

## ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

### SPECIAL SESSION - MARCH 9, 1999

The Board of Island County Commissioners met in Special Session on March 9, 1999, beginning at 9:00 a.m., held in the Commissioners' Hearing Room at the Island County Courthouse Annex, Coupeville, Wa. and at 1:30 p.m. in the Office of the County Commissioners for the purpose of conducting an Executive Session.

The purpose of the Special Session beginning at 9:00 a.m. was to meet with the Island County Planning Commission and Hearing Examiner, on the following topics:

- Planning Department Mission Statement
- Planning Commission Work Plan for 1999
- Progress Report - Community Development Division
- Hearing Examiner Year End Report 1998.

#### *Attendance:*

**Board of County Commissioners:** Mike Shelton, Chair; Wm. L. McDowell, Member; William F. Thorn, Member

**Hearing Examiner:** Michael Bobbink

**Staff:** Vince Moore, Planning Director; Phil Bakke, Comprehensive Planning Manager; Marc Mullin, Code Enforcement Officer; Larry Kwarsick, Public Works/Community Development Director; Pam Dill.

**Consultant:** Keith Dearborn

#### *Handouts Provided:*

- Planning Department's Mission Assignment for 1999
- Island County Planning Agency 1999 Annual Work Plan

### Presentation of Planning Department's Mission Statement

Vince Moore, Planning Director, noted that the mission assignment handout outlined the Planning Department's statutory authority for both state and local statutes. The key functions of the Planning Department include comprehensive planning, sub-area planning, functional plan coordination, enforcement and administration.

### **Comprehensive Planning**

Annual Plan Amendment (ICC 16.26)

Policy Amendments

Zoning Amendments

Deadline for Applications (2/1)

Docket to Planning Commission (3/1)

Planning Directors Report (5/1)

BOCC (7/1)

GMHB Remands (assumes no appeal)

GMHB Decision (5/1)

Staff Preparation

PC Public Hearings, Findings & Department Comments

SEPA

State Agency Review

Transmittal to BOCC

Review by GMHB

Plan Monitoring

Benchmark Program Development

UGA Build-Out (Long Term Monitoring)

Code Interpretation

Policy Interpretations

Existing Use (CZC)

Major Plan Revisions

Five Year Required by Comp. Plan (2002)

Update to 2025 (New OFM/Census basis)

Include Sub-area Plan Results

UGA Plan Synchronization (2002-2003)

Shoreline Master Plan Revision to conform with proposed new guidelines (2002)

Interlocal Coordination

UGA Joint Planning Areas

Oak Harbor

Coupeville

Langley

Adequacy Reviews

School Districts

Island Transit

Water System Reviews

**Sub-Area Planning**

South Whidbey

Freeland Non-Municipal UGA Plan

Clinton Non-Municipal UGA Plan

Central Whidbey

North Whidbey

Goldie Road Industrial District

Camano Island County, WA

**Functional Plan Coordination**

Economic Development

Transportation

Island Sub-region RTPO Tech. Commission

Route 20/North Whidbey Access Study

Natural Lands Plan

PBRs

Watershed Planning Program

Salmon Recovery

Marine Resources Council

Northwest Straits Commission

Capital Facilities

Water Resources

Parks & Recreation

Solid Waste

Housing

**Enforcement**

Zoning Code Violations

SPR and PRD Violations

Shoreline Violations

Critical Areas Violations

LDS Violations

Building Code Violations

**Administration**

Managerial

Personnel

Staff Recruitment

Staff Development

Space & Equipment

Work space (office, mapping & layout)

Records storage space

Financial

Budgeting

Accounting

Contract Administration

Records management

Planning Commission Support

Sub-area Committee Support

Hearing Examiner Support

Technical

Planning Commission

Hearing Examiner

SEPA Administration

Programmatic

Public Works Project Actions

Intergovernmental Coordination

Public relations/Web page maintenance

**Current Activities**

Comp Plan

Housing PRD Bonus Remand

Communication Towers Remand

Species of Local Importance

Appeal support

Codification Support

Comp Plan Amendment Process

Benchmark Program Development

Shorelines Master Plan DOE review

JPA Program Development

Interlocal Agreement Finalization

Adequacy Reviews

School District

Island Transit

Water System Reviews (15 pending)

Auto rezone tracking

Open AG & Forest Tax Classification Applications

Sub-area Planning

Freeland/Clinton

Advisory sub-area committees formed

Officers Elected

Scope of study developed

Infrastructure Planning consultant contract underway with PW

Issue Definition Phase underway

Short Course completed

Functional Plan Coordination

Island County Sub-region RTPO Technical Committee

Route 20/North Whidbey Access Study

LOS Stakeholders Group

Public Benefit Rating System Administration

Enforcement

Complaints on file (150 pending)

