

# MASON COUNTY PLANNING ADVISORY COMMISSION

**August 26, 2013**

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

=====

## **1. CALL TO ORDER**

The meeting was called to order at 6:04 pm by Chair Jim Sims.

## **2. ROLL CALL**

**Members present:** Jim Sims, Bill Dewey, Ken VanBuskirk, Kristy Buck, Vicki Wilson, and Rob Drexler.

**Staff present:** Rebecca Hersha and Barbara Adkins

**Department of Ecology:** Tim Gates and Rick Mraz

## **3. REGULAR BUSINESS**

### **ADOPTION OF AGENDA**

Ken asked to add a brief discussion on the material received on August 14 regarding Table 1 and 2 for lakes, streams and rivers under agenda item 6a. The approval of the agenda, as amended, was approved.

### **APPROVAL OF MINUTES**

The minutes for August 12, 2013 were reviewed. Jim made the motion to approve as-is and Kristy seconded, the motion passed unanimously.

## **4. PUBLIC HEARING**

### **TITLE 17 (ZONING): RECREATIONAL MARIJUANA**

Public Hearing to consider amendments to Title 17 (Zoning) of the Mason County Code pertaining to the zoning of businesses involved in the production, processing and retail sales of recreational marijuana. Staff: Barbara Adkins

Barbara Adkins, Director of Community Development, opened the hearing on the proposed amendment to Title 17, zoning for recreational marijuana, a continuation from the August 12, 2013 meeting, which was tabled at the request of the PAC in order to review additional information on alternate options prior to making any recommendations. She gave an overview of what had been discussed at the previous meeting and what was proposed in the Memorandum dated August 16, 2013. She explained that the Liquor Control Board has revised their deadlines, which have been extended to allow additional public testimony and the application submittal. She discussed what other jurisdictions were considering. After further review she explained that the consensus was to treat recreational marijuana production, processing and retail sales like any other business.

Barbara continued her presentation explaining that the regulatory approach varies between Kitsap, Kittatas, Douglas and King Counties. She asked the PAC to consider and establish a policy and treat it as any other business, if they

## Planning Advisory Commission Minutes, August 26, 2013

wanted to narrow it down to only certain commercial districts, ban as a Cottage Industry, allow as a Cottage Industry in residential areas.

Jim noted that the PAC had previously discussed the current zoning and the restrictions on Cottage Industries. He asked staff for questions. Rob commented that as long as all the requirements were met, it should be allowed, and didn't know why they needed any special rules. Jim commented on the zoning and where they should be allowed. The PAC discussed the regulations and suggestions of the memorandum in detail. Vicki questioned why these would be treated any differently than other businesses. The issue with Cottage Industries was discussed. Barbara explained that Cottage Industry was not a Zoning District it is a Land Use, and the PAC would need to determine if it should be allowed in a Cottage Industry, like any other home business.

There were no public comments made.

Ken made the motion to allow Recreational Marijuana in any zoning area within the County, with the exception of a residence or dwelling. Bill seconded for discussion. Jim noted that Recreational Production, Processing and Sales be allowed in any zoning area of the County except residences or dwelling. Barbara commented that residential or dwelling are not zones. She explained that the PAC does not need to specify if it would be allowed in a house or a dwelling unit because it is already specified in the proposed regulations. It was discussed in detail. A vote was taken to allow Recreational Marijuana in any appropriate zoning area within the County. The motion passed with a vote of 5 affirmative and 1 abstained.

Jim added that the proposed Amendment to Title 17 (Zoning) for Recreational Marijuana would now go in front of the Board of County Commissioners for final review.

## 5. PUBLIC HEARING

### TITLE 14 (BUILDING AND CONSTRUCTION): FLOOD DAMAGE PREVENTION

Public Hearing to consider amendments to Title 14 (Building and Construction) of the Mason County Code pertaining to Flood Damage Prevention. Staff: Barbara Adkins

Barbara, gave a brief presentation on the proposed Flood Damage Prevention changes. She explained that FEMA conducted a Community Assistance Visit (CAV) to evaluate the permit process used by the County and the primary goal was to ensure that the County is properly enforcing its Flood Damage Prevention ordinance. FEMA had suggested edits to the County's Flood Prevention Ordinance which Barbara explained were submitted to FEMA for review and approval of the changes was received on July 29, 2013.

Ken asked for clarification on the page 2 of the report inquiring about the lack of data with the accuracy of maps of the Flood Insurance Study (FIS) conducted during the CAV. He added that there are maps that have not be updated for quite some time. Ken added that there have been homes built in the flood plain and suggests that they see all the flood plain maps for the County be updated. Rob asked who is responsible for updating the maps so that they are accurate? Rebecca explained that the maps were currently being updated by FEMA and they would be expected to be complete by 2015.

