

MASON COUNTY PLANNING ADVISORY COMMISSION

June 3, 2013

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1. CALL TO ORDER

The meeting was called to order at 6:02 pm by Chair Jim Sims.

2. ROLL CALL

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

Staff present: Rebecca Hersha, Grace Miller and Allan Borden

Department of Ecology: Tim Gates and Rick Mraz

3. REGULAR BUSINESS

APPROVAL OF MINUTES

The minutes for May 20, 2013 were reviewed and approved as amended. Rob made the motion to approve and Bill seconded, the motion passed unanimously.

MEETING AGENDA UPDATE – SMP TIMELINE

Staff addressed the PAC meeting schedule. Rebecca explained that there were staffing issues with the July 1 PAC meeting. The PAC agreed to reschedule both July and August meetings. The July meetings will be held on the 8th and 29th, and the August meetings will be scheduled for the 12th and 26th.

4. SHORELINE MASTER PROGRAM UPDATE

Tim Gates with the Department of Ecology presented a Powerpoint presentation that highlighted the items on the agenda pertaining to regulations and policies under the Shoreline Master Plan (SMP) and the Comprehensive Plan.

NON-CONFORMING USES AND STRUCTURES

Tim started the presentation off with Non-conforming Uses explaining the guidelines and state law. A prepared staff report on Non-conforming Structures and Uses was submitted. This report, named Option 3, is an addition to the March 11, 2013 staff report given to the PAC. It was explained that Option 3 gives an alternative method of addressing existing uses and structures based on Kitsap County's draft SMP. These regulations implement the legislative option to classify existing structures as conforming, regardless of whether they are inside buffers (RCW 90.58.620).

Tim explained that all existing uses/structures can continue, be maintained, repaired, and replaced. The key difference for existing structures is expansions. Staff explained that you can go up to legal limit without a Variance

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with the existing footprint. But an expansion outside the footprint needs a Variance if waterward of the minimum setback.

Staff discussed the suggested Staff Report (Option 3) and clarified the key changes to the provisions. Tim explained that the first revision is to change the name to Existing Structures and Uses and strike Nonconforming Uses and Structures.

Title: K. Existing Structures and Uses

Staff explained that regulations would now fall under new subheads of 'Existing Structures' and 'Existing Uses'. The subheads were created for clarity. Staff continued their presentation with Title K 1.3. The issue with upward expansions and the impacts to views were discussed.

- 1.3 Lawfully constructed conforming structures may be expanded by addition of space above the existing building footprint up to authorized heights without a Variance. Upward expansions shall minimize impacts to existing views of the water to the greatest extent practical.

Staff asked how to make the provision more specific. Rebecca explained that there were no view protections outside of the shoreline jurisdiction. It was determined to make the General Regulations more specific to view protection and to address the issue in the SMP under 17.50.055.F Views & Aesthetics.

Rebecca commented that there was no definition for 'building footprint' and suggested that it be added under 1.3. It was discussed in detail. The PAC agreed that the building footprint would be measured from the roofline.

Kristy questioned 1.2 and asked if 'rebuilt' should be added to it for consistency. All agreed, including staff to add 'rebuilt' to 1.2.

- 1.2 Lawfully constructed structures may continue and may be maintained, rebuilt and repaired in accordance with the Act and this Program.

Tim continued with the presentation of Option 3. He explained that 1.5 addresses the placement of manufactured homes is based on a provision from the Resource Ordinance. Staff explained why you could replace a manufactured home in a larger footprint. This would accommodate the homeowner when replacing a single-side to a double-wide manufactured home, where the increase is less than 50% of the existing home, without getting a Variance. The PAC discussed it in length.

- 1.5 For the replacement of manufactured homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of a single-wide manufactured homes to double-wide manufacture homes. Applications for such replacements shall submit a Habitat Management Plan that identifies measures to protect habitat and mitigates for unavoidable impacts. The replacement home may be no closer to the shoreline than the existing residence. A proposed increase less than 50% of the existing home shall not require a Variance.

