete the task and we ask for you help in approval to gain a roof for the pavilion shelter.'

We started this in 1999 and I submitted the plans in November of 1999. The first time my application was going to cost \$150.00 to do this. When I readdressed it, it was \$750.00, but at the same time they said I couldn't be 57 feet from the water; I have to be 90 feet from the water. Well, the pad is existing and it's 57 feet from the water and we can't go 90 feet or we'll be in the middle of the road. So we talked to the people up there and then we went back to the planning department and they said we could do it on the existing property, however, it's now going to cost you \$88.90 sf for the total value of this pavilion to be \$64,000.00. That's the tax basis and now the permit fee is \$1,569.00. We're a very small, nonprofit organization and for a \$2,500.00 roof to pay \$1,600.00 in fees is just not viable. The reason they estimated it so high is because there doesn't seem to be any kind of plans; it's a community picnic area and it's got to be OCC. To me it's the same as a carport. They said a carport is only good for a private family; single residence. They're saying it's a commercial building. I would like to see some kind of wording or a code that would allow us to build this without having to pay \$1,600.00 for a permit.

(#0300) Steve Clayton: Rick, in the planning process as far as permitting this, ...

(#0310) Bob Fink: The proposal from planning would allow this.

(#0325) Rick Mrasz: This project has not gone through any planning review recently with regards to the zoning requirements and the critical areas setbacks. Did you submit this?

(#0335) Frank Graham: Yes, I did. I submitted it the first time in 1999. We came back again and submitted in February of this year.

(#0344) Rick Mrasz: The real issue relates to the fact that the Building Official and the building codes are what

Planning Advisory Commission Minutes, August 16, 2004

are determining your evaluation of your building and your fees. I don't think this body is involved with the review of those particular regulations. The only thing you could really hope to do is talk to Larry Waters, the Building Official, for some other reconsideration or special dispensation. I'll see if I can look into this for you.

(#0420) John Diehl: My name is John Diehl. I have submitted some materials in writing. I do that so that I don't need to speak at length so that when I'm here I can learn from what I hear. In this instance I've gleaned some things that caused me to modify some of the things that I have written. In particular, let me start with the question of the proposed 20% bonus or consolidation of footprints and removal of existing structures in the buffer or FWHCA. I've heard Rick say this evening that he's thinking of a case of three mobile homes which someone wanted to remove and could be consolidated. I think that might make some sort of sense because there you're talking about residential structures; you wouldn't increase the human impacts by that kind of consolidation. If that's what's being proposed then you need a narrower sort of proposal. Something that is more narrowly crafted to address that sort of concern. This relates to what Diane was saying that this contains language that perhaps is not intended but can open the door to things that you really don't want and which I don't think were anticipated by the people who drafted this. If you have a large, broken down barn that's in a buffer it may have virtually no adverse impact on FWHCA. If you convert that into the equivalent of a house and add 20% and you've got a major impact in terms of affects on FWHCA. So I think the present language is really improper and inadequate if you're keeping your eye on the ball in terms of protecting FWHCA. There may be some narrower exceptions that can be crafted that would be appropriate but not the one we have in front of us.

In the process of doing that I think it's important to address some of the anomalies that have now arisen in terms of allowing the automatic 10% increase of the footprint without regard to the total size of the property. In theory you could have a two or three story dwelling. I do think there's a 35 foot height in rural areas but that would accommodate three stories with a flat roof. The point here is that we've seen again and again people coming in and having their case heard by the Hearing Examiner and he says they don't qualify for a variance but they can go out and build the house essentially the size they wanted to begin with but they just have to go up instead of horizontally. That doesn't make a lot of sense. I think if we're serious about treating these as nonconforming uses in buffers where the primary purpose of those buffers is to serve to protect fish and wildlife habitat you need to not only craft more narrowly the kinds of exceptions you make or bonus you offer but also address the fundamental flaw that's in the existing language.

With respect to the disturbed areas and the landscaping, I think there's been some helpful clarification this evening. I misunderstood in reading it that it was not intended to allow expansion of these disturbed areas. The word 'existing' will help a little but I think there is a larger problem here that is getting overlooked and that is that we really do not have a well defined notion of a landscaped area or an area that is now disturbed. There is an effort at that and the language that says 'The landscaped area is one that is defined by mowed grass, flower beds, orchard trees, non-native shrubs, and non-native trees'. I don't think that's adequate for a typical rural situation because you don't have sharply defined areas in most rural landscapes; you don't have disturbed areas and then non-disturbed areas. You have islands of disturbance and they're scattered amongst undisturbed areas. I think before you go any further with this you need to give some serious thought to how you better define disturbed areas. I know that I've seen in requests for variances discussion about what was disturbed before and one fellow brought in aerial photographs to show that it had been disturbed before. I don't know what the answer is to that but I am very much concerned that this will open the door to virtually any kind of disturbance on a persons property. Given that you're not getting environmental review and you're not going to have people out there looking, it really encourages just ignoring the whole concept that we should leave the undisturbed areas undisturbed.

The third set of comments I partly made with respect to the distinction between freshwater and saltwater and the development of piers. I haven't yet heard any scientific basis for distinguishing freshwater from saltwater. I've heard that there's a procedural difference in terms of the permit process but my personal experience in dealing with the people who write permits for F & W is that they have pretty narrow parameters and so they don't feel authorized to comment on anything beyond what they're looking at and what they're looking at with the shoreline disturbance in the form of a pier or dock or boathouse has to do with perhaps aquatic habitat but not with respect to wildlife at all. To the extent that we're trying to make these buffers do double duty in our county and to serve as wildlife habitat as well as to protect fish habitat we're not going to capture that concern if we exempt structures of this sort and rely upon the existing review process by WDFW. To put it in legal

Planning Advisory Commission Minutes, August 16, 2004

terms I don't think that exemption addresses the requirements of the GMA to protect FWHCA's.

The fourth point is kind of a technical point and it goes with some other technical points that were made in the course of earlier discussions but this is a little different. I think there's a basic error in the substitution of language which says 'may be approved' under the heading that says that 'the following uses shall be allowed'.