The PAC discussed in detail.

There were no public comments made.

Bill made the motion to approve the revisions, Rob seconded. The motion passed unanimously.

## 6. SHORELINE MASTER PROGRAM UPDATE

Rebecca asked the PAC to review the tentative SMP timeline and if there were any revisions they would like to make. Ken commented that on Sept. 23, he would like to only review the Capital Facilities Plan adding that it took two meetings last year. Rebecca asked if they wanted to add an additional meeting in October or bump down? It was discussed in detail. Jim wanted to wait to discuss until they see how far they get in tonight's meeting.

## Planning Advisory Commission Minutes, August 26, 2013

Staff submitted a designation map and two tables that reflect changes made to lakes, rivers and streams. The tables were erroneously left out of the original document of the draft edits (dated April 2013). She explained that staff had found errors on the tables in the current draft SMP.

Ken commented on Table 1 of Rivers and Streams. He explained that there were 38 rivers/streams for 234 miles listed in the January 2013 draft SMP and now there are 65 rivers/streams listed and the mileage is not listed. He suggested that the mileage be added to the tables. Rick commented that staff decided to omit the mileage explaining that it did not provide accurate information of where the shoreline jurisdiction begins. Ken asked if the Citizen's Advisory Committee (CAC) ever seen these revised tables or if it was staff that verified it is correct? Rick explained that these are the streams that are in the Inventory Characterization Report (IRC). Ken stated that he also asked staff to look at John, Jorsted and Eagle Creeks and asked if they were on this new list. Rebecca explained that they were not listed since they do not meet the criteria and do not show 10 years of data. Rick commented that Ecology's rule says a minimum ten years of data mean annual flow is required. Ken asked if they have data on the 65 streams listed now versus the 38 listed in January? Rick affirmed. Ken stated he was frustrated that they are now receiving this information that was updated in May. Staff explained that it was an error and that all the streams and lakes were known and it was included in the IRC and the jurisdictional designations map, but somehow the transfer of information to the draft SMP was left off. It was discussed in detail.

Ken added that the unnamed lake listed as #44 on Table 2 is listed with 32.7 acres, but the draft SMP has it listed as 38.7 acres, which is correct? Rick said that he would check the data and confirm which acreage is accurate.

Rebecca clarified that Table 1 and Table 2 will replace what is currently listed on pages 6, 7 and 8 in the draft SMP dated January 17, 2013. She also added that she would make the necessary revisions prior to going to the public hearing.

Rick also confirmed that the correct size of the Unnamed Lake on Table 2 is 31.56 acres.

### A. Review of edits to the Draft SMP

Staff gave a brief overview of the changes and recommended suggestions, made to date, by the PAC of the draft Shoreline Master Program (SMP) on regulations 17.50.010 through 17.50.050.

Rebecca went through each section of the SMP highlighting edits. She explained that the policies from the Comprehensive Plan and regulations from the SMP have been combined. It was discussed in detail.

#### *17.50.040 Definitions*

After some discussion, staff agreed to revise the definitions in the Resource Ordinance to align with the SMP definitions.

Eric Schallon of Green Diamond Resource Co. commented on the definition of Confinement Areas stating it was very vague. He asked the PAC to define the use of the word 'concentrated', that it was animal density dependent and as a land owner, very confusing. The PAC discussed in detail. Staff explained that this was old language used from the current SMP. The PAC asked staff to strike the wording 'are concentrated areas and' from the second sentence of the definition.

**Confinement Areas.** Corrals or other concentrated animal keeping areas. Confinement areas ~~are concentrated areas and~~ do not include the entire fenced perimeter of a parcel.

The PAC also asked staff to remove Commercial Feedlot from the definitions because it was already listed under Feedlot.

Jim asked staff to add 'See page xx' for the definition of Designations, instead of listing each Designation definition separately. Kristy asked for clarification from staff on the definition of Feasible. Rick explained that it is a definition in Ecology's rule under WAC172-26 that cannot be changed.

Rebecca asked for a decision from the PAC on the definition of Transportation Facilities. She explained that the Road and Railway Development definition was combined in to the existing definition.

Transportation Facilities. (Road and Railway Development). Facilities consisting of the means and equipment necessary for the movement of passengers or goods. Includes also related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings and spurs.

# Planning Advisory Commission Minutes, August 26, 2013

The PAC agreed to accept the revision.