Active COV's (120 pending)

Pending Enforcement orders (90)

Administration

Bill watch (GMA, SMA, ESA, UAC)

Rule watch (SMA, BAS)

SEPA

Web site maintenance

Planning Commission support

Hearing Examiner support

### **Presentation of the 1999 Annual Work Plan**

The 1999 work plan was graphically illustrated on a Gantt Chart and showed the starting and ending dates of various activities:

**Item 1.** Regular commission meetings (Second Tuesday of each month)

**Items 14 & 15.** Affordable housing remand & communication tower remand (Completed by PC and before the Planning Department for comments and recommendations prior to transmittal to the BOCC)

**Items 16-20.** Species of local significance (Chart shows a period of 3 ½ weeks has been reserved for public hearings before the Planning Commission and another 3 weeks has been reserved for the Commission's debate, decision and preparation of Findings and Conclusions, and comments and recommendations of the Department. )

**Items 21-32.** GMHB Appeal Process (Chart show a period of five months reserved for dealing with any remands. This process would be deferred should the County decide to appeal the GMHB ruling. If not, staff proposed to complete revisions by 8/10/99 and provide these to the state for the mandatory 60 day review. The Planning Commission's Findings and Conclusions, the Departments comments and recommendations and the State agency comments call all be placed before the BOCC by 10/13/99, and the revisions placed before the GMHB for approval by early November.)

**Items 33-46.** Comprehensive Plan Amendments (Annual docket presented to Planning Commission by March 1<sup>st</sup>. Report for each amendment prepared, public hearings held (tentatively scheduled for the period of May 11<sup>th</sup> –June 8<sup>th</sup>.)

**Items 47-55.** Interlocal Coordination (CWP final revision 2/22, Interlocal agreements in place by the end of April.)

**Items 56 – 65.** Sub-area Planning. (If the current schedule is maintained the Planning Commission would receive the recommendations from the two sub-area committees in December.

Phil Bakke advised that the 1999 Comprehensive Plan Annual Review Docket consisted of the following applications:

- CPA 706/99 – Citizens for Sensible Development. Impact Fees
- CPA 707/99 – Citizens for Sensible Development. Utilities
- CPA 722/99 – Board of Island County Commissioners. Amend Rural Land Use Element re Policies for Rural Village Designation and Light Manufacturing Designation
- ZAA 710/99 – Demerau. Rezone of S6655-00-00R170 and S6655-00-0R10 ("Nichols Brothers Dock") from Rural "R" to Rural Center "RC"
- ZAA723/99 – Board of County Commissioners. Rezone of Oak Harbor UGA Goldie Road Potential Industrial Zone from Rural "R" to Light Manufacturing "LM"

In addition to the above, the following amendments have been proposed to Island County Code 16.03, and the Commission may wish to consider them on the same time schedule:

- DRA 708/99 – Citizens for Sensible Development. Amend ICC 16.03.260 Penalties and Enforcement
- DRA 709/99 – Citizens for Sensible Development. Amend ICC 16.03.180 P. Signs and Lighting
- DRA 724/99 – Board of County Commissioners. Amend ICC 16.03.130 A. Rural Village (RV) Zone Permitted Uses

George Crampton expressed concern with the Planning Commission's workload in relation to the above five applications.

Commissioner Shelton's understanding was that the Planning Commission would not be making a decision on the appropriateness of impact fees, rather would be deciding whether or not to set up a committee to study impact fees.

### **Presentation by Public Works/Community Development Director**

#### *Handouts:*

- Community Development Flow Chart
- Type I, II and III Processes
- Sample Development Information Bulletins
- Sample Training Device
- Application Form
- Island County Permit Fee Schedule

Mr. Kwarsick commented that the activities of the Community Development Division of Public Works had been divided into five work groups, with the idea to bring into being teams of people that span all the regulatory aspects of land use review:

- Land Use Review – Debra Little (staff engineer currently assigned – would like environmental health staff assigned)
- Site and Shoreline Development – Matt Nash (staff engineer currently assigned – would like environmental health staff assigned)
- Development Services – Carole Croft
- Permit Administration – Kelly Whitney
- Building Services – Bob McCaughan

New permit types have been established, Type I Process – Ministerial (SEPA exempt), Type I Process– Administrative (Non-SEPA exempt), Type II Process – Administrative, Type III Process – Quasi-Judicial.

