

**ISLAND COUNTY PLANNING COMMISSION  
SUMMARY MINUTES  
COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA  
MONDAY, February 8, 2016**

|                   | <i>Members Present</i>         | <i>Members Absent</i> |
|-------------------|--------------------------------|-----------------------|
| <i>District 1</i> | <i>Val Hillers</i>             |                       |
|                   | <i>Dean Enell – Vice Chair</i> |                       |
|                   | <i>Karen Krug</i>              |                       |
| <i>District 2</i> | <i>Jeffery Wallin – Chair</i>  |                       |
|                   |                                | <i>George Saul</i>    |
|                   |                                | <i>Darin Hand</i>     |
| <i>District 3</i> | <i>James Caspers</i>           |                       |
|                   | <i>Beth Munson</i>             |                       |
|                   |                                | <i>Scott Yonkman</i>  |

Meeting was called to order at 2:04 p.m. by Chair Jeff Wallin.

**ROLL CALL:**

Commissioner Caspers, Commissioner Munson, Commissioner Hillers, Jeff Wallin, Commissioner Krug, Commissioner Enell.

Staff present: Hiller West, Director of Community Development; Beckye Frey, Long Range Planner; Nathan Howard, Long Range Planner; Keith Higman, Long Range Planning Interim Director; Dan Mitchell, Chief Civil Deputy Prosecutor.

**MINUTES**

NONE

**ELECTION OF OFFICERS**

Chair Wallin called for nominations for Chair.

- Commissioner Caspers nominated Commissioner Munson for Chair. Commissioner Krug seconded; Commissioner Munson declined.
- *Commissioner Hillers nominated Commissioner Enell for Chair. Commissioner Munson seconded; motion carried unanimously.*

Chair Wallin called for nominations for Vice-Chair.

- *Commissioner Enell nominated Commissioner Munson for Vice-Chair, Commissioner Krug seconded; motion carried unanimously.*

## **DIRECTOR'S REPORT**

Director West noted that Director Higman would inform the Planning Commission (PC) of Comprehensive Plan Update schedule changes later in the meeting unless they had any objections.

Chair Wallin agreed to the change of the agenda to allow Director Higman time to make his presentation.

## **ITEMS FROM THE PUBLIC**

### *Penny Hill, 3975 Violet Street, Freeland*

Ms. Hill wanted to speak to the PC regarding a code violation in her neighborhood. She presented a petition to the PC signed by 18 residents of the Beverly Beach neighborhood. Ms. Hill has been living at her residence for 6.5 years, 5.5 years of which there has been an illegal permanent campsite within 100 ft. of five inhabited residences. Ms. Hill mentioned that the person living on the property has half-ownership with his brother. She said that there have been septic and health violations as well as building code problems, and that the Sheriff's department is frequently called to the site. Ms. Hill mentioned that Code Enforcement Officer John Clark has an extensive file on this location, 1926 Moonlight Drive, Freeland. Ms. Hill and petitioners requested that the PC take steps to administratively resolve this situation. She provided the PC a copy of the assessor's parcel map and photographs of the site. Ms. Hill noted that the property owner had ignored an enforcement order deadline dated 1/24/16.

- Commissioner Enell asked the PC to consider a motion to direct the code enforcement officer to take the next reasonable step in regards to the January 24 enforcement order.
  - Director West stated he would check with John Clark to learn the status of this case, and then report at the next PC meeting.
- Commissioner Hillers thanked Ms. Hill for her comments, but voiced that this may be outside of the realm of the PC. She asked Director West to clarify whether this issue is within the scope of the PC.
  - Director West stated that it may be out of the realm, and that the PC's role was advisory and legislative one, rather than a code enforcement body. He explained the code enforcement process to the Commissioners, and noted that further legal action may be recommended after the enforcement order has failed. In this case, the next step is to pass the case to the Island County Prosecuting Attorney's office. Prosecutor Mitchell questioned whether the landowner had received a notice of violation or enforcement order, and thought it would be wise to clarify that before taking further steps.
- Commissioner Hillers objected to the PC's involvement with specific cases of code or zoning violations.
  - Prosecutor Mitchell referred the Commissioners to Code 16.08 of Island County for guidance on PC involvement on these items.
- Commissioner Krug highlighted the repetitive nature of this non-compliance, and noted that the system may not be working well in this case.

- Chair Wallin suggested, and Commissioner Enell agreed, that the issue be brought to the Board of County Commissioners (BOCC). Ms. Hill then noted that she brought this issue on John Clark's recommendation.

Chair Wallin asked for any other public comment, and when none was forthcoming, closed public comment.

## **NEW BUSINESS**

Chair Wallin began discussion to amend Island County Code (ICC) 16.13 and 16.19.

