

# MASON COUNTY PLANNING ADVISORY COMMISSION

**Minutes**  
**January 26, 2009**

(Note audio tape (#1) dated January 26, 2009  
counter (#) for exact details of discussion)

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

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## **1. CALL TO ORDER**

The meeting was called to order at 6:00 pm by Vice-Chair Dennis Pickard.

## **2. ROLL CALL**

**Members Present:** Tim Wing, Dennis Pickard, Jim Reece, Diane Edgin, Debbie Jacobs, and Don LeMaster. Bill Dewey was excused.

**Staff Present:** Barbara Adkins, Susie Ellingson.

## **3. APPROVAL OF MINUTES**

The minutes from the September 15, 2008, September 29, 2008, October 20, 2008, and November 3, 2008 meetings were approved as presented.

## **4. NEW BUSINESS**

(#0050) The election of a new Chair and Vice-Chair for 2009 was tabled.

(#0125) Discussion with PAC regarding obtaining the results of their recommendations to the BOCC. They inquired of staff to bring back feedback regarding how the decisions by the BOCC were made in reference to whether they went with PAC recommendations or not. Discussion that this would aid the PAC with how their decisions may be made in the future. If the BOCC concluded something different from the PAC, that information should be forwarded to the PAC for future decision making. That would bring consistency to the recommendations that are made. It was proposed that staff reports back to the PAC on each of the recommendations they make to the BOCC. Also, if they choose to make a decision that's counter to the PAC's recommendation, staff should explain the details of why. Further discussion about the Stout rezone request and why the BOCC denied the request. Barbara Adkins explained they considered it 'spot zoning'

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and they are against those requests.

The question was raised as to how the Transportation Element was handled by the BOCC. Barbara Adkins explained the BOCC passed it without any changes that were forwarded on from the PAC. Charlie Butros did not incorporate the PAC's recommendations onto the BOCC.

Tim Wing commented that if we make a recommendation that is at odds with staff's recommendation, and staff doesn't change their mind, but in fact go before the BOCC and again make their same recommendation, which is not the recommendation we're making, we would be wise to send someone from our group to testify in front of the BOCC explaining our reasoning. If we think that's a fairly serious issue that we might decide to send someone in front of the BOCC to express our point of view. It's not because I think staff misrepresents us, but they're there and we are not.

Debbie Jacobs stated that the PAC can also send in a letter to be publicly read if we feel strongly about something as well.

Don LeMaster noted that instead of just having our discussions read in the minutes, that if we do disagree with staff, we should have a written point and a summary of that disagreement to be read along with staff's recommendation. There was discussion about who would write that summary and how it would get into the process.

Diane Edgin also stated that if we have a specific concern, we can always go to our own Commissioner and discuss it with them.

(#1000) Dennis Pickard opened the hearing on the continuation of the public hearing on the Fish and Wildlife Habitat Conservation Areas regarding Danger Trees. Since there was no public present to testify, Dennis closed the public comment portion of the hearing. Dennis noted one of the areas of concern is how much this can actually be applied, enforced, and practiced. He stated the consensus was that it would be preferable if a person could provide the county with a notice and if the county doesn't respond within a certain amount of time to say 'no', or 'you have to do something else', to have it approved by a lack of rejection by the county. We just didn't want people to be held hostage by the county if they can't get to it in a certain amount of time. The primary purpose of this is to educate the public so they do the best practices.

(#1100) Barbara Adkins noted her concern with the response time considering current staffing levels.

(#1150) Debbie Jacobs commented on the county's liability if the cutting down of a danger tree poses a direct threat to property and life and then it takes them 60 days to get back to them for approval and in the meantime the tree falls down and causes injury. One of the conditions is that it poses a direct threat to property and life. So there should be a sense of urgency.

(#1200) Don LeMaster noted there is no language now that talks about a sense of urgency.

(#1245) Dennis Pickard stated now it doesn't require notification or approval by the county. It requires essentially the same mitigation that we're looking at, but the regulations don't require an application or county approval.

(#1255) Don LeMaster noted it states 'The County is notified and approves the felling and mitigation. The County may require evaluation by an arborist or forester if the hazard is not readily apparent'. There's no time line. It's called 'danger tree' for a reason. My point is that given the staffing the county has now, it could be 60 days before someone actually got back to the person that has sought council on the 'danger tree'. I would agree there is potential liability there.

(#1270) Tim Wing stated this is a very complex issue because as soon as you say that you have to give us notice you want to cut the tree down, it's now in the county's court and they are going to be liable for someone who might get hurt or any damage that might happen who is waiting for 30 days or whatever for approval. Do you want to say that a tree that is in imminent danger of falling down that we can fell it with the approval of the local fire department, or some other method? I don't think anyone is going to jail for cutting a tree down that

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is a danger. However, there will be people who go down and cut trees that they don't like the look of and claim it was a danger tree. The county used to have rules regarding sanding the roads that said that within 20 minutes of ice on the road, they will have sanding trucks out sanding the roads. On the Old Belfair Highway, about 15 years ago, a woman with her two children slammed into some concrete. Her children were killed, and she was almost killed, and it cost the county about 2.5 million dollars because their documents said that they would be out there within a certain length of time. That's a dramatic example but the point is you become liable for things that you write down and say we'll do this within a certain length of time. I think that is a legal question.