I sense some inconsistency there. I think what was meant is that it shall be allowed if you meet these requirements. That language has been inserted and it contradicts and is inconsistent with what you'll see under F.: 'The following uses shall be allowed'.

(#0775) Tim Wing: It says 'to the extent that they're not prohibited'.

(#0778) John Diehl: That's right but the word 'may' is normally discretionary. So you especially Mr. Wing should be concerned that it not be a matter of discretion and that the remodel shall be approved subject to the conditions. That's a very minor point but it speaks to the larger question of whether you yet have before you a thoroughly reviewed proposal. I suggest to you that it should be sent back for some redrafting.

(#0810) Tim Wing: So you're suggesting that the word 'shall' should be used in the place of 'may' most of the way through here?

(#0850) John Diehl: If you're talking about activities which do not require an environmental permit and subject to certain qualifications which apply to all of them.

(#0875) Tim Wing: Personally, I think it's correct the way it is. In the opening paragraph it says 'shall be allowed' if it passes all these tests. In F.1.a., 'the application may be approved'. It may be approved and it may not be approved if you don't pass other things.

(#0885) John Diehl: That's the point that I think you should be concerned about because that seems to open the door to a level of administrative discretion that I don't think you would find friendly.

(#0892) Tim Wing: If you changed that to 'shall be approved' then each sentence there should say that's provided it passes all the other tests.

(#0898) John Diehl: I think that's covered or if it isn't then you need to recraft the opening paragraph to make sure that it is covered. I think the concept is that everything that is listed as an exception to those activities that do require environmental permits have to satisfy certain basic requirements. I'll simply close by saying that the overall effort here seems to me to have gone a bit astray in that it represents a net weakening of regulations when we see evidence that we need to be looking at a net strengthening of regulations, especially with respect to Hood Canal. It's possible that could be accomplished with a more thorough review of these same sections but what I see is the lenient portions, like the 10% bonus, is that we're adding on something that really isn't consistent. We're switching to a different standard of footprint, we're offering a bonus; it doesn't make any sense. You need to review the whole section and not just try to tack on something that will add an element of lenience. If you don't focus upon narrow examples I think there's some serious problems and we can't begin at this point to say that we have a scientific basis for these revisions. That is something that we are legally required to include when it comes to any amendments or original creation of the regulations that protect critical areas. Any comments or questions?

(#0995) Mark Drain: Do you have a suggestion, John, for an incentive for the removal of those structures which people might want to get rid of that were within the buffer?

(#1000) John Diehl: I'm glad you asked that because it gives me a chance to say that I recognize that what I put in as a comment in my written comments is kind of an empty suggestion. I said you could have 20% as a bonus if you moved the structure outside of the buffer but there's no real incentive to do that because you can build a larger structure outside. The only thing that occurs to me is to identify more narrowly the kinds of tradeoffs that you are willing to accept. Maybe residential structures that are put further back might qualify. The other thing you might look at, and I'm not going to endorse this tonight, some of the setback requirements, be either the road or other property lines, in preference to allowing expansion of the nonconforming use. Legally the nonconforming use is not something that you're supposed to go around

Planning Advisory Commission Minutes, August 16, 2004

expanding and you need a different conceptual framework here to achieve some of the things we're talking about. We're on the same page that we'd like to eliminate some of these eyesores but it's not clear that the eyesores are nearly as damaging to the FWHCA as what will replace them.

(#1065) Tim Wing: Can you tell me who Advocates for Responsible Development are; what is that entity?

(#1068) John Diehl: It's a nonprofit, public interest group that was formed several years ago to attempt to achieve compliance with GMA and other appropriate development conditions for Mason County.

(#1080) Tim Wing: How many people are in your group?

(#1084) John Diehl: We don't keep our membership list in a tidy way because we don't have any assessed dues so we haven't any good way to say who is in our group and who is just a friend of our group.

(#1092) Tim Wing: How often do you meet?

(#1095) John Diehl: We meet as often as necessary.

(#1098) Tim Wing: How many times have you met since you drafted this, or in the process of drafting this?

(#1102) John Diehl: In the process of drafting this we did not meet. I consulted with key people who had been interested in this kind of thing through e-mail and by phone.

(#1108) Tim Wing: How many people was that?

(#1110) John Diehl: I would hesitate to say how many people because some of these people are married and they talk with their spouses but I would say it's approximately a dozen.

(#1116) Tim Wing: I have some questions about some of the things you discussed in this paper. For example, 'as summer cabins are converted to full time residences' ... Do you have some sort of data about summer cabins being converted to full time residences?

(#1128) John Diehl: Yes, although at this point, from my perspective anecdotal, but one of the things we have done is to focus upon the attempts to obtain variances and we've been fairly active in monitoring those and we've seen a number of situations of this sort where people wanted a variance in order to convert a small summer cabin on the shore of Hood Canal to a full time residence.

(#1152) Tim Wing: You actually know that they're going to be used as full time residences?

(#1155) John Diehl: Well, they said so in their variance applications.

(#1158) Tim Wing: I take issue with you about these homes that perhaps are being improved dramatically necessarily bringing additional people to the canal, in particular, but to any shoreline. You know what I do for a living and my experience is that these homes along the canal are a little bit like yachts; the bigger they get the less they're used. I also think that most of the places that have added guest houses are some of the biggest places and they're used the least.

(#1180) John Diehl: There may be an extreme point where I would agree with that but I do think that both of us would have trouble documenting that but I don't think it's true as a generalization. In the middle range of housing the bigger it is the more people tend to occupy it. Yes, there are some land yachts that may be extraordinary exceptions. However, I don't think anyone would say that that represents the general pattern. Maybe you would.

(#1210) Tim Wing: I would say that pretty emphatically at least enough to neutralize your point of view which you admit is anecdotal. I really don't think that there is as many people on Hood Canal now as there were 20 years ago on an ongoing basis and I also think that the larger the houses are the less they're used. Additionally, I think adding a second story to a house doesn't necessarily mean that a family is going to move in there. Families can't afford to live on Hood Canal, at least not families that are working in this area.

Planning Advisory Commission Minutes, August 16, 2004

(#1230) John Diehl: I live at Harstine Point and it has its share of retirees and some land yachts. I guess my point is that over the course of time one expects that what starts out as a land yacht will end up being sold to someone who doesn't treat it as a land yacht but uses it more.

