

MASON COUNTY PLANNING ADVISORY COMMISSION

February 10, 2014

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1. CALL TO ORDER

Chair Jim Sims called the meeting to order at 6:01 pm.

2. ROLL CALL

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

Staff present: Barbara Adkins, Rebecca Hersha, Grace Miller and Allan Borden

Department of Ecology: Rick Mraz

Jim Sims welcomed Tim Duffy and Tim provided brief bio for himself.

3. REGULAR BUSINESS

a) Finalize Election of Chairperson and Vice Chairperson – **Motion** made that Jim remain as Chairperson and Ken as Vice Chairperson; seconded. No objections. An introduction was made of Penny Cline as Clerk/Clerical in the Department of Community Development.

b) Set of dates for meetings – March 10 and 24 and April 7 and 21; Bill Dewey will miss February 24 mtg.

c) Adoption of Agenda – **Motion** was made to adopt the Agenda, seconded, motion passed unanimously.

4. PUBLIC HEARING

To consider proposed amendments to Title 17, Chapter 17.06, Section 17.06.010 DEFINITIONS changing the height exemption for fences and signs from 6 feet to 7 feet to be consistent with the building code.

Barbara Adkins presented proposal. Discussion was had regarding sign ordinances and should the height requirement be made to 7 feet? Barbara stated that the State's building code is 7 feet. Members discussed fence and sign height requirements in the SMP, should they be consistent with. If they adopt 7 feet as the building code directs, then should they go back and change the SMP to be consistent? Rick Mraz explained what Barbara is asking, and that is for an amendment to the definition of 'structure' in the building code to allow for 7 foot fences to be exempt. Rebecca confirms that in the SMP, they could not allow for a 6 or 7-foot fence within the setback, confirming they can't be completely consistent. Also notes this is a different issue - building permit vs. setbacks. Jim asked for any

Planning Advisory Commission Minutes, February 10, 2014

other discussion or public testimony. Jim Reece made comment that going to 7 feet, so the deer won't clear it. Vicki Wilson asked for confirmation regarding the signs. Jim and Barbara confirmed there are separate ordinances with regards to signs, and if they are more restrictive, they will trump this amendment.

Motion was made to approve the proposed amendment to change the height exemption for fences and signs from 6 feet to 7 feet; seconded; motion passed unanimously.

5. PUBLIC MEETING - SHORELINE MASTER PROGRAM UPDATE

A. Boating Uses/Facilities (continued)

Rebecca reminded the PAC of where discussion had left off at last meeting and desire to get through this section today. She referenced a couple additional comments since last meeting. The first one, from Jim Reece dated February 3, 2014. The second one from Amy Leitman of Marine Surveys & Assessments. Copies circulated to members. All issues addressed in the Key Decisions to Make.

Acronyms:

HCP – Habitat Conservation Plan

DNR – Department of Natural Resources

HPA – Hydraulic Project Approval

RGP6 – Regional General Permit by the US Army Core of Engineers – expired, but still used as a reference.

Jim Sims asked Rick Mraz if the RGP6 would be renewed. Rick Mraz stated that in the absence of new standards, the RGP6 is the only set of written standards that the Core refers to, in addition to consultation with the National Marine Fisheries Services when you build a dock, pier or floating structure in waters where there are listed species. Concurrence is needed from the other agencies.

Jim asked that as long as the PAC does not adopt any standards that are contrary with the U.S. Army Corps of Engineers, they are ok? Rick Mraz asked for comments from the respective representatives to get a sense of their perspective on how the draft HPA is lining up with other standards, like the Corps and/or DNR. Teresa Nation from WA Dept of F&W could not make any comment as it has been awhile since numbers have been compared.

Rebecca looked up the last version of the draft HPA and compared with the HCP requirements and the RGP6, and they are all very different. In order to be consistent, the PAC should pick one or be general enough so they don't approve any docks that won't be approved higher on up the chain. She noticed that in our drafts some of the requirements come from the DNR's HCP language, some comes from WA Dept of F&W 's HPA language and conflicts with DNR's language. Hence, why she has made so many recommended changes to think about.

Bill Dewey mentions that the DNR HCP is not finalized yet and is still in development and could change as well. Rebecca notes same is true for the HPA rules.

Rebecca prompted discussion of the definition of 'grating'.