In the interest of obtaining better certainty in terms of time frame there comes some rigidity in terms of the process. The Community Development Division is trying to work within these time frames, but are also trying to create processes that are a little more logical. The Division is now open to the public Monday through Thursday at 8:00 a.m. Each Friday, staff has training in the morning and the

Division not open to the public until 10:00 a.m. The Department is trying to focus morning hours on permit applications, and afternoons spent dealing with questions and trying to provide greater public assistance. The Department has been working to create Development Information Bulletins (DIBs) to assist the public in understanding the effect of new codes and regulations. New application packages have been created, divided into three parts. A cover sheet/counter complete checklist is intended to verify that the application contains all the information required, the detail of the application itself, and Part C attempts to advise applicants of issues they should be thinking about as they submit their application. The Department has two counters, one for submitting permits and the other to meet with a building plans examiner.

Commissioner McDowell asked if it would ever be possible, for certain types of applications, to review them for completeness at the counter.

Mr. Kwarsick responded that he was working with staff now to create a logical process. Currently the counter complete process just makes sure that the application contains everything required, but does not make a judgment in terms of whether the information is right or wrong. Within a couple of weeks the application is reviewed for technical compliance. Eventually, there will be a data entry terminal at the counter so not only can staff make a decision, but will be able to actually enter all the data on the project into the permit tracking system while the applicant is standing by. One of his concerns is that the County has created a process that resulted in a lot of review of maps and permit history and that does not necessarily mean the job always gets done in the field. The first time that an inspection is done on a home is when someone calls for a footings inspection; that is also the point where problems are first discovered. He is looking at the idea of training additional staff with knowledge in terms of critical areas, who can go out and inspect the proposed site as soon as the permit comes in. That same staff person would go out and inspect the footings and verify that the structure was placed in the location shown on the plot plan and originally identified. At that point, regular building inspectors would take over the rest of the project.

Mr. Kwarsick identified the two issues he thought had been a little more difficult than expected with regard to the new regulations: buffers and setbacks. On shore from the ordinary high water mark inland a buffer was established; in addition special shoreline setbacks were created which deal with the entire shoreline of the County that more or less relate to whether the shoreline is designated natural or conservancy. The interplay of those two things has probably been the most difficult thing that the Department has had to deal with in the start up of the new regulations.

Shoreline buffers and special shoreline setbacks both have averaging capabilities and sometimes are inconsistent with one another. His recommendation was to try and achieve through one, the objectives of both.

Vince Moore commented that one of the elements of the new shoreline guidelines was a series of rules governing the

definition of a "vegetative management zone" which is above and beyond any critical area or shoreline setback.

Larry Kwarsick mentioned there was a period of time last year when the County was dealing with FEMA regarding the National Flood Insurance Program, and the County on the brink of being placed on probation. As a result of that probation about 600 property owners with flood insurance from the federal government would have been impacted. In terms of how to deal with growth and development in the future, he thought it important to maintain tight control on construction at the base flood elevation by making sure that construction does not occur that creates depressed areas. There are depressed garages which under FEMA became by definition basements, even though functionally are not basements. Basements are unlawful under the National Flood Insurance Program. The reason for this is residents along the shoreline who are either developing or redeveloping are fighting old covenants that restrict the height maybe down to 20 feet in some cases and are creatively trying to figure out a way to build a reasonably sized home. In terms of the construction based flood elevation and making sure that conversions do not occur, the Department is linked with the electrical inspection division of the Department of Labor and Industries who have agreed to notify the County of anyone seeking an electrical permit for a modification along the shoreline.

Rufus Rose suggested it would be useful for staff to verify the accuracy of the FEMA maps while in the field.

Mr. Kwarsick reported that FEMA maps were inaccurate in a variety of different ways, for example, Lagoon Point was an area where there had been a problem with several homes and the maps that were created as part of the National Flood Insurance Program were made prior to the dredging and the creation of Lagoon Point.

### **Hearing Examiner Report**

Michael Bobbink, Island County Hearing Examiner, stated that the Hearing Examiner's Office at this time had a very small work load. The zoning code he has worked under is ICC 17.02 in effect for about 15 years. Several years ago the GMHB declared invalid significant portions of ICC 17.02 and the County at that time chose not to process applications under those sections. At the beginning of the year, hearings were held on two or three complex subdivisions that had vested prior to that declaration of invalidity. At this point, the new Zoning Ordinance has only been in effect since December 1, 1998, therefore has not reached the stage yet where there have been any significant hearings under the new ordinance. It was obvious to him that at some point in the next few months the workload would pick up again. Normally at these joint meetings he would have a list of issues we has come across over the past year that had created problems, such as sections of the ordinance that were hard to interpret or that conflicted with other areas and gave rise to things he felt should be looked at by the Planning Commission and the Board; however, at this point it is too early in the process. Anytime there is a major overhaul of a statute or ordinance there will be things that come up that will create problems that were not anticipated.