(#1252) Tim Wing: Do you have a basis for that?

(#1255) John Diehl: Let me put it this way. Going to your point about the trends in use. I don't think there's a shred of evidence that there's less effluent from septic systems or especially from the nitrates and phosphates that are not filtered out of septic systems going into Hood Canal and that the evidence is to the contrary that it's increased over the last 20 years.

(#1268) Tim Wing: I wouldn't argue with you about that, John, and I'm not one that wants to increase that at all; you and I are in a great deal of agreement about what we want to do to protect the canal but I am challenging some of the things that you have woven through your position here about human use along the canal and whether it's increasing or whether expanding these houses by 10% might have a good impact or bad impact. My experience along the canal is when you allow people to expand their house they can't do it and keep their current septic system because the environmental department makes them put a new one in and it's too big to fit on the ground so often it goes across the road and a long ways further away from the water than if the house had been required to remain the same size and the septic system would be approved for continued use even though it was put in their 35 years ago. Those are the ones we'd like to get rid of and I submit that there are a lot of cases where those have gone way away from the canal because we've allowed people to expand their houses. I don't know if you've given that a thought but I could drive down the canal with you and point out a half a dozen places that I've sold where that has happened.

(#1310) John Diehl: I hear you and I think that that may speak to a need to try to provide incentives for upgrading of septic systems. I don't think that the general answer to that is to allow expansion of nonconforming uses; both because that's contrary to the very concept of a nonconforming use and because I think as a general rule it doesn't work. Let me elaborate on the legal side of this a little bit. The county itself declined to allow a variance for a person named Cousins that involved a small house to be placed in the Town of Allyn and part of their rationale there was that the use proposed was more than the minimum that was necessary for a reasonable use to obtain. That was upheld in the courts. If we get away from the generalization that it doesn't matter what the size is and we just look at the family's habits we're getting into an area that is very difficult to regulate or predict and so although there are certainly exceptions, and there may be more than I am prepared to acknowledge, that I don't think that we could allow those exceptions to drive our public policy. We need to find mechanisms that recognize that these are nonconforming uses and that nonconforming uses by their nature are not to be expanded.

(#1394) Tim Wing: We disagree about that.

(#1396) John Diehl: I might pose a final question to you. If you disagree with me about that do you disagree with me at the most basic level; do you think that in general nonconforming uses should be allowed to expand whether they're in cities or in the countryside?

(#1406) Tim Wing: It depends on how much they're allowed to expand. I think 10% isn't very much. If you have a place that's 1,000 sf and it expands 10% that's 100 sf. That's about the size of this table. I don't think they should be allowed to expand indefinitely but when you allow a new building to go up and an old building to be removed you're improving all kinds of things that include drainage, septic systems and other issues that improve the way the drainage is handled around the building. All of those things have to meet current standards and if we were to insist that they only leave the house the way it is they'll only remodel it and it won't require that they get into a lot of issues that a new structure will get into.

(#1436) John Diehl: I think your point might lead to some creative legislation and I would be glad to discuss that further with you and see if we could find a compromise that would work. I do think as a broad generalization you don't want to go down the road of saying there's nothing wrong with expanding nonconforming uses. Any other questions?

Planning Advisory Commission Minutes, August 16, 2004

(#1465) Steve Clayton: Tim brings up a concern that maybe staff can answer. This addresses a 10% increase in size how often? Can somebody replace their 2,000 sf with a 2,200 sf this year and next year put on another ...

(#1475) Rick Mraz: It's a one time deal. The parcel is tagged electronically in the county's data base and so it's noted and there's a parcel flag on it as soon as permitted.

(#1482) John Diehl: Let's keep in mind that this isn't 10% of the square footage of the area. It's 10% of the footprint so when we're talking about that we're creating this kind of much larger structure, potentially, and we're also creating an internal inconsistency if we go ahead and talk about a 20% bonus where that's based on square footage.

(#1500) Rick Mraz: For further clarification, the 10% expansion has been also interpreted as not allowed in waterward expansions.

(#1512) Steve Clayton: That isn't in the development regs; that would be in the building process that there's a one time shot on it?

(#1515) Rick Mraz: It's tagged in the county's electronic data base, Tidemark Permit Plan, which keeps records of all the permits that we issue and also keeps track of all the permits issued under a given parcel number so that is flagged as soon as that 10% is allowed.

(#1524) Steve Clayton: So this proposed 20% increase on combining structures would that be tagged also?

(#1528) Rick Mraz: That crossed my mind just as you were discussing it how that would be tagged and I can't imagine any other way; that it would be flagged in the system as well that the structure had already been increased the allowable 20% and no further expansion of the structure is allowed.

(#1540) John Diehl: I think you could avoid some potential problems which Steve is pointing to if you made it explicit and said one 10% increase. I don't approve of the 10% increase but ... what you're saying is a matter of interpretation; now a matter of something you can point to in the language.

(#1555) Steve Clayton: So maybe we should put in a subsection that says something like this applies to the square footage that existed in 1993 or 2000 so that when Tim's people come and they're expecting to either be able to combine and expand 50 years from now and it already happened there's some way they can research that.

(#1575) John Diehl: Not just that but you would not get into a legal argument. I don't disagree with your interpretation and I'm inclined to think that a court would sustain it but on the other hand I can easily enough image the lawyers looking at the language of the ordinance saying that it doesn't say that it can only be one time and it's been 10 years since we did it so we're asking for another one.

(#1600) Steve Clayton: Tim, were you aware that this was a one time shot?

(#1602) Tim Wing: Actually, I was not even aware that you could expand the footprint; period. I know you could build up. I never tell people exactly what they can do; I always tell them to come down and talk to the county.

(#1625) Steve Clayton: The RO is available on the web so as we're discussing on this particular one time shot then people would have a little bit more of an idea of what they can do. Anything further for John?

(#1644) Frank Graham: Could that not be added in that paragraph that you can increase by 10% one time only.

(#1664) Steve Clayton: Any other public testimony? We will now close the public hearing on q1), q2) and II). Let's take a short break.