Director West stated that purpose of the amendments is to change the appeal process for Type I and Type III Land use decisions. These amendments would remove the BOCC from hearing administrative appeals. He referred the Commissioners to the materials they received by mail and email, on how other counties handle administrative appeals.

Prosecutor Mitchell and Director West presented information from Municipal Research and Services Center (MRSC), which offers information and research to county governments regarding use of a Hearing Examiner and the appeals process. The packet of information provided by MRSC contained the following:

- Memorandum by Mike Smith, Community Development Director, Ellensburg. This document was provided to the Ellensburg City Council and PC; which highlights pros and cons of using a Hearing Examiner for permit cases.
- Memorandum by Carol Morris, land use attorney in private practice. She writes about whether a city should change to a Hearing Examiner System, and why this system is best for Land Use Decisions.
- Background paper by Steve Reinig, Administrative Analyst to Washington Cities Insurance Authority (WCIA). This paper is most relevant to the amendments at hand. It speaks to the liability of Island County or even the personal liability of Island County Commissioners in the land use decision process. This paper also highlights how using a Hearing Examiner for land use appeals can reduce the liability to governments and Commissioners. This paper also points out that there is more direct accountability to voters in the Commissioner system.
- Article by Tanya Crites, of the WCIA. This article illustrates how to use a Hearing Examiner to the fullest extent allowed by RCW 35A.63.0170.

Director West noted that Island County currently has a Hearing Examiner, but the purpose of the above information is to assist the PC in making a decision.

- Should our Hearing Examiner be used to hear appeals on Type I decisions?
- Should Hearing Examiner decisions on Type III permits be final land use decisions? So they be can appealed only to District Court or Shoreline Hearings Board as provided by state law? Currently Island County Code states that they can be appealed to the BOCC.

Chief Civil Prosecutor Dan Mitchell introduced himself to the Commission, and noted he had helped draft the proposal on the table. He reiterated that the purpose of these amendments is to remove the BOCC from the appellate decision-making in Type I and Type III appeals. To help illustrate this proposal, Prosecutor Mitchell presented the following information:

- Charts of other counties' systems for land use appeals, and noted that other counties are using Hearing Examiners rather than Board of Commissioners for these types of decisions.
- He referenced the article by Carol Morris presented by Director West in stating that the Hearing Examiner is commonly used for Type II decisions, and many counties have no administrative appeal process at all for this type of decision. The only recourse in this scenario is for the appellant or third party to go to court.
- Prosecutor Mitchell stated that Type III decisions are open record and made by the Hearing Examiner after recommendations from the Planning Department, posted notice to a neighborhood, individual notice to local parties, and open record hearing for public input. Then the Hearing Examiner issues a decision with findings of fact and conclusions of law. Permit decision-making process allows for administrative appeal (Hearing Examiner of Board), but doesn't require it. Carol Morris notes in her article that these quasi-judicial, complex decisions are best left to Hearing Examiners, who have the expertise and training in land-use law.

Discussion between Director West, Prosecutor Mitchell and the Commissioners clarified the following points:

- Director West explained that Type I decisions are administrative decisions, usually issued by staff on behalf of the Director, and they require application of code, but are not generally very subjective decisions. Type III decisions are quasi-judicial and more involved, with more latitude for code application.
- If an appeal goes to BOCC or PC who may not have the expertise in land use decisions, those Commissions do seek counsel. In the case of Island County, Type III decisions should make use of the Prosecutor's office.
- Prosecutor Mitchell guides commissions in their decisions, although there is no legal requirement that he be called in to help.
- Many Commissioners would like for there to be provision for the PC or the BOCC to be allowed to reconsider a Hearing Examiner's decision. In the case of Benton County, the Hearing Examiner's decision is final, except the appellant can ask the PC or BOCC to reconsider the decision. This avenue may increase liability to Island County, but at the same time would increase the direct accountability to the public.
- There is neither special licensing nor training required for Hearing Examiners, however most are land use attorneys or former planning directors. The Hearing Examiner should, but isn't required to, possess experience in legal procedure, accepting testimony and evidence, familiarity with appearance of fairness and conflict of interest laws.
- In Island County currently, Type I and Type II decisions are issued by planning staff on behalf of the Director, and appeals are heard by the BOCC for Type I decisions. Type III decisions are issued by the Hearing Examiner, subject to public hearing, and appeals are

heard by the BOCC. None of these decisions are heard by the PC, which has a legislative and advisory function, not a ruling one.

- Counties differ in how they handle these decisions and appeals. For instance, Clallam County Assistant Director, who said that Clallam County had removed their BOCC from the appeals process on land use decisions.