Kristy asked staff to add 'Preferred Use' as a definition. Tim asked if they wanted to use the same definition from the statute under RCW 90.58.020 which reads:

To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.

PAC asked staff to add to the definitions.

There was a 10-minute break.

## *17.50.050 Environment Designations*

Staff continued the discussion of the draft edits opening with 17.50.050 Environment Designations.

Bill commented that his notes had 'and agricultural' under the Conservancy Purpose. The PAC agreed and asked staff to add 'and agriculture'. Staff agreed to make the necessary revision.

a. Purpose

The purpose of the Conservancy designation is to protect and restore ecological functions and conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource and agricultural use and recreational opportunities.

Staff explained that 'Urban' would be stricken from the Urban Commercial designation; the edits were made prior to the PAC making their decision to remove.

PAC asked to remove 'within urbanized areas' under the purpose of ~~Urban~~ Commercial.

a. Purpose

The purpose of the ~~Urban~~ Commercial designation is to ensure optimum utilization of shoreline ~~within urbanized areas~~ by managing commercial development.

There was additional discussion on the wording and what had already be discussed and proposed by the PAC regarding revisions to the Urban Commercial designation. Staff agreed to bring the corrected wording to the next meeting for review.

## *17.50.050 Project Classification Tables*

Staff requested to discuss at a later date after all Uses have been discussed. The PAC agreed.

## *17.50.051 General Policies*

Vicki asked if they could have a discussion to add another policy under Views and Aesthetics. She added that it would be helpful to address some issues and WAC173.26.221(4)(D)(iv) under Public access may address them. She suggested adding:

Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

She added that the issue of views and water-dependent uses comes up a lot and if there was a policy that mirrored the statement, it could set a priority sequence to address some of these issues and a basis for decisions. It was discussed in detail. The PAC agreed and asked staff to add under Views and Aesthetics and to reference the WAC with it.

## *17.50.055 General Regulations*

## Planning Advisory Commission Minutes, August 26, 2013

Staff opened with the addition of new wording to No Net Loss and Mitigation regarding compensatory mitigation. It was discussed in detail and copied from Wetlands chapter of the Resource Ordinance at the request of the PAC at a previous workshop.

- b. Considerations for determining whether off-site mitigation is preferable include, but are not limited to:
  - i. On-site conditions do not favor successful establishment of functions, such as lack of proper soil conditions or hydrology;
  - ii. On-site compensation would result in a habitat that is isolated from other natural habitats or severely impaired by the effects of the adjacent development;
  - iii. Off-site location is crucial to one or more species that is threatened, endangered, or otherwise of concern, and the on-site location is not;
  - iv. Off-site location is crucial to larger ecosystem functions, such as providing corridors between habitats, and the on-site location is not; and
  - v. Off-site compensation has a greater likelihood of success or will provide greater functional benefits.

The PAC discussed in detail and they agreed to accept 'b' as listed above.

It was also noted that 'County approved' would be added to the second sentence under 8. They also agreed to strike 'or would be considered non-conforming' under 9 due to redundancy.

- 8. Mitigation activities shall be monitored and maintained by the applicant or their County approved designee to ensure they achieve intended functions.
- 9. Land that is constrained by critical areas and buffers shall not be subdivided to create parcels that are only buildable through a shoreline variance ~~or would be considered non-conforming.~~

Monica Harle of Shelton asked staff about critical areas and where they apply. She asked for clarification on which is more restrictive, the Resource Ordinance (RO) or the SMP? Jim commented that what they are trying to ensure is that the SMP and the RO are consistent and that they are equal. It was discussed in detail. Rick commented that the SMP is more restrictive explaining that it is incorporated in the RO to address those critical areas. He added that there are some exceptions, but they would be subject to review and approval by the County.

There was discussion regarding what is and isn't allowed in the RO with a Mason Environmental Permit (MEP) under 17.50.055 Critical Areas applicability:

- e. Shoreline uses and developments shall be consistent with the MCC Chapter 14.22 Flood Damage Prevention, as amended. Where provisions of the FDPO and the SMP conflict, the more restrictive provisions shall apply.

Staff questioned when an MEP is required by the RO, and the activity is exempt from shoreline permit requirements. Jim asked staff for clarification adding that they need to rewrite the language and explain what is and isn't required and they will revisit the topic again. Staff affirmed.

Monica Harle questioned if you wanted to appeal a shoreline permit decision in any area covered under the SMP, who do you go through, the Shoreline Hearings Board? Staff confirmed. Monica asked if it takes it out of Mason County, and goes to who, Ecology? Rick commented that it is a government appointed Board. He explained that the local decision is made by Mason County and then forwarded to Ecology who makes the final decision. That decision can be appealed under the Shoreline Hearings Board. It was discussed in detail.