Rob suggested the language be changed and not use specific wording of single or double-wide, but instead use percentages. Cathi suggested using the wording 'square footage of the structure' along with the percentage. For example, 50% square footage of the structure. She also suggested that this would not include carports or covered porches.

The discussion of derelict properties was discussed. Vicki referenced 2.4 under Existing Uses and asked if this would apply to 1.5. Tim explained that it is a residential use. Jim suggested that the PAC stay on track and continue until they are finished with Existing Structures.

Cathi asked if 1.4 would include removing a single-wide manufactured home and replacing it with a stick-built house that exceeded the footprint and would this include a Variance? Staff explained no Variance would be required if you stayed within the footprint. Cathi asked if you could go 50% bigger? It was discussed in detail. Rebecca asked what the original intent was. Wasn't the intent to allow someone to replace a smaller manufactured home with a larger one because it is hard to find the exact same size?

Staff answered no, this provision is only allowed for manufactured homes without a Variance. It was explained that if you wanted to build a stick-built house larger than the footprint, you would need a Variance, if you are in the setback.

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Staff suggested adding the word 'setback' to 1.5

The original wording and origin from the Resource Ordinance was discussed. Staff explained that the current language of the Resource Ordinance allows you to repair, remodel or alter existing buildings up to 10% more than the existing footprint. It was discussed in detail and the PAC agreed that the wording would include square footage of the entire structure not just what is in the buffer.

Tim continued the presentation with 1.6 explaining that the time period was changed from 6 months to two years on structures that had been destroyed or damaged.

Tim explained that 1.7 was direct from Ecology's rule.

- 1.7 An existing structure which is moved any distance on the subject parcel shall conform with the Program to the maximum extent practicable

Cathi asked if you could get an extension to the two year's on 1.6.

- 1.6 In the event a lawfully constructed structure is damaged or destroyed by fire, accident or the elements, it may be reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed, provided applications for permits are submitted within ~~two (2)~~ five (5) years of the date of damage.

Jim suggested that new language be added 'extensions to the permit application requirement can be requested from the county,' or change the timeframe to five years from two. Barbara Adkins stated that if the PAC allow extensions, then there needs to be guidelines. They need to make clear what qualifies for an extension. It was discussed and the PAC agreed to change the timeline allowed on 1.6 from two (2) years to five (5) years.

Bill asked staff to add 'away from the shoreline' on 1.7. Staff explained that it has to conform from the Program and it would be redundant. Rob asked about moving a structure closer to the meet the common line. It was determined that the current language would allow that. The PAC discussed and agreed to leave provision 1.7 as-in with no revisions.

There was a 10-minute break.

Chair Jim Sims addressed the PAC regarding the letter received from Master Builders. He said that the changes they have made address what was in the letter dated May 20, 2013. Ken disagreed, stating that they would not be aware of Option 3, Kristy agreed, saying that the letter only addressed Option 1 and 2. They suggested sending Option 3 along with a letter addressing the changes made and asking them if they have any additional comments or concerns. The PAC agreed and asked staff to send a follow-up letter to Olympia Master Builders.

EXISTING USES

Tim continued the presentation with Existing Uses of the Option 3 handout. Non-water oriented commercial uses were discussed. He explained that under provision 2.2 both conforming and non-conforming uses may continue, but non-conforming uses shall not be enlarged or expanded. It was discussed in length.

Kristy asked for a definition of non-water oriented industrial. Staff explained that water oriented commercial would be anything related or oriented toward the water. Staff explained that there are two categories, water oriented and non-water oriented. Water-oriented has several subdivisions in it, they include water dependent (which is the most dependent), water related (which is almost water dependent, but is economically more useful to be near the water for transit purposes), and water enjoyment (restaurants). He explained that non-water oriented would be opposite, like a clothing or antique store.

Staff discussed in detail and asked about value added to being in the location. It may not be dependent on the water, but they benefit from the location. Staff explained that the business does not have to be there to function, but can exist outside of the shoreline. It was explained that the reason that restaurants are included as water dependent is that they function to provide public access in the form of views to patrons, they are typically full of windows and give the public the opportunity to enjoy the water.