Planning Advisory Commission Minutes, August 16, 2004

Break in meeting.

(#1685) Steve Clayton: We're now back in session. We'll start with our discussion on these issues. Let's start with q1).

(#1698) Allan Borden: It's the standards for reviewing piers, docks, boat ramp, boathouses, etc.

(#1710) Steve Clayton: Allan, would we be safe to go through and review instead by page 3, page 4, page 5 and 6, which are all the FWHCA's rather than doing q1), q2) and II)?

(#1718) Allan Borden: Yes, the way it's been proposed with q1), q2), and II), it's a little patch here and a little patch there so going by page would be fine.

(#1730) Steve Clayton: Any thoughts on page 3?

(#1735) Mark Drain: For section 1., I do think that it should be mentioned that it's a one time opportunity to remove structures and increase structures and I do think we should change the wording from 'may be approved' to 'shall be approved' as John mentioned would be appropriate.

(#1765) Steve Clayton: Rick, how far back do we go that we started tagging properties for the 10%?

(#1972) Rick Mraz: Tidemark functions back to 1992 in that electronic system. The 10% expansion has probably only been tagged for the last couple of years because that language wasn't closely monitored by planning staff. Since I've been here in the last 3 ½ years we've been tagging them.

(#1805) Steve Clayton: If we're going to put language in here that says it's a one time shot from what date do we start that one time shot?

(#1815) Bob Fink: This language probably dates back to about 1999. It is easy to monitor the building permits. The building permits since 1992 would have been on the system and are easy to locate. So if someone had exercised this provision with a building permit since 1999 that is easy to find on the permit system. So if you pick a date that's within the permit system you can clearly see whether they expanded. Before 1999 this wouldn't have been regulated. They would have been able to expand as much as they could fit. That to me would be the critical date. You could either go from today or you go back to when this provision was first adopted. Either way, you could put that in your motion.

(#1900) Steve Clayton: Does that work for you, Mark?

(#1902) Mark Drain: Yes, that'll work.

(#1906) Rick Mraz: The buffer didn't increase until June 2002.

(#1914) Bob Fink: It went from '0' to '75' feet to '100' feet for common line so it's going to vary depending on where the property is whether it was actually regulated under this code. What you'd do is if you knew this was there it would either be one flag where there was no question. If it wasn't flagged you'd see if they had a building permit to expand the building within the relevant time frame and then what the applicable ordinance would be whether it was regulated at that time or not. So you'd have to check both of those. If you simply go by it being flagged then you may be unfair in the sense that you might have missed some that hadn't been flagged. If you go through the time certain then the department would be able to track that better.

(#1965) Steve Clayton: Mr. Diehl brought up the 20%. If they're combining structures they can go 20% more on the second floor. Do we want to add that provision to sections a., and b., because right now they can go 10% expanded footprint on a rebuild plus 110% on a second floor?

(#1985) Tim Wing: I'm not in favor of restricting the size of the second floor. If they have 1,000 sf on the main floor they should be able to make a 2,000 sf house if they just go straight up. Are you wondering if we want to change that to a 1,200 sf house if they use a second floor?

Planning Advisory Commission Minutes, August 16, 2004

(#2000) Mark Drain: Or are you thinking that maybe we should go 10% in both areas and do away with the 20%?

(#2006) Steve Clayton: If they're combining structures and add those two together and go an additional 20% up ... if they're just rebuilding in a particular spot they can expand 10% plus they can go up an entire second floor. It seems to make sense from Mr. Diehl's point of view that you're dramatically increasing the habitable area of the property and increasing impacts. Tim talked about generally you don't increase the number of habitants and I don't have a whole lot of experience there. When we used to do variances along the canal and I remember one next to the Alderbrook Inn and they were living off a 1930 septic tank and they weren't changing it based on a new house.

(#2050) Bob Fink: My understanding when the biologists who put together this regulation were writing it is they were concerned about the footprint on the ground of the structures. That's the way they wrote the ordinance. As far as the number of people using the area and the type of use, full time or part time, the health department's codes are based on occupancy. The occupancy is based on the number of bedrooms; not in the number of bathrooms or the size of the rooms or on the size of the living room. If you're attempting to keep the number of people using the property about the same you're better off focusing your attention to the number of bedrooms and not to the absolute size of the structure. The size of the structure is more related to the income of the people than it is to the number of people living there. There's also a concept that you may be familiar with which is functional obsolescence. It was mentioned earlier that people are building bigger houses now. Well, the standard of housing has changed over the years partly due to affluence; whereas, people used to be happy in a 1,200 sf house with three bedrooms and one bath. Now a three bedroom house will have at least two baths. If it doesn't have two baths it's functionally obsolete. It doesn't meet the modern living standard and often they have even three baths for a three bedroom house so there's a tendency, which I don't think has any environmental impact or connotation, towards having slightly bigger spaces. I think it's more related to the ability of people to afford such things rather than their use of them or the number of people living in them. So where there was a small cabin built maybe 30 years ago and it may have one bathroom and there's a wish to expand it without necessarily increasing the number of people living in it. Sometimes they do expand and it increases the number of people living there but you're really better off targeting bedrooms than you are targeting square footage when you look at that consideration.

(#2175) Diane Edgin: Basically that's one of the first questions when you go to get a septic and since you're going to be rebuilding and you're going to be asked the same question and then you're going to have the septic accordingly.

(#2190) Bob Fink: Right, and that's because the health departments have found that that's what the strongest relationship is.

(#2210) Steve Clayton: Is there a way to craft the verbiage?

(#2225) Bob Fink: You might say I'm satisfied that the original language was the intent of the biologists that crafted it and the public process it went through and it was approved by the GMHB with a 10% expansion. I'm comfortable with that language but I understand that there are a number of particularly septic related issues and use issues related to the number of people living on the canal and other sensitive areas and those are the kinds of areas we're dealing with so if you want to ... it seems to be more logical given the scientific background that you control the number of bedrooms while allowing the expansion and square footage. Maybe you say there can't be an increase in the number of bedrooms would be one way to go or you allow an increase in one bedroom. If you're trying to control the people then it's the bedrooms that are the critical factor.