Jim asked - If a resident in this county today, comes to the permit desk and wants to build a dock, does that resident deal with the Dept of F&W or with the DNR? Rebecca explains Dept of F&W is always involved with in or over water permitting, but DNR is only involved if it's on state owned aquatic lands. The RGP6 or whatever review the Army Corps of Engineers is using doesn't apply to any of Mason County lakes but does to saltwater.

Ken VanBuskirk had a question regarding the "Key Decisions to Make", citing a couple case laws from about 8-9 years ago. In both instances it appeared that people got permits, went through the process of getting started and then had to go to the Shoreline's Hearing Board. Have there been any instances of permitted docks on the canal since that time? Rebecca responded, yes, but they almost always have been joint use. Single use has been very difficult because there is the question of whether it is in an area of other docks or more natural.

Rick Mraz commented that Mason County denied both of those instances referenced, and other parties may have commented, but it was denied at the local level and then those denials by county were appealed to the Shoreline Hearing's Board and upheld that the county's decisions were consistent with the SMP and the Act. He continued to explain decisions related to joint use and single use docks.

Jim asked if there are cases within the county, outside of Hood Canal, where a permit has been denied or provided for a dock? Allan Borden answered that there was one in Case Inlet that was denied. Rick Mraz explained that this

Planning Advisory Commission Minutes, February 10, 2014

was because the shoreline reach had few, if any, other docks. And, the only other docks were old and predated the county's SMP.

Ken VanBuskirk referenced both the City of Bainbridge Island and Kitsap County's SMP as possible examples for appropriate language. He mentioned that they suggest that a meeting with state, federal and tribes prior to any applications happen. Rebecca responded that when at a meeting with Kitsap County she learned that is what they did, but Mason County Code does require for any shoreline permit, that there is first a pre-application conference. And, at this time, the experts from the other permitting agencies can be invited to the meeting inside or the pre-app conference can occur at the site. Mason County could take better advantage of this opportunity like Kitsap County.

Rebecca does like the idea of inviting representatives from state and/or federal jurisdictions that regulate docks to pre-application conferences, but as a Planner she'd like to see a limit in length and/or depth rather than being put in the awkward position of asking for proof of boat size to determine depth needed to prevent scour, so we have answers when people ask for this information. This reduces confusion and provides consistency as well she notes.

The PAC continued to have discussion regarding dock length and the necessity to have both requirements. The City of Bainbridge Island requires docks to be less than the average length of the adjacent docks AND no more than a depth of 4 feet at extreme low tide. Whichever of these is more restrictive is what is going to limit the applicant. The PAC agreed to the importance of a pre-application conference AND set guidelines for the property owner as to how long a dock can be, and what the maximum depth of the water at the end of the dock can be.

Rick Mraz offered that we could run the risk of being arbitrary in making the decision of approval or denial without a set standard. He also explained that the development pattern that has been created over almost 4 decades is what the county has been permitting.

Jim asks if there is any objection to taking public comment; no objection.

Jim Reece (1913E Mason Lake Drive East, Grapeview, WA 98546-9786)

He submitted letters in January and February 2014. He would like to see something regarding docks, piers and floats that would permit for grandfathering and an easy way to repair, permit to maintain without having to go through excessive permitting processes, joint meetings, etc.

In reference to docks and length, he believes a dock should be long so that boats don't scrub the bottom. Also, believes a dock should be out far enough that when there is a diving board it faces shore vs. facing out where people are diving out into boat traffic. He believes a diving board is attractive nuisance because when a boat comes close to it, a diving board can be clipped. He thinks they ought to be deep enough for that. Comments that the docks do provide protection to the shorelines when they keep the boat traffic away. He also wonders if variances should be allowed.

Rebecca explained that in reference to variances for docks, they are only authorized if you don't have minimum reasonable use of your property. Rick Mraz confirmed this, but said variances have been issued in the past.

Jim Sims asked for any other comments regarding length of docks.

Rebecca suggested this idea:

Average the following two lengths: 100 foot length, the length required to reach 7 feet depth at mean lower low water.

The PAC continued with discussion about not being able to completely solve the issue of eelgrass, fish and aesthetics, unless you leave it bare. With regard to docks, a dock cannot be more than 15% of the fetch, and the end of the dock cannot come within 200 feet of the opposite shore. There was clarification that for saltwater docks, length is 100 feet for single use, and 115 feet for joint use, currently and current proposed. In reference to depth, it is being proposed to change from 3 feet to 7 feet. Then whichever is stricter of these rules is what applies.