Vicky commented that all the definitions have been defined.

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Changing the use was discussed in detail. Cathi asked for clarification from staff. Rick explained that if you change to a conforming use it is allowed. But if you change to a non-conforming use, then you would be required to submit a Conditional Use Permit.

Rebecca commented on the language of 2.2 saying it was confusing and it needs to be clarified with a Conditional Use Permit.

2.2 All lawfully established uses, both conforming and non-conforming, may continue, and may be repaired, maintained, or replaced consistent with the Act and this Program. Nonconforming uses shall not be enlarge or expanded.

Eric Schallon of Green Diamond Resource Company commented that the language does not work. He was concerned that a use, which is non water dependent, works on the water. Would you kick out that tenant because they are not dependent on the water? It was discussed in detail.

Monica Harle of Shelton, asked if the WAC retains the limitations on expansion under WAC 173-27-080(4)? Staff suggested that the provision should be consistent with permitting and add the new language to support it.

It was determined by staff and the PAC to change the language by striking 'shall not' and replacing with 'may be' and add to the last sentence 'with a conditional use permit.'

2.2 All lawfully established uses, both conforming and non-conforming, may continue, and may be repaired, maintained, or replaced consistent with the Act and this Program. Nonconforming uses ~~shall not~~ may be enlarged or expanded with a Conditional Use Permit.

Eric Schallon asked what environmental good is being done by requiring a Conditional Use Permit if there are no new impacts? Staff commented that this is a shoreline zoning ordinance as well as environmental protection. When you are asking for a Conditional Use Permit, there is criteria that must be met with consistency to surrounding uses. The potential for cumulative effects of similar uses being authorized in the vicinity, the environment is one of those elements.

It was discussed in detail. The distinction of water-related uses, how they are defined and tourism as an industry was also discussed in detail. It was determined that staff will revisit the issues of existing uses, expansions and enlargements in existing buildings with Conditional Use Permits and look to see if other Master Programs have creatively dealt with the same issue.

Tim continued the presentation with provision 2.4 and Discontinued Uses. Jim asked if a permit is required when one use ends and another starts? Staff affirmed with a change-in-use permit. If a business closes and then reopens 12 months later, it would not need a permit.

Eric Schallon asked what would happen to a locally owned shop that closed due to the economy? Would they be required to go through a big process just to reopen their shop?

It was discussed if they should delete 2.4 altogether.

Staff suggested leaving the wording non-conforming in 2.4. Bill asked why non-conforming uses, why apply it to all uses? What if it was a conforming use? Staff suggested changing the language of 2.4.

Harvey Scott asked what the definition of 'discontinued' was in regards to a business closing. Staff discussed in detail. Cathi asked if they could expand the definition of 'conforming' to include businesses that are not necessary water dependent or water oriented, but are appropriate for occupying an existing building.

2.4 If a non-conforming use is discontinued for ~~twelve (12)~~ twenty-four (24) consecutive months or ~~twelve (12)~~ twenty-four (24) months during any ~~two (2)~~ four (4) year period, any subsequent use, if allowed, shall comply with the Act and this Program.

Staff gave the option of deleting 2.4, clearly defining 'discontinued', or increase the 12-month period or not striking the word 'non-conforming'. It was agreed by the PAC to keep the wording 'non-conforming' and increase to '24-month' and '4 year'.

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Staff agreed to look for an existing definition of 'discontinued' and refine it.

DELETED REGULATIONS

Tim discussed the deleted regulations in Option 3. Vicki requested that all wording be consistent regarding the use of non-conforming, existing non-conforming, etc. She wanted to make sure that it was clear for the public. Staff agreed.

Harvey Scott asked if 'overwater' can be defined. Staff explained that the definition would be defined with the 'ordinary high water mark' definition.

VIEWS & AESTHETICS

General regulations and policies of Views and Aesthetics were discussed. Tim went through the policies explaining that the language for D. Views and Aesthetics were new.