(#2280) Tim Wing: I'm not in favor of controlling any of it. The septic system that's available for the house is the septic system that determines how many bedrooms the house can have. Your points about the size of the rooms is well taken. Most people now want a master suite with a large master bathroom and if you go up and down the canal and anywhere else and look for a house that was built in 1950 it doesn't have that so the buyers want to have a more modern space. So it doesn't make any sense to me at all to decide that we know exactly these kinds of rules are going to impact the number of human beings on that property. John and I

Planning Advisory Commission Minutes, August 16, 2004

both agree that our information was anecdotal but my information is based on my experience as a professional in that business and I'm here to tell you that more often than not these houses that are expanded are not used by more people.

(#2340) Bob Fink: I don't necessarily disagree with that. There are a couple of other points I could make. One is that there is a tendency in the county and a long term trend in the county for the high number of vacation homes to convert to permanent residences. That trend has been happening since the '50's and the rate has slowed but there is approximately 26 or 28% of the housing in this county are vacation homes or second homes and that's well above national average and that rate that's been tracked since this information has been declining. That doesn't tell you if that's on the water or someplace else but certainly the trend is there.

(#2388) Tim Wing: I believe that trend includes a whole lot of homes like on Haven Lake, around Maggie Lake, around other developments that have a lot of back woods lots and not necessarily on the water. There could be some increase on some of the smaller lakes but on the canal I think the trend is the opposite direction. There are fewer people using those homes now.

(#2400) Bob Fink: I don't have any contradictory information but you have to understand that's with a lot of construction of new houses so the trend is down but the number of conversions is also limited. People do build new vacation houses. I would also say that I support the suggestion that it be specified as a one time exception. I think that was clearly the intent and that has been the policy of the county and how we've been interpreting it. The other issue about changing the language 'may be approved' could simply be deleted.

(#2450) Diane Edgin: The size of the septic is going to be configured to the size of the lot, correct?

(#2454) Bob Fink: That's not my understanding. The experience of the health departments is typically the demand on the septic system is based on the number of bedrooms and obviously there are wealthy people that have fifty bedrooms and never have people in half of them. There are other exceptions where there may be five kids in a bedroom. The septic size will vary by soils but it's based on the number of bedrooms.

(#2500) Diane Edgin: I don't see how we can do anything other than let the septic size, how many bedrooms, govern what goes on to a piece of property. How else could you regulate it?

(#2550) Steve Clayton: We talked about bedrooms and we talked about the 10% and Bob said the GMHB accepted the 10% ...

(#2600) John Diehl: The fact is that the GMHB did not review that issue. They may have the opportunity as a result of this tinkering with the ordinance but we didn't make an issue out of that before the GMHB so that never was anything that the GMHB dealt with.

(#2622) Steve Clayton: I'm trying to get some kind of a consensus on the first few pages and then make a motion on them. This isn't approval by saying it but to just trying to get a consensus on the direction we're going to go.

(#2638) Tim Wing: I don't have a problem with the word 'shall' in a couple of places there and the one time issue. I'm not in favor of trying to limit the two story issue.

(#2645) Steve Clayton: It sounded like your thoughts regarding the sizing ... would you be opposed to the bedroom concept? Either limit the bedrooms to existing or an additional bedroom?

(#2655) Tim Wing: My thought is that's already a limiting issue. If you want to add a bedroom to your home you have to provide a larger septic system. To do that you have to have the ground to do that. When you attempt to expand your house that way it triggers a new septic system in many cases, or at least a complete review of your septic system.

(#2677) Steve Clayton: That's not been my experience in the variances I've reviewed. Whether or not that's because our health department doesn't follow it through but I've not seen that in my experience.

Planning Advisory Commission Minutes, August 16, 2004

(#2688) Tim Wing: If you have a two bedroom and you go in and say you want to remodel it or expand it to make it a three bedroom house you have to show that that septic system can handle that or you have to replace it with one that can or expand the one that you have.

(#2710) Steve Clayton: That's the septic issue. What about more people in a critical area with more pets?

(#2714) Tim Wing: I'm not buying the argument that more people necessarily come with an expanded house. Affluent people want to have a guest room. Does that mean there's more people in the house all the time? Probably not; they used to sleep on the couch in the living room and now they have a guest room. It's empty most of the time. We're trying to tell people to limit the number of people on their property.

(#2735) Steve Clayton: In the critical area; we're not talking county wide; FWHCA's.

(#2740) Tim Wing: It's making the assumption that expanding the house will lead to additional people; we don't have any evidence of that. Secondly, it's making the assumption that that in fact will cause an environmental problem; we don't have any evidence of that. It's dealt with with the septic system. I'm not wanting to limit peoples use of their property based on a few peoples opinions.

(#2775) Mark Drain: I'm fine with it except for the couple of things I mentioned. If you want to change the wording to 'shall' or you want to eliminate it that's fine.

(#2785) Diane Edgin: We know we have water and wildlife issues but we still have to work within the perimeters of the existing law until it's challenged. I think at this time I don't see any real evidence to not allow it. This is a carrot; it's not saying somebody who already has an existing structure wanting to increase it by a huge amount. That may be the area where the language needs to be a little stronger is to write it in such a manner that you will get this bonus if you remove these other agile structures. You're trying to get things away from the critical area. Make sure we're showing it as to be the carrot.

(#2865) Allan Borden: That's why I put in the 1.c., 'To further reduce the impacts of existing structures' ...

(#2872) Steve Clayton: So the only changes we're recommending in the first section is to add language along the lines that it's only available one time since the county started tracking them in 1999. Something along that line and delete the words 'may be approved'. Do we have a motion on that?

(#2960) Diane Edgin: I'll make that motion.

(#2965) Tim Wing: I'll second it.

(#2970) Steve Clayton: We have a motion and a second. Any further discussion?

(#2975) Tim Wing: Clarification. We're talking about this one time shot for the 10% but are we also talking about it for the 20%?

(#2985) Steve Clayton: I believe for the entire first section.

(#2988) Mark Drain: Yes.

(#2990) Tim Wing: Does that work?

(#2992) Mark Drain: You wonder if they do it for three little outbuildings and fifteen years from now the boathouse and dock rots away and they've lost their opportunity.