Bill Dewey wondered about staying with the limits we have now, but to add in the Jefferson County language recommended in the letter from Marine Surveys & Assessments:

"The administrator may approve a different dock or pier length when needed, to:

- i. Avoid known eelgrass beds, forage fish habitats, or other nearshore resources;
- ii. Reach adequate depths to accommodate watercraft; or
- iii. Accommodate shared use."

Planning Advisory Commission Minutes, February 10, 2014

Rebecca notes that in reference to ii above, it might make for an awkward correspondence with the applicant as to how big their boat is now or what they might purchase in the future. The other two items seem reasonable, except again Rebecca recommends a maximum depth and/or length to reduce confusion for applicants and permit review Staff.

Rick Mraz added the importance of having some kind of bracket/limit that would trigger a variance – ie, a dock length over 150 feet. He also noted that there are certain criteria for variances to be issued. The rationale is not everybody is guaranteed a dock.

Motion was made by Vicki Wilson for the PAC to accept the Staff's Recommendation made within the Staff Report for dock length and depth; seconded by Kristy Buck.

CONTINUED DISCUSSION:

Ken VanBuskirk expressed a desire to have Staff come back to the PAC with what Kitsap County does in terms of their dock lengths for clarification. Rob Drexler asked about what happens in situations such as when a dock is beyond 115 feet, but below the 7 feet for mean low water. The PAC acknowledged situations such as this, and the need for a Designer to determine these specifics. Grace Miller offered assurance that it is quite common on saltwater for their to be a designer (consultant) which speaks to these issues. Tim Duffy added the idea of a "preamble" that might explain the difficulty with meeting the requirements that allow for one to have a dock. Vicki Wilson inquired of the language in reference to a pre-conference in these situations. Rebecca explained that this language is not in the SMP, but it is in the Title 15, which allows for any shoreline permit, you need to have a preapplication conference. Jim Sims asked that this be researched.

Jim Sims asked for a vote from the PAC to accept the Staff's Recommendation for saltwater of 120 foot single use, 135 foot joint use, and depth of water of 7 feet at mean lower low water. A dissenting vote of 6 in favor and 1 opposed occurred.

Break at 7:36

Jim Sims begins the discussion on collaboration. Rebecca references Mason County Code 15.05.020 (b) "that unless you have a Type 1 or Type 2 permit, you shall attend a preapplication meeting to discuss the nature of the proposed development". That would include shoreline substantial developments, variances, conditional uses, and resource ordinance variances. Most new dock permits are Type 3, which go to a public hearing. Jim suggested that there could be an inclusion in the SMP of the requirement for a conference whether it was Type 1, Type 2 or Type 3. Rebecca suggested the language could include that a shoreline substantial development, conditional use, or a variance should have a preapplication conference. The language could also invite the agencies to come to a preapplication meeting or a site meeting. **Jim asked for Rebecca to draft proposed language to consider in 2 weeks for this.**

Bill Dewey emphasized again the importance of the language provided in letter from Marine Surveys & Assessments: "The administrator may approve a different dock or pier length when needed, to avoid known eelgrass beds, forage fish habitats, or other nearshore resources." No objections from the PAC to add this.

Motion was made to make this language addition; seconded.

Discussion followed regarding a dock length maximum may need to be set. Idea of saying, "maximum dock 120 feet, allow the exception for avoiding eelgrass up to a maximum length of 150 feet" – for that reason only.

Motion made to amend previous motion above to include below new language; seconded.

"The administrator may approve a different dock or pier length when necessary, to avoid known eelgrass beds, forage fish habitats, or other nearshore resources to a maximum length of 150 feet, beyond which it would require a variance."

For freshwater – The PAC agreed to go with the recommendations made in the "Key Decisions to Make" of 7 feet depth, 60 feet long for single use and 75 feet long for joint use.

Motion made to approve the Staff's Recommendation to adopt the above language regarding freshwater; seconded.