IX-2 SHORELINE MANAGEMENT PROGRAM POLICIES – GENERAL

D. Views and Aesthetics

1. This program seeks to minimize obstructions of the public's visual access to the water and shoreline from new shoreline developments while recognizing private property rights.
2. Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as estuaries, bluffs, beaches, vegetative cover and historic sites/structures.
3. Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological, aesthetic values or slope stability.
4. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.
5. The County should achieve aesthetic objectives by implementing regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards, sign control regulations, appropriate development siting and maintenance of natural vegetative buffers.

Kristy suggested to add language to D.1 that would say something about private property rights. Bill asked if they could just remove the word 'public's'. Tim explained that this is policy language and the program is to set direction. Staff suggested adding 'while recognizing private property rights' to the end of the sentence of D.1.

Tim continued discussing the addition of Views and Aesthetics in 17.50.055. Kristy asked if the word 'new' should be added to F.1 It was discussed in detail. The PAC agreed to add new to F.1 as discussed.

Harvey Scott commented on F.1.C adding that it was too vague and needed explanation. The PAC agreed to strike F.1.C.

Staff discussed, in detail, if the language should have 'residential' listed under 1.a. and remove b, c, d and e altogether. The PAC agreed to strike 'shall' and add the word 'should' on 1.a. and delete b, c, d and e.

17.50.055 General Regulations

F. Views and Aesthetics

1. The following standards shall apply to new developments and uses within the jurisdiction of this Program:
 - a. Where commercial, industrial, multifamily and/or multi-lot developments are proposed in locations that would interrupt existing shoreline views, primary structures ~~shall~~ should provide for reasonable view corridors.
 - b. ~~Buildings shall incorporate architectural features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.~~
 - c. ~~Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.~~
 - d. ~~Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.~~
 - e. Any other design standards included in community plans or regulations adopted by Mason County.

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Tim continued with F.2 discussing walls and fences regarding view protection and the maximum 30" height limits in the buffer. It was discussed in detail. It was explained that a fence or landscape wall will require a Variance for all new construction.

2. To preserve aesthetic characteristics and minimize environmental impacts:
 - a. For new residential construction, no fence or landscape wall shall be erected, placed or altered closer to the water than the landward edge of the required setback line;
 - b. If an existing primary dwelling encroaches into the required ~~buffer~~ setback, fences or landscape walls may be allowed in the required ~~buffer~~ setback consistent with MCC 17.01.110.F(2), provided they do not exceed twenty four (24) inches in height;
 - c. Fences or landscape walls that exceed twenty four (24) inches in height must be sited at or behind the building setback line;
 - d. Fences and landscape walls shall not be allowed waterward of the ordinary high water mark.

Staff explained that they need to revise some definitions and regulations in the Resource Ordinance that conflict with each other. The PAC agreed to revisit the issues until staff had reworked the definitions. Tim asked the PAC for further guidance. Tim went through the proposed changes to F.2 A through D. He emphasized that this is for new residential construction. Staff would change the wording 'buffer' to 'setback' in 2.B to match what the Resource Ordinance says.

Bill asked about a farmer placing a fence across a creek. Staff explained that they would require a Variance because this is a 'new' fence. It was also explained that any structure within the buffer or setback, would require a Variance. A fence is considered a structure.

Rebecca also explained that the current definition for landscape walls would be corrected. Vicki asked if terraced walls with pavers are considered a landscape wall? Rebecca explained that it currently states if you plant a non-native species in a line that serve as a wall or block a view, it may not be allowed per case law. But native plants or species, it is allowed. It was discussed in detail.

There was discussion regarding the placement of fences, heights and landscape walls. The PAC asked staff to combine B & C. Staff added that a fence is allowed for an existing residence, to have a fence placed waterward of the common line, but it needs to say where the fence can end. The language in the Resource Ordinance will also have to be corrected to accommodate these changes.

The PAC discussed the issue with fences and landscape walls for new construction. Staff explained that they need direction from the PAC in order to revise the regulations. Ken asked staff to research the Kitsap County SMP. The PAC requested that the height limit of fences and landscape walls be revised to 48".

5. NEW BUSINESS

There was no new business.

6. ADJOURNMENT

Meeting adjourned at 9:12 p.m.