(#3010) Bob Fink: This is limited to garages and residences themselves as far as transferring the square footage.

(#3016) Tim Wing: You can't use a yard shed?

Planning Advisory Commission Minutes, August 16, 2004

(#3018) John Diehl: That needs to be clarified. I discussed it Rick at the break that's maybe your intent but it's not the way it's expressed. You need some additional language there.

(#3030) Rick Mraz: In f.1.c.2., where it doesn't follow through.

(#3038) Diane Edgin: I was thinking that when we were discussing this last time that we were talking about just any structures that were waterward; boathouse, picnic shelter ...

(#3045) Mark Drain: I think our problem was you couldn't substantiate how long they had been there but structures that had permits ...

(#3070) Rick Mraz: Right, that's why we put in the 'legally established residences and garages'. Those we could legally identify as being permitted.

(#3090) Tim Wing: What about the dozen or so old wooden boat houses that are on pillars over the water that are falling down?

(#3102) Rick Mraz: They can be repaired and maintained in perpetuity.

(#3106) Tim Wing: What if somebody says I'd like that to be counted for my square footage and I'll take it down and remove it if you'll let me?

(#3115) Allan Borden: That's apples and oranges as far as I'm concerned. That's over water development that wouldn't have ever been permitted.

(#3130) Tim Wing: Most of them predate 'permitting'.

(#3135) Steve Clayton: Part of the problem we had in previous discussions on this was if you had somebody that wanted to expand their house dramatically they're going to go to Costco and buy a couple of carports and all of a sudden ...

(#3144) Tim Wing: I can understand that but that's more recent.

(#3146) Steve Clayton: The problem is documenting what's existing. Okay, we have a motion. All in favor? Opposed? Motion passes. Let's move on to section F.2.

(#3200) Diane Edgin: In this one we want to make sure that people know we're talking about existing.

(#3206) Mark Drain: The first sentence there about 'noxious weeds' I think is inappropriate. I think it's misplaced there.

(#3220) Steve Clayton: It was in section 6,. On the next page.

(#3235) Mark Drain: You were on the right path there and I had thought that there's a maintenance and use of landscaped areas within the buffer area. It should say 'maintenance and use of existing landscaped areas' and then in the next sentence 'An existing landscaped area' so that it's understood that it's existing.

(#3266) Steve Clayton: Is that enforceable, Bob? Are we going to have trouble enforcing that for somebody that wants to clear their vegetation?

(#3275) Mark Drain: In maintaining an existing buffer it could grow a little bit but it would just be horrendous to try to document all existing and keep tabs on it.

(#3295) Rick Mraz: If someone was trying to circumvent the regulations we typically would receive a complaint that someone was doing some vegetative management in a buffer area and it would be investigated by our code enforcement officer who would go out and document what had been done as best as she could. A complainant would usually have some kind of testimony that this had happened. Then the burden of proof is

Planning Advisory Commission Minutes, August 16, 2004

on the applicant to demonstrate that that area is or has been a landscaped area. That's how the county staff would review such activity.

(#3355) Miscellaneous discussion.

(#3600) Diane Edgin: I don't think the 20 cubic yards in total jives with the 200 square feet. I think we should reduce it.

(#2640) Steve Clayton: We should at least have it be one dump truck load and I think that's 13 yards.

(#3650) Mark Drain: It depends. Sometimes it's 9 or 10 yards. Does 10 yards sound good to you?

(#3670) Diane Edgin: I think so.

(#3700) Steve Clayton: Okay, so in summary we're talking about moving the first sentence about noxious weeds back to section 6. On page 4. Also, changing it from 20 yards that can be imported to 10 yards that can be imported. Adding the word 'existing' in the first line 'An existing landscaped area' as well as in the third sentence 'Maintenance and use includes' ...

(#3800) Mark Drain: I make the motion as stated by Steve.

(#3810) Tim Wing: I'll second that motion.

(#3825) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. On page 4 staff recommended under 7. adding 'associated with residential use'. Any discussion there?

(#3850) Mark Drain: I'll make a motion that we accept the change to 7., with the addition of 'associated with residential use'.

(#3860) Tim Wing: I'll second the motion.

(#3864) Steve Clayton: We have a motion and a second. All in favor? Opposed? Motion passes.

(#0088) Steve Clayton: On page 5, we're working on section G., Areas requiring an environmental permit. Staff has recommendations under G.1.c.

(#0100) Diane Edgin: Where it says 'appurtenant structures' weren't we talking about making that a separate paragraph?

(#0112) Allan Borden: Do you want me to go over it with you? Under 1., 'An HMP shall be prepared for these activities', I was suggesting that section c., be titled 'New Construction' and then c.1., would read 'Major New Development is not permitted within the FWHCA or its buffer' ... 2., would then start off with 'Appurtenant structures not needing building permits, associated with residential development ... may be permitted'. Then under 3., under c., we'd move Saltwater Activities from page 6 listed as 2.f.1, up to G.1.c.3 so it reads 'Saltwater Activities' Accessory uses to existing or new development, such as saltwater pier, dock, or float' ... That would be the three parts of G.1.c.

(#0195) Steve Clayton: How do we address under the current c., the last line which says 'A proposal shall meet the additional review standards of the Mason County SMP, RO and other development ordinances'?

(#0208) Allan Borden: We should probably add it to the beginning as a separate paragraph. The continue with 'The design and siting of these projects' ...

(#0220) Steve Clayton: So that same verbiage exists under the saltwater activities from page 6 so we need to replicate it there.

(#0230) Allan Borden: Right.

Planning Advisory Commission Minutes, August 16, 2004

(#0240) Bob Fink: One comment. In the next section the Uniform Building Code has been replaced by the International Building Code.

(#0244) Steve Clayton: We might want to discuss ... the difference between the saltwater activities where we just put it from where it came from was the need for an HMP. In both places we needed an MEP. Do we want to treat the freshwater activities in the same manner as saltwater and put it in this same section?

(#0260) Tim Wing: Is there a problem? I'm not interested in putting regulations in place when there's not a problem. Rick, have we had situations where the docks have ruined the lake?