(#1500) Barbara Adkins noted that's probably why this is written the way it is as it takes the responsibility out of the county's hands and left up to a professional. The language that's in there now doesn't put the liability on the county. It's between the homeowner and their professional.

(#1575) Debbie Jacobs comments if you take out 'a direct threat to property and life', that's the exception of the tree. If it's a tree that's a direct threat to the destruction of property or life, that could be an exclusion tree. So liability wise the county isn't holding up that direct threat.

(#1600) Don LeMaster stated it clearly would be much better to have someone cut down a thousand trees than to have one tree out there that falls on somebody's house because they couldn't get approval to cut the tree down.

(#1625) Tim Wing stated he doesn't know why this is even an issue in this county. He doesn't know who is driving this issue, but it doesn't make sense that we even need this policy.

(#1650) It was noted that Fish and Wildlife is driving this issue.

(#1675) Jim Reece stated if you have a danger tree, you ought to be able to photograph it, take the tree down, submit the photograph and list what you're going to do to mitigate the removal of that tree. The idea of a tree leaning over waiting for someone to approve it's removal could be disastrous.

(#1700) Debbie Jacobs stated that in Lakeland if anybody says they have a danger tree and they've identified it, we do not ask for an arborist anymore. We go look at the tree the next day and give them approval to cut it down because of the liability. If you're going to put yourself between the approval process of identifying a danger tree then you're going to take on the liability.

(#1765) Tim Wing noted that as soon as you put yourself in the position, or I know about the danger tree and fail to act, then that should be put in this ordinance. You should be able to give notice that you are cutting down the tree, and the county should tell you what you need to do to mitigate it.

(#1830) Don LeMaster stated it should be an 'over the counter' permit.

(#1850) Tim Wing inquired if staff could take this to our attorney and get the county's liability out of this.

(#1860) Don LeMaster added to express our concerns with having this kind of terminology in here.

(#1865) Barbara Adkins noted the PAC's desire to make it so that the county doesn't pick up the liability for this. We don't want this to be abused either.

(#1900) Dennis Pickard stated the majority of the people could care about this if they knew the existence of the rules.

(#1950) Tim Wing stated he is hearing a lot of comments about the timeline of this permit, but not about the policy, practice, or purpose of this. It seems that if we just agree that we generally accept the nature of this but we need the county to get out of the liability in this issue. That's the change to 'A' that I would like to see. That's my recommendation for a change as an alternative.

(#1980) Dennis Pickard stated if we just remove the two words 'and approves' under 'A', we're not having people wait for the county to approve something.

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(#2000) Barbara Adkins inquired what would be the way to make sure the mitigation is followed through with. If you're notifying them, how are you going to hold the person responsible to follow through with the mitigation?

(#2020) Dennis Pickard responded you still have the requirement that 'A' and 'B' must be met so you still have to notify the county and do those things. The county then has the opportunity when you notify them to instruct them of the mitigation requirements.

(#2100) Tim Wing stated so 'A' should read 'The county is notified prior to the felling and mitigation'.

(#2120) Don LeMaster stated no because if it's dangerous enough, they're going to cut the tree down. You don't want to be in noncompliance just because they want to protect their property.

(#2130) Tim Wing stated 'The county is notified of the felling . The county may require an evaluation by an arborist or forester if the hazard is not readily apparent. If the hazard is readily apparent, the property owner may proceed to fell the tree but must report their action to the county and mitigation must be implemented'. That rolls right into 'B' regarding the mitigation. I would like to see the legal department review this as well.

(#2140) Diane Edgin added and at that time, they're handed something that states what they have to do now that this tree is no longer there, and then you could put a time limit on these things need to be done within 'x' amount of time.

(#2220) Debbie Jacobs noted there would be an application made, the county can look at it and make a determination, and explain how to proceed with mitigation. Debbie inquired what would be the penalty for taking down the danger tree.

(#2330) Dennis Pickard stated what we're saying now is instead of having to have it documented by a professional forester, which is the status quo today, you have to notify the county. So you're protecting yourself by notifying the county.

(#2385) Barbara Adkins stated you're recommending this to the BOCC with these proposed changes.

(#2400) The PAC stated that is their recommendation. We also are requesting this be reviewed from someone in the legal department. As long as the legal department doesn't kick it back, we are recommending it move forward to the BOCC.

(#2430) Miscellaneous discussion.

(#2650) Dennis Pickard reiterated the most important thing is that the mitigation gets done.

(#2700) Tim Wing noted the only change the PAC would like to see is in 'A' to read: 'The County is notified of the felling'.

(#2715) Dennis Pickard stated he is comfortable with that.

(#2725) Tim Wing made a motion to change 'A' to read: 'The County is notified of the felling'. And secondly I would like to include in my motion that we recommend this entire policy be given to county legal staff to ensure the county is not taking on any liability for danger trees through the use of this policy.

(#2760) Don LeMaster seconded the motion. The vote was taken and the motion passed unanimously.

Meeting adjourned.