Staff explained that all the references to MCC 17.01.110 Resource Management is the incorrect code that has been cited throughout, as it does not exist. The correct code will be added as MCC 8.52.

Jim asked for clarification on the last sentence of #4 under Water Quality and Quantity, which was to be reworded. It currently reads:

- 4. Wood treated with creosote, chromated copper arsenate and pentachlorophenol is prohibited to fuse in boating facilities.

Both Vicki and Kristy commented that their notes state to match the wording in Boating Facilities. It was discussed in detail. Staff agreed to look at their notes and will submit revised wording.

## Planning Advisory Commission Minutes, August 26, 2013

Kristy also commented that 'effective erosion' should be stricken from #2. The PAC agreed.

2. All shoreline uses and activities shall use effective stormwater, ~~and erosion control and~~ treatment, and flow control methods during both project construction and operation. At a minimum, ~~effective erosion control~~ methods shall require compliance with provisions of MCC Chapter 14.48 Stormwater Management and 17.80.

Public Access was discussed. The use of private access was questioned. Vicki asked about access under the Public Trust Doctrine. Jim asked Pat Schneider, Attorney at Law, representing Green Diamond Resource Company for clarification on the Public Trust Doctrine. Mr. Schneider explained that the Public Trust Doctrine stating it is for any navigable water, any lake that is big enough to be subject to the SMP is probably subject to the Public Trust Doctrine. He explained it would apply to any kind of private water-related use. It was discussed in detail. The PAC agreed to table the topic for the next workshop.

### B. Review and Address Written Public Comment

A letter received from Foster Pepper, dated August 19, 2013 was reviewed. Pat Schneider, Attorney at Law for Foster Pepper, representing Green Diamond Resource Company, addressed the PAC. He commented that he wrote the letter in response to the Shoreline Environment Designations regarding Hanks Lake, Lake Nahwatzel, Forbes Lake, and Mason Lake.

He explained that the letter was to give the PAC an overview of how much discretion you have under the SMP and the Growth Management Act to make policy choices. He added that it is the PAC's discretion and that of the County Commissioners to decide how to balance and weigh the policies in Mason County.

Chair Jim Sims commented on the letter and the issue of what is best for the citizen's of Mason County and how they fit with guidelines. He expressed his concerns. Vicki commented on the criteria that they have to be consistent with their decision-making. Jim asked if the criteria, which were established by the Citizen's Advisory Committee (CAC), match the recommendations in Ecologies Guidelines? Jim asked if the criteria were recommendations? It was discussed in detail and there was a debate whether or not to redo the criteria. Ken added that they (PAC) should consider the Zoning and the Comprehensive Plan when deliberating over the designations.

Rick asked to read something out of Ecology's Guidelines on Shoreline Environmental Designations.

#### *WAC 173.26.211(3)(a): Provisions not precluding one another*

The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

Rick added that the four lakes Green Diamond is referring to are currently proposed with the designation of Conservancy. He added that those proposed designations are based on a number of factors, and especially on what the existing conditions are and how a development pattern might affect the existing ecological functions. In all the decisions that Ecology considers and that the County will have to consider, are to designate or to determine that you are going to achieve No Net Loss of ecological function. He added that as a Shoreline environment designation, it should be clear that residential use is allowed in Conservancy. They are not precluded from Residential Use and they are not precluded from future resource use, they are not precluded from continuing the existing recreational use. They are not precluded from using the land as RR-5, they could have 5 acre lots throughout all of the parcels that are on the shoreline. Rick stated that the objection as it relates to the loss of the use of property because the use is still there, it's just the way the use would be managed in consideration of the existing ecological functions.

Pat Schneider commented that they have several issues that need to be addressed. What is the intent of the land in the future? What is the existing development on surrounding properties on the lake? What is the consistency with making Green Diamond's land with Conservancy? All these need to be taken into account.

## Planning Advisory Commission Minutes, August 26, 2013

There was discussion on the criteria and how to apply the guidelines. Jim and Ken both commented that they would have to revisit the designations for the four lakes in question, adding that this is a draft document. The PAC agreed to discuss further when time allows.

### **7. NEW BUSINESS**

Ken asked the PAC to review the documents he brought up for discussion is added to the next agenda.

The next meeting will be held on September 9, 2013.

### **8. ADJOURNMENT**

Meeting adjourned at 9:13 p.m.