The Commissioners had more specific questions, which Staff addressed as follows:

- Commissioner Hillers reiterated her understanding of the intent of the amendments, which is to remove the BOCC from the appeals process.
  - Director West confirmed that this is the case.
- Commissioner Krug asked that the BOCC have a right to review Hearing Examiner decisions if asked. She clarified this doesn't mean that the BOCC would hear the case again, but could review the decision if necessary.
  - Director West stated that the current proposal to amend ICC 16.13 and 16.19 does not include this provision.
- Commissioner Enell said that he would prefer that Type I decisions still be reconsidered by BOCC if necessary, to maintain accountability to voters. Commissioner Munson expressed doubt that accountability to voters could be maintained if the amendments are adopted as written.

Chair Wallin asked for public comment, and when none was forthcoming, closed public comment.

- Commissioner Caspers expressed that the PC and the BOCC are here to serve the public interests. He isn't concerned about liability or appearance of fairness. He advocated for the BOCC to be allowed to be part of the process, but not required. Commissioner Hillers opined that Commissioners should maintain balance between service and liability. Political pressure can result in inappropriate actions, resulting in too many people tweaking the system and not following the rules.

Chair Wallin asked his fellow Commissioners if the Hearing Examiner makes a decision, does the PC want to add BOCC reconsideration?

- Commissioner Krug said yes, and she would like this reconsideration to be final.
  - Prosecutor Mitchell noted this reconsideration would provide an opportunity to review a possibly incorrect decision. Some counties have reconsideration provision by either the Hearing Examiner or BOCC, either as an optional or required step before taking the case to court. He also noted that if we were to adopt these amendments with the provision that the BOCC has the ability to overturn the Hearing Examiner's decision, then the liability risks would remain the same as they are with current code.
- Commissioner Enell asked for clarification on what the Type I decision process involves.
  - Director West informed the Commissioners that Type I decisions don't involve SEPA, and are made in cases where there is no environmental impact. These

decisions do not involve a public hearing by code. This is a Ministerial decision which requires the application of certain standards provided by code. There is very little judgment involved, and decisions are made by staff in routine performance of their duties. The BOCC is requesting that these types of appeals are heard by the Hearing Examiner because his experience lies in that direction.

- Commissioner Munson asked what is the liability of the Hearing Examiner?
  - Prosecutor Mitchell replied that ICC provides that officers of the county, if operating in official capacity, are covered by Island County insurance policies.
- Commissioner Krug remarked that a Hearing Examiner's training reduces the risk to the county, since his decisions are more likely to be properly substantiated.
- Commissioner Enell reminded the PC that they are making a recommendation, and they would make no final decision at this meeting.

*Commissioner Krug moved that for Type I decisions that the Hearing Examiner's final decision be subject to optional reconsideration within 14 days by the Board of County Commissioners; Commissioner Enell seconded; motion carried, with Commissioner Hillers opposed.*

- Chair Wallin suggested a further discussion of Type III decisions, followed by a vote. Commissioner Krug asked for more information regarding the proposed amendment to Type III decisions.
  - Director West clarified that for Type III applications, the decision would be made by the Hearing Examiner. Appeals would be heard by Shoreline Hearings Board, Superior Court, or as provided under state law. He confirmed that the amendment would remove the current first level of appeal, to the BOCC.
- Commissioner Hillers observed that it seems appropriate that these more complex land use appeals be heard by a legal body instead of the BOCC. Commissioner Enell expressed that he would like to adopt the amendments for Type III applications, to keep the Hearing Examiner system in place but eliminate the BOCC from the process. Commissioner Munson would prefer to leave the code as it is, keeping the BOCC involved. Commissioner Krug agreed, and would like to offer the BOCC the possibility of reconsideration. Commissioner Hillers remarked that such complex appeals were likely to end up in court anyway, and wondered if this amendment to the motion would delay the process and increase expense.

*Commissioner Hillers moved that Type III remain as it is in Exhibit A, that the proposed amendment be adopted; Commissioner Enell Seconded; motion carried; Commissioner Munson and Caspers opposed.*

Director West stated that the proposed amendments would need a bit of reworking, and he would like to bring findings and conclusions for adoption at the first meeting in March.

- Commissioner Caspers stated that he would like PC to address Type II appeals.

- Prosecutor Mitchell explained that no changes are being proposed to Type II decisions. Currently the Director makes decisions, and appeals are heard by the Hearing Examiner.
- Director West noted that these applications can encompass variances, conditional uses, and sometimes third parties are involved in the appeals. Full notice is required under ICC.
- Prosecutor Mitchell agreed that in Type II applications, there is not an open record public hearing, but notice is publicly posted.