Keith Dearborn briefed participants on the three GMA appeals: the WEAN appeal only on critical areas; the Richard Wright appeal on commercial agriculture; and the Coalition's appeal covering everything except critical areas. There are four intervenors in the case: Tom Roehl, Linda Moore, Marilyn Adams, and the Resource Group. Linda Moore's specific issues include the boundaries of the Bayview and Freeland RAIDs; the Marilyn Adams issue is the Mutiny Sands RAID; and the Resource Group's issues is the Whidbey Resort. Last week the City of Langley intervened as well on the issue of the Whidbey Resort.

In all of the appeals there are some technical glitches he felt the County should not spend time arguing about, issues that are readily resolved by minor amendments to the Plan or Code. Those account for about 10% of the appeal issues, 60% of the appeal issues the Planning Commission and Board are familiar with and 30% (of the Coalitions appeal) are new issues the County never heard word one on through the process and there is no record on that at all. The GMHB has ruled, at this point, to permit the Coalition to bring those issues forward, concluding that the GMHB is not a quasi judicial organization, rather an administrative organization, and under GMA, part of the public participation process, with the public to have broad latitude in bringing issues before them. The County filed motions to dismiss those issues but were denied, even in light of the fact that both a Whatcom Superior Court Judge and the Central Puget Sound Board ruled that an issue had to be raised specifically. Mr. Dearborn pointed out too that John Graham had admitted to the Board that some of the issues the Coalition raised in its appeal had never been raised with the County. The GMHB is not finished on that question and the County is not finished in terms of raising the policy issue and the fundamental

dilemma it creates. If issues are raised for the first time with the Growth Board and the County has no record on them the county is obviously going to get a remand on those issues if the GMHB concludes that the county is clearly erroneous.

The essence of the WEAN appeal comes relates to the size of the buffers and Mr. Dearborn thought there probably was no compromise or resolution of that issue. The Planning Commission made its recommendation after a lot of study and the Board made a decision after a lot of study, and the County basically will be making new law or the Growth Board will be consistent with past decisions. The Growth Board has said that there are certain assumptions they make on buffers, but basically will look at the record of the local government and the record there for the buffer selected.

As far as the appeal by Richard Wright, Mr. Dearborn indicated that Mr. Wright wants to have a 5 acre parcel size for commercial agriculture to allow for wineries and viniculture in the County. There is nothing in the record on viniculture, never raised as an issue. The Board amended the rezone criteria to allow small parcels to opt into the commercial agriculture zone. Mr. Wright's property used to be zoned Resource Agriculture under ICC 17.02 and asked for, and received, a rezone; under the new code because his property is under 20 acres in size, it did not automatically go into the Agriculture zone classification, although he has the ability to file a request and be processed if he can demonstrate that he is a commercial operation. He feels that it should be mandatory for small parcels to be included in commercial agriculture, rather than optional on the part of the landowner.

The Coalition is challenging the rural densities and are asking that the PRD density bonus, the guest house, and the EDU option in the rural area be invalidated. The Coalition also asks that the County be found not in compliance for the rural 5 acre zone, and contend that the County could become in compliance only there were a TDR program, mandatory clustering, and some kind of unspecified larger density in the rural zone.

Also, the Coalition is asking that virtually every rural use, except single family housing, be invalidated in both the Residential and Rural zones, and have identified what they think are the problems and have offered solutions. The solutions range from having some kind of rule that spaces country inns and schools so many miles apart, to reducing the site coverage requirements so that the use would have to be concentrated on a smaller portion of the property to creating compatibility standards. The County has compatibility requirements currently, but the Coalition wants more specific requirements. The Coalition also wants substantial changes to signs and lighting and want the NR design guidelines to become requirements instead. The Coalition feels that those kinds of changes in the code would fix and make permissible most of the rural uses they are challenging. The Coalition is challenging the automatic opt out in the Rural Agriculture and Rural Forest zones and request it be invalidated, and are arguing that there is a lot more land that should be zoned Commercial Agriculture and that there should be a Commercial Forest zone as well.

It appears that the Coalition is asking that every RAID be invalidated with the exception of about three RAIDs which have no development potential. The reasons are not explained in the Coalition's brief, and say they will explain specific reasons at the hearing why they believe some of the RAIDs have boundaries too large and why some are simply not permitted. They also are arguing that Residential RAIDs should be sized based on the OFM forecast and the Non-Residential RAIDs should be sized based on need. The remainder of the Coalition's appeal is on concurrency and adequacy, claiming that the County has not implemented the Comprehensive Plan policies on affordable housing and are asking for a remand on that issue. The Coalition argues that the County allocated too much growth to the rural area and should increase the allocation to cities to a larger number. The last issue is a vesting issue related to the resort which appears to stem from a misunderstanding of one section of the zoning code, and that is being sorted out at this time.