Planning Advisory Commission Minutes, February 10, 2014

The PAC agreed to keep going with the outline of the Key Decisions to Make. Next topic was about incorporating state and federal requirements. Rebecca explained purpose of this was so that all lined up better – ie: when one gets a permit from Mason County, it won't be denied by another agency. She explained that not all of the other agencies' drafts line up, and so the question is, which one do you pick?

Rebecca recommended taking the more complicated regulations out (ie: grating), but leave the more simple numbers that a county would have as dimensional standards. In addition, she added additional language, which would address that there are other state and federal jurisdictions and all of their requirements need to be met.

Rebecca also noted that there is another option (not recommended in the draft), and that is to pick one of the agencies requirements, understanding that the problem is still that some are still in draft form. The PAC could refer to their requirements or incorporate them. There is the question of - if one can't meet one of these requirements, then they have to get a variance from the county because it is in our regulation. So, not only is approval needed from the state agency to vary from their requirements, but also they would have to go to Mason County to get a variance.

Rick Mraz commented that deferring to other agencies is not passing the buck, but rather working to provide that all parties are moving in the same direction.

Rebecca referenced the Staff Report: Shoreline Master Program Update – Boating Facilities, (**page 13 of Staff Report**) with regard to Docks and Unattached Floats. The PAC reviewed the underlined language for any additions or changes and noted that "and federal" should be inserted after "state".

"New construction, replacement, and repair of boating facilities shall comply with all applicable state and federal agency policies and regulations, including but not limited to the Washington Department of Fish and Wildlife (Hydraulic Project Approval WAC 220-110), the Washington Department of Natural Resources (Habitat Conservation Plan), and the United States' Army Corps of Engineers. These include functional grating, size restrictions, and other standards."

Vicki Wilson had a question regarding replacement and repair when applying with all other applicable state agency policies and regulations. She added that if there are new standards, they might conflict with the definitions section. Jim Sims commented that an existing dock or pier is grandfathered, but if you want to repair it, then the repairs have to be in accordance with current regulations not past. Rebecca confirmed this and referenced **page 26 of Staff Report, Item 14** for repair and replacement for docks. Discussion continued as to the meaning of this language and how it relates to existing docks and grandfathering. Rick Mraz explained what the regulations mean and instances when additional scrutiny is required. Rebecca reiterates this is a new regulation.

Jim Sims asked for public comment on repairing and replacing docks:

Thomas Nevers, resident of Mason Lake

Mr. Nevers' first comment was to ask for further discussion of the Key Decisions to Make, Section C.

Format/Terminology. He noted that the Staff Comment states that they felt "it's odd to group docks with marinas", and instead everything was put under Boating Facilities. He asked for clarification of the language "the term boating facilities indicates that docks or floats used for swimming or fishing are excluded". His concern is that his dock is used for swimming; he does not own a boat.

Rebecca, along with the PAC, explained to Mr. Nevers that this language is noted within the Key Decisions document as an issue that should be discussed by the PAC.

Mr. Nevers' second comment was to the continued reference to "piers and docks", but at the same time there is the elimination of piers. In argument, he stated that the Department of Ecology still recognizes the definition/distinction between the two. In response, Rebecca explained the reason the word "piers" was stricken was because it was redundant. Mr. Nevers disagreed. Rebecca acknowledged that in all state documents, they do use the language "piers and docks" but is unsure of the reason for this. Mr. Nevers reiterated that he believes there is a big difference between a pier and a dock.

The PAC appreciated Mr. Nevers' comments and expressed their commitment to sort out these issues he addressed. Rick Mraz added that he believes that Mason County, in their writing, is trying to recognize other water oriented uses besides boating facilities and create a definition of dock that catches all of those possible designs.

Mr. Nevers asked to add an additional comment regarding length of docks. He asked that the PAC check the HPA rule being presented (WAC 220.110.370, (3)(b), because he believes that what the PAC is proposing is in conflict with what HPA is proposing. Rebecca responded that she noticed that too and believes that if the HPA is going to prohibit docks within 25 feet of eelgrass, kelp, and macroalgae where herring spawn, in order to avoid approving

Planning Advisory Commission Minutes, February 10, 2014

docks that will be denied by WDFW, the County's language in subpart (A)(3)(f) should not state that this restriction only applies where feasible.

Teresa Nation added the question of how allowing a dock to be longer than the regular limits, avoids aquatic vegetation? Discussion continued with reference to the email from Marine Surveys & Assessments, and Rebecca demonstrated by a visual drawing of how a longer dock could possibly "avoid known eelgrass beds, forage fish habitats, or other nearshore resources".