(#0280) Rick Mraz: That hasn't been researched. Some of the obvious impacts, and Mr. Diehl was attempting to point out the wildlife impacts but I'm not sure what they are. Aside from the aquatic impacts, I'm not sure what those would be. There's certainly shading of aquatic vegetation. That's associated with any emplacement of a structure out over the water. You're going to shade whatever grows in the near shore and kill it. Aquatic vegetation is used by macro invertebrates which are fed on by large fish and other vertebrates in the near shore, like reptiles and birds that would use the near shore habitat.

(#0300) Tim Wing: This would be shading similar to a natural tree falling into the lake and shading the area underneath it?

(#0306) Rick Mraz: The tree will provide nutrients and actually provide habitat for the insects that would fall in the water and be fed upon by all species that I just listed. The dock won't do that because it's treated wood. The tree will become habitat over time as it decays so there is pretty significance to what it contributes to the near shore versus a dock.

(#0320) Diane Edgin: We're talking freshwater?

(#0333) Rick Mraz: We're talking freshwater. There has been significant research on the effects on saltwater docks associated with eel grass shading and the effects of the positioning of the dock on salmonid migration in the near shore, effects on migration of surf smelt, etc. That's why the Corp has changed dock configurations over time to be narrower and narrower and to require translucent sections of the dock to allow sunlight to pass through. That sort of research has not been done on freshwater docks, to my knowledge.

(#0340) Tim Wing: So we don't have any data that gives us guidance?

(#0344) Diane Edgin: There is data. You may not have it available here but it just so happens that I have a member of the family that's a lifetime member of BASS and I get these papers from them and they talk about water issues all across the United States based on freshwater. I read all the time about dock issues and the two biggest concerns is 1), from the standpoint of the property owner, and 2) people who use the water for recreation. One is the size, whether it's covered or a pathway dock that people tie up to. Freshwater fish habitat, other than trout, is that the docks do provide shelter for bass and we don't have a great deal of catfish. Docks that stick out where there's a lot of recreation with boats, there is a hazard there. I think the treated wood issue is there and that's an issue. Trees are a natural habitat.

(#0400) Tim Wing: My problem is there's pros and cons about docks. You have docks and they keep boats away from the beach, you keep kids from having a lot of activity in the shallow water on the beach; there's negative things about docks, we're going to require a study and find out what? That there's pros and cons about docks and all we're doing is causing work and we don't have a definitive solution about how the dock impacts things or what our policy ought to be so why would we be suggesting that a study be done?

(#0430) Steve Clayton: As I understand it, we're already requiring that it has to have an MEP which would address some of your concerns about landing boats on beaches, which I agree the dock is a better application. As I understand it, an HMP will say if you have any eel grass there or not so you can build a dock there. An HMP will address if it will have impacts and if you don't have impacts then you don't worry about it.

(#0450) Tim Wing: But it does have impacts; there's pros and cons on the impacts. My point is why are we

Planning Advisory Commission Minutes, August 16, 2004

requiring people to do a study?

(#0458) Rick Mraz: I may have given you the wrong impression. I'm sure the DOE, when they review dock proposals, are reviewing them for the impacts on the near shore, exclusively related to biology. There's criteria out there that they're using.

(#0470) Tim Wing: Why do we need to duplicate that?

(#0475) Rick Mraz: That's why we, at this point in time, don't ask for HMP's; we defer them to F & W for the HPA and their conditions. That's was the fall back position that the county adopted in terms of not requiring HMP's on freshwater lakes.

(#0480) John Diehl: But as you just said they review the aquatic stuff and they don't, for example, discover whether there's a Great Blue Heron nest nearby. That might be the sort of fact that ought to be considered and which would be material and not just a matter of pluses or minuses; it's really something that ought to go into the decision making on increased development in that area. That's the same situation whether you're talking freshwater or saltwater. There are some species that are not aquatic that are not being given their due consideration if we don't have HMP's.

(#0512) Diane Edgin: I think that would be a hard sticking point to defend.

(#0515) John Diehl: They have a very limited staff and they focus it on ... their job is not, in fact, no agency seems to take it as it's responsibility to enforce or implement the GMA and it's a problem.

(#0525) Tim Wing: What is the question that we're dealing with here? Are we wondering where to put the freshwater paragraph?

(#0530) Steve Clayton: Yes, either to leave it in not requiring an HMP section which staff originally put it in or to put it back in as requiring an HMP.

(#0538) Tim Wing: I propose at this time that we leave it right where it is as it is. It can be revisited as some future time. We have very limited staff here. I just don't think we have a clear enough picture of what we're trying to do and require another big permit for people to put a dock on a freshwater lake that might be 4 feet long.

(#0545) Mark Drain: I concur.

(#0550) Steve Clayton: So back on page 5 Allan had made some recommendations and I think we pretty much went along with his recommendations and added saltwater activities from the next page. Do we have a motion to that extent?

(#0565) Tim Wing: I move that we accept those changes that staff proposed in G.1.c.

(#0574) Diane Edgin: I second that motion.

(#0576) Steve Clayton: We have a motion and a second. Further discussion? All in favor? Opposed? Motion passes. Next item staff made a recommendation in section G.1.e on page 5. Staff had talked about adding the words 'by bulkhead or other means' and then tonight staff had talked tonight about not adding it. So do we have a recommendation to unedit that?

(#0590) Diane Edgin: I make the motion that we unedit it.

(#0595) Mark Drain: And that we also change 'Uniform Building code' to 'International Building Code'. With that I'd like to second the motion.

(#0615) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. On page 6 there was no staff recommendations on item h); that was information only so we'll

Planning Advisory Commission Minutes, August 16, 2004

go on to section 2.f., We agreed to move the saltwater activities section so that will require Allan just to delete those words and just adding freshwater activities. That's staff's recommendation.

(#0640) Tim Wing: I move that we leave that as described there with the freshwater activities under 2.f.

(#0648) Mark Drain: I second the motion.

(#0650) Steve Clayton: We have a motion and a second. Under discussion, we actually want to remove the word 'Freshwater and Saltwater' in the heading.

(#0660) Tim Wing: So we eliminate 'Freshwater and Saltwater' in the heading. We eliminate paragraph 1 and we eliminate the #2 so 2.f. becomes simply 'Freshwater Activities'.