Mr. Dearborn expected a decision any day from the Court of Appeals with regard to the ruling by Clark County Superior Court that the OFM forecast has no basis on planning for the rural area. In January, a new WWGMHB decision involving Mason County said their Rural Activity Centers have to be sized based upon the OFM forecast and he is still trying to figure out what the difference is between what they have done and what Island County has done because Island County did not size RAIDs based upon the OFM forecast.

The Coalition's portion of the appeal will rest upon the Growth Board making new interpretations of the law since the

1997 amendments and the real issue will be whether and to what extent they will take the Land Use Study Commission's report. If they take it as an indicator of legislative intent it will require them to change position on a number of issues they have already ruled on in terms of the 1997 amendments.

Commissioner McDowell asked Mr. Dearborn how he would be able to respond to the challenge on the RAIDs without specifics.

Keith Dearborn said he did not know how they could respond. He had expected that the Coalition would take a set of specific RAIDs and show where the boundary was not proper and explain why it was not proper under their interpretation of the law. He noted that for two or three RAIDs general statements were made, but nothing visual or narrative that would allow making a judgment.

To help understand the Coalition's argument on RAIDs, he found on the Internet aerial photos dated June of 1990. The County did not use those photos, rather took the Assessor's information and platting information as it existed in 1992 and began the boundary definition for Residential RAIDs, then expanded or contracted based on logical outer boundaries, as well as information from the Health Department and Public Works Department. One of the Coalition's arguments is: if you take the aerial photo and overlay the RAID there is a lot of land that by the aerial photo looks undeveloped. Staff indicates that while it may look undeveloped, if you pull the trees away you will see a lot of homes, water systems, septic systems and roads in those areas. The Coalition believes that all the information that defines RAIDs needs to be in existence on July 1, 1990 and anything looked at after that date had to clearly show in the record that where the County was adding or subtracting based upon the new information, and they feel that the County's process was fundamentally flawed because it did not use only information as of July 1, 1990 to establish the RAIDs.

One of the things Mr. Dearborn reminded was that if there were no RAIDs at all, it would only amount to 1700 lots that could not be developed out of the 40,000+ lots in the County. The County's numbers demonstrate that even if every parcel in the RAIDs were to be developed fully that would account for no more than 25% of the growth forecast, 75% of that growth forecast is going into the cities or the rural area. RAIDs are basically a very small part of the ability to accommodate the forecasted growth.

The Coalition does not want urban development in the Non-Residential RAIDs, essentially mentioning that all of the commercial and non-residential activity provided for in Non-Residential RAIDs has to be substantially modified or deleted. In the Light Manufacturing zone, the Coalition wants height limits, more stringent site coverage requirements, and limitations on uses and sizes of buildings. Mr. Dearborn did not see that as a big issue; the County has only two light manufacturing areas, both almost fully developed.

### **Public Input**

Rufus Rose felt it was important that the differences between the OFM numbers, Island County's estimates, and school district numbers somehow be resolved. He urged everyone to read the Land Use Study Commission's 1998 Final Report. He asked why the Board had not received the affordable housing and cellular tower remands that the Planning Commission finished in January. Mr. Rose requested he be informed how to find out exactly how much money had been spent by Island County on GMA and what the forecast of expenditures is in the future for GMA related activities.

Don Jewett, South Whidbey, suggested there seemed to be more government than the County can afford and asked the Board to try and simplify, combine and eliminate duplication.

Joint Workshop adjourned at 11:35 p.m. The Board of County

Commissioners resumed in Special Session at 1:30 p.m. as provided

in a separate Notice to the Press for purposes of meeting in

Executive Session.

**EXECUTIVE SESSION**

The Board met in Executive Session at 1:30 p.m., as allowed under R.C.W. 42.30.110 (1) (i) to discuss litigation with legal counsel representing the County. As indicated by the Chairman, the

Executive Session was expected to last approximately 1-1/2 hours. Any final action, if any, will be taken in a regular meeting open to the public. No announcement was made on conclusion of the Executive Session and the meeting adjourned at 2:45 p.m.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

\_\_\_\_\_  
Mike Shelton, Chairman

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Wm. L. McDowell, Member

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Wm. F. Thorn, Member

**ATTEST:**

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Margaret Rosenkranz, Clerk of the Board