Jim Sims asked for any additional comments from Jim Reece.

Jim Reece (1913E Mason Lake Drive East, Grapeview, WA 98546-9786)

He referenced the repair he did to his own dock in 2005. He put on over half of the dock with a \$973 permit. He'd like to clarify this section for all people who have docks that exceed this new ordinance to be 8 feet and 10 feet wide. He understands the grating issue, but feels having to take the dock and reduce it to 4 feet wide would be a great expense.

Rebecca clarified that it is only when you are repairing more than fifty percent of the pilings *and* more than 50% of the decking that bringing your dock into conformance is required per the draft SMP. **(Page 26 of Staff Report)**

Jim Sims confirmed with Jim Reece that this was proper clarification for him.

The PAC continued with discussion concerning the replacement of pilings and what this poses to the environment. Rebecca explained that this new regulation came about to match up with one of the state agencies requirements, and goes above and beyond what is required of the county for the SMP.

Jim Sims spoke that if we do not include that restrictive language, then what restrictions exist (if any) on the property owner for replacing a dock? Hypothetically speaking, if a person wants to replace his dock, and then he deals with new standards, but if he wants to repair it, and the footprint is grandfathered, how much can he do to repair it as opposed to replace it?

Rebecca reminded the PAC that during their discussion of grandfathering and the general regulations, it includes replacement in with repairs, so it allows you to replace and consider that a repair. But, once you increase the size or change the footprint around, then it is treated as a new structure. (B.14.c.)

Jim Sims asked if one keeps the existing footprint, but replaces all the pilings because they have rotted, just like the decking, then one is repairing an existing facility. Rebecca confirmed that this meets the definition of normal maintenance.

Discussion continued at length about the difference between repair and replacement, specifically how much constitutes repair as opposed to replacement. Replacement requires one to go to new construction standards. Repair, means it is grandfathered. The question is where does repair stop and replacement begin? Rebecca offered a simple option to keep 14 b, but remove all the language about fifty percent - ie: "Replacement of an entire dock needs to meet standards for new construction". Or, another option is to remove the language altogether and say "Proposals for expansions need to meet current standards".

Kirk VanBuskirk commented that a common sense solution would be to repair fifty percent of it, and then the following year or two, complete the other fifty percent. Discussion continued that a "timeline" such as this would be useful. Rebecca offered that if the entire (B)(14) a and b were to be stricken, it would simplify things and would resolve the discrepancy between this regulation and the revised draft language in the General Regulations that allows replacement within footprint, but it by allowing total replacement in the same footprint even if it were a nonconforming footprint, the County could be approving a dock that might be denied by a state agency.

With Rebecca's recommendation, the PAC agreed to edit B.14 to the following:

- "14. Repair, replacement and enlargement of piers, ramps, and floats.
 - a. Repairs or replacement of existing docks must conform to all applicable standards in the General Regulations (17.50.050) for ~~new construction~~ existing uses.
 - ~~b. Replacement of an existing dock, including more than fifty percent of the pier support piles and more than fifty percent of the decking or decking substructure (e.g. stringers) must meet the current standards for new piers. Existing skirting shall be removed and may not be replaced.~~

Planning Advisory Commission Minutes, February 10, 2014

- e.b. Proposals involving the addition to or enlargement of existing docks must comply with the requirements for new dock construction. Enlargement beyond current standards would require a variance.”

Vicki Wilson commented that she is concerned with progress on the SMP, and would like to present her comments in writing to the PAC members before the next meeting to help move things along. She will send it to Rebecca and Barbara.

6. NEW BUSINESS

Kirk VanBuskirk made reference to an email forwarded to PAC members from some members of the CAC because it was sent to all of the county commissioners and a couple PAC members. He felt the PAC should know that he discussed that email with the Hood Canal Environmental Council as well as the Lower Hood Canal and Watershed Coalition, and the person who wrote the emails does not necessarily represent the opinions of either of the two groups.

Rebecca also passed around a general comment email received regarding lack of updated PAC Minutes, which she explained to this person why this was so.

The next meeting will be held on February 24, 2014.

7. ADJOURNMENT

Meeting adjourned at 9:06 p.m.