(#0666) Steve Clayton: Actually, we eliminate staff's recommendation in the underlined but we'll leave in the 'All activities in tidal/saltwater' under #1 ...

(#0675) Tim Wing: And then #2 is 'Freshwater Activities'.

(#0678) Steve Clayton: Would that be a correct layout for you, Allan?

(#0684) Allan Borden: What I intended was basically delete 'Freshwater and Saltwater', 'Marine Nearshore' and #1 with 'Saltwater Activities', and then all the text following that and 2.f. would only address freshwater activities, under HMP not required.

(#0700) Steve Clayton: Okay, do we have a motion?

(#0705) Tim Wing: I'll make that motion as to what Allan said.

(#0735) Mark Drain: I'll second that motion.

(#0740) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. Let's pass over page 7 and go to the ADU standards on page 8 and the wetlands standards on page 9.

(#0760) Allan Borden: Item mm) is to change out of the DR's some of the standards for Accessory Dwelling Units. Some of the other requirements talk about the number of ADU's on a lot, where it's positioned, that it has to be served by proper water and septic. Criteria or requirement D., talks about size in respect to either square footage of the primary residence or a size and earlier in 2004 we changed the size from 800 sf to 1,000 sf so that it matched up with the SMP. Now from feed back from several people in the community there's a recommendation to change the percentage from 50% of the square footage of the primary residence, habitable area, to 80%. But we're still keeping the balance where it can be 80% of the habitable area of the primary residence or it can be 1,000 sf, whichever is smaller. That's what we've proposed.

(#0820) Steve Clayton: In tonight's letter from the Advocates group it comes in his last paragraphs some concepts that maybe we shouldn't allow ADU's in a FWHCA, which seems kind of practical, if you want to limit construction there based on impacts.

(#0835) Bob Fink: You'd need a variance to do it and you wouldn't get a variance to put an ADU in there.

(#0845) Rick Mraz: The point Mr. Diehl was trying to make was that they shouldn't be allowed in the buffer area. An individual could conceivably apply for a variance to build in one but ADU's are not typically good candidates for variances.

(#0855) Bob Fink: It would be our considered opinion that they wouldn't be able to get the variance but they're not prohibited from applying for a variance. If you wanted to specifically add that as one of the conditions I don't know that we would have any objection.

Planning Advisory Commission Minutes, August 16, 2004

(#0868) Steve Clayton: What about the density requirements as if you're in a RR5 or a small lot and you're putting another household on a small lot ...

(#0876) Tim Wing: It's not another household.

(#0878) Rick Mraz: That's right; it's not.

(#0880) Tim Wing: It specifically can't be another household unless it's for a family member.

(#0894) Bob Fink: You have to realize that ADU's are intended to provide affordable housing as well as deal with family issues. In the shoreline the regulations did not allow ADU's except as guest houses and family housing. Away from the shoreline the rental of these units is allowed. The reason for this particular change is simply to address the issue that not everyone has a 2,000 sf plus house. The current restriction restricts it to 1,000 sf or 50% of the primary structure, whichever is less. If someone has a 1,200 sf house then the ADU is limited to 600 sf. If they had a 1,000 sf house then they would be limited to 500 sf.

(#0940) Steve Clayton: So people with bigger houses are getting a bigger benefit than the average Joe.

(#0945) Bob Fink: This isn't a provision that's applied for very frequently. There's been only a few applications that I'm aware of in the last couple of years since we've allowed this. Most people don't want a second house on the property near their house. One of the requirements is it has to be near their house. If they have 10 acres they can't put it way over there. It has to be within 150 feet of their house.

(#0966) Allan Borden: There is no restriction about leasing or anything.

(#0968) Bob Fink: There is on shorelines but not generally because the very intent is to provide affordable housing. What you can't do is rent both houses. If you're going to rent it you have to be willing to live there with your renter.

(#0978) Tim Wing: I thought you couldn't rent it at all.

(#0980) Bob Fink: Just not on the shorelines ADU.

(#1010) Tim Wing: These are not recommended things to do from a realtors standpoint. When we talk to people who are thinking about doing that we tell them when it comes time to sell their place no one is going to want to buy your two house place that can't be subdivided and has all these restrictions.

(#1040) Bob Fink: This is not something that has really created much demand because of the restrictions that are on them.

(#1060) Tim Wing: I don't have any problem with it the way it is. I move that we accept this recommendation for the change of 80% from 50% for ADU's.

(#1140) Mark Drain: I second the motion.

(#1145) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. On to nn). Rick, do you have a comment on this?

(#1200) Rick Mraz: Yes, currently Category IV wetlands are described in the RO and for 1., under Category IV, it originally said what you have in your text in the first paragraph which says 'Wetlands less than one acre, hydrologically isolated and comprised of one plant layer dominated (>80%) by one invasive species'. That is essentially a scribner error. We pretty much adopted our wetland category regs from DOE and what #1 intended to say was it was a list of three native plant species and it references a table elsewhere in the DOE regs that list these three native plant species whereas if this wetland is 80% or greater than of any one of these native plant species it becomes a Category IV wetland. Currently, because we don't have these three native plants we have to regulate all of these wetlands as Category III. So if I have a spirea pond I have to call it a Category III even though the DOE regulations says it's a IV. What that means is the buffer zone gets

Planning Advisory Commission Minutes, August 16, 2004

a little smaller. Category IV buffers are 25 foot buffers plus a 15 foot building setback whereas III's are a 50 foot buffer and a 15 foot building setback. Planning staff is simply asking that we correct our Category IV criteria to reflect the DOE criteria so that we can regulate some of what are arguably low functioning, low plant diversity native wetlands so that we can regulate them as Category IV's as they're intended to be regulated.

(#1275) Mark Drain: I make a motion that we accept additions to Category IV Wetlands as proposed by the county staff.

(#1282) Diane Edgin: I second the motion.

(#1284) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. Our next meeting will be on September 20th. Before we adjourn we need to excuse Bill Dewey from this meeting and from the September 20th meeting and Mark Drain from the September 20th meeting. Motion passes.

Meeting adjourned.