*Commissioner Caspers moved that the PC recommend that Type II appeals include the option of reconsideration by the BOCC, as was agreed in Type I appeals; Commissioner Munson seconded.*

- Commissioners Enell and Krug want more information and discussion before the PC moves on any Type II recommendations.
  - Director West reminded the PC that no changes were proposed for Type II items, and so another public hearing, with proper notice given, should be held to make changes to the Type II process.
  - Prosecutor Mitchell stated it is ok with him to make a suggestion to the BOCC on Type II items.
  - Director West explained that the Type II process is similar to the Type I process, but may include SEPA threshold considerations. This category can include conditional use, a Type I clearing and grading decision that involves SEPA because there are critical areas, such as wetlands or steep slopes. Type II can include preliminary short plats, planned residential development of four units or less, reasonable use determinations, zoning code interpretations, zoning setback reductions, shoreline substantial development permits. He said these more subjective decisions are made by staff with more training. These decisions can include mitigation conditions to reduce impact on adjoining properties. Type II decisions are made by staff, appealed to the Hearing Examiner, then the courts.
  - Prosecutor Mitchell noted that these policies have been in place since 1999.
- Commissioner Enell mentioned that much time is spent getting SEPA and critical area code right. He doesn't want to introduce too much subjectivity into these cases and prefers to keep these decisions in the hands of the Hearing Examiner, without option for reconsideration by the BOCC.
- The Commissioners asked what the associated costs for Hearing Examiner versus BOCC appeals.
  - Director West stated the fee for appeals to the Hearing Examiner are \$1802, while the fee for the BOCC is \$750.

*Commissioner Caspers moved to suggest the addition of optional reconsideration for the BOCC to Type II decisions. Commissioner Munson seconded; motion failed for lack of majority.*

## **DIRECTOR'S REPORT**

### ***Comprehensive Plan Update Scheduling***

Director Keith Higman and planning staff have been asked by the BOCC to formalize a schedule for the completion of the Comprehensive Plan. The Board wants to see a detailed work plan that includes meetings, dates, times, days, and decisions. He noted that a more detailed discussion of this topic would take place at the PC meeting on February 22, 2016.

During the discussion with the BOCC, it was recognized that the original plan to bring elements Comprehensive Plan forward on an individual basis couldn't be completed within the original deadline of June 30, 2016. Director Higman presented two documents to the board for information only, as they were not part of the original published package. He then asked the PC to meet jointly with the BOCC. All ideas can be discussed together, which will foster understanding of each other's processes.

Planner Beckye Frey stated that the Comprehensive Plan team have tentatively scheduled March 17 for the first of these joint sessions. Although more detailed discussion of this topic will take place on the 22<sup>nd</sup>, Planner Frey and Director Higman decided to present the schedule to the PC early, so the Commissioners would have time to review their own schedules. Director Higman noted that in this upcoming joint meeting, he would like the PC to weigh in on the public participation process.

- Commissioner Krug said that the PC had seen critical areas and the best available science, but that the Commissioners haven't seen the gap piece.
  - Director Higman assured the PC that this piece is coming, stating that the consultant had committed to a deadline. He noted that the Freeland sub-area plan and development regulations, rural area, and critical areas ordinance are all a part of this schedule.
  - Director Higman noted that lots of conversations need to happen before June. These conversations are going on a calendar that will be adopted as part of the Comprehensive Plan Update that will schedule these public conversations for the next steps after we attempt to meet the June 30 deadline.
- Commissioner Krug voiced her displeasure with the fact that we have already had public hearings on rural areas topics, and noted that we've already gotten the public all riled up, and is reluctant to rile them up for another year.
  - Director Higman remarked that there is some work that is part of the code cleanup process that involves adopting definitions, which is part of the rural areas conversation. He opined that there is a much broader and richer public conversation that needs to occur, but if we're asked to staff that conversation, other work schedules will suffer. He said that doesn't mean rural lands will be ignored, but public conversation will begin later, after the June 30 deadline.
- Commissioner Krug voiced that she is not happy that the PC had been told in 2015 that this rural lands discussion was to take place at this time. She expressed that its absence strains the credibility of the original timeline, but that she would review the definitions.

- Commissioner Enell asked for what date is the Freeland discussion scheduled?
  - Planner Frey stated that there will be a Freeland UGA, sub area, and development regulations discussions. There are three discussions planned, one in April, one in May, and one in June. She noted that the entire draft plan will be presented to the public later. She said that her department will provide more information at the February 22 meeting.

***Principal Planner Replacement***

Director Higman discussed the steps that are being taken to replace Brad Johnson, former Principal Planner. He noted that an RFQ has been published for professional consultants to assist to complete this. We have posted a job description for an Assistant Director as well as a Planner. The BOCC will evaluate the responses before deciding on its next steps.

*Commissioner Hillers moved to adjourn; Commissioner Enell seconded; Motion carried unanimously.*

Meeting adjourned at 3:55 p.m.

Respectfully submitted,

Allegra Clarkson