

**ISLAND COUNTY PLANNING COMMISSION
SUMMARY MINUTES
COMMISSIONERS HEARING ROOM
TUESDAY, MAY 23, 2006**

MEMBERS PRESENT: Mike Joselyn Ray Gabelein
Bill Massey Val Hillers
Scott Yonkman Deb Eidsness

MEMBERS ABSENT: Wayne Havens Sheilah Crider
Alan Schell

ITEMS FROM THE PUBLIC

There were no items from the public.

PLANNING DIRECTOR'S REPORT

Phil Bakke, Planning Director, updated the Commission on the new Surface Water Quality Monitoring Program. On the direction of the BOCC the salmon recovery and surface water efforts have been transferred from Public Works to Planning. The BOCC is considering a \$300,000.00 + six month interim budget revision to help fund the program and additional staff members.

UNFINISHED BUSINESS – Public Hearing

Adoption of County code provisions pertaining to appeals of SEPA Threshold Determinations issued in conjunction with Type IV legislative actions initiated pursuant to Chapter 36.70 RCW (the Growth Management Act).

Jeff Tate noted that this issue has been before the Planning Commission at their two previous hearings. Staff brought it before the Planning Commission to fix a problem that currently exists in the code. The code currently states that if you appeal a threshold determination on a legislative action it will go before the Hearing Examiner and then to Superior Court. GMA action appeals go to the GMHB so the SEPA appeal should be packaged with that and go to the GMHB.

During the April 11, 2006 hearing Mr. Massey pointed out that the definition for “aggrieved party” referred to land use decisions. Staff revised the language to include the term “or determination” which expands it out of the realm of just a land use decision on a project action.

Public comment from WEAN was received during both public hearings. In their comments WEAN provided three decisions issued by the Western Washington Growth Management Hearings Board (WWGMHB) in Island County cases that address standing to bring SEPA claims under GMA. Staff met with Josh Choate, Deputy Prosecutor, to look at some case law and what the SEPA statute says. The GMHB ruled, in these three cases, that there was a flaw in the County's ordinance in that it has the appellant going to Superior Court rather than the GMHB. They granted standing and allowed the SEPA issued to go before them in these cases but they also pointed out that the parties failed to adequately brief the issue of whether the GMHB should be evaluating SEPA determinations or not and they were still holding out judgment.

He felt that was an important point in that the GMHB was stepping in to fill a void but clearly there is case law in the SEPA statute that establishes a process at the local level for making threshold determination appeals. It is staffs recommendation that the Planning Commission provide a recommendation to the BOCC to approve this amendment.

Josh Choate, Deputy Prosecutor, commented that the WWGMHB feels pretty strongly that the GMA standing standards should apply to SEPA issues that come before them. The Central Washington Growth Management Hearings Board since 1995 has felt that the GMA and SEPA are two separate statutes with two separate sets of procedures and each should be respected.

Aside from all that what we are talking about is what the County's policy decision is regarding standing. The County has the authority to create its own appellant process and it has done that and it has a standing requirement that requires people who go before the Hearing Examiner to be affected by the decision. The GMHB allows standing to anyone who has testified either written or orally.

WEAN has objected to the County's standing requirements. They want the County to use the same standing requirements that the GMHB uses, but the County is under no legal obligation to deviate from the procedure that it already has in place.

With regard to the legality of having SEPA appeals of non-project determinations happen before the BOCC changes the code or takes their final action, SEPA itself ordinarily authorizes appeals to come at the same time as the final county decision with four exceptions. One of those exceptions is SEPA determinations that are made in connection with non-project or legislative decisions and the State Supreme Court has recognized several reasons why counties would want it to be that way.

He noted a case entitled "*Citizens for Clean Air vs. City of Spokane*" where a citizens group wanted to appeal an Environmental Impact Statement that the county prepared in connection with its decision to create a refuge incinerator. The citizens group tried to appeal it directly to the court and the county argued that it should be appealed to the

county first and the court agreed. The court noted that one of the reasons for having this early stage appeal was to provide a more efficient process and allow an agency to correct its own mistakes so you don't get all the way through the entire legislative process without knowing whether or not there are going to be objections to the SEPA determination. The SEPA determination is an early step in the process and it seems that you should be able to correct problems with that before you get all the way down the road of public hearings and ultimately a change in the county code.

Bill Massey moved to recommend to the Board of County Commissioners adoption of county code provisions pertaining to appeals of SEPA pursuant to Chapter 36.70A RCW. The motion was seconded by Val Hillers and carried unanimously.

Mike Joselyn moved to authorize the Chairman to sign findings and a transmittal memo to accompany their recommendation to the Board of County Commissioners. The motion was seconded by Deb Eidsness and carried unanimously.

Staff presentation of Comprehensive Plan Annual Review Amendment – CPA 167/06 – Review of Accident Potential Zones surrounding NAS Whidbey

Anthony Boscolo, Planner, addressed changes that need to be made to the Comprehensive Plan with regard to APZ's surrounding NAS Whidbey. Currently the Comprehensive Plan has general language about airports (private and military) and development limitations around NAS Whidbey. The statistics on NAS Whidbey operations data is outdated and there is no actual delineation of Accident Potential Zones (APZ's)

One of the problems currently with the way the Comprehensive Plan is set up is that these statistics and language about NAS Whidbey is separated through multiple sections. Staff is proposing to bring together all those issues into a single section so that it is easy to find. The statistics have been updated regarding employment, population, and economic benefits to Island County. Staff wants to ensure that future laws and codes regulate development to protect the future use of the naval airfields.

Mike Kershner, Planner, addressed the changes to the Island County code. A new Chapter of code will be produced which will create development standards within the APZ's. These development regulations were based on recommendations from the Navy's AICUZ update. Staff has singled out a few of the uses that will be largely indicative of the uses that will be in this zone. A more detailed list is shown on Table 6-3.

Land use comparison: Navy Recommendations and Island County Code

Type of Land Use (permitted by IC)	Navy Recommendations	Island County Code
SFR	No explicit	Allowed in APZ-1 & II

	recommendations	
Guest Cottages	Allowed in APZ-II	Allowed in APZ-II
Communication Tower	Allowed in APZ-I & II	
Home Occupation		
Business office	Allowed in APZ-II	Allowed in APZ-II
Day Care Nursery	Not allowed	Allowed in APZ-II
Bed & Breakfast Rooms	No explicit recommendation	Allowed in APZ-II

Most of the parcels in the APZ's are zoned Rural and most will be able to have houses on them. The Navy has no explicit recommendation on whether houses should be allowed in any of the zones. He thought that was largely a political decision based on the fact that if you do not allow houses it effectively acts as a taking. Most of the parcels in the clear zone are owned by the Navy and there is enough room on those parcels to put houses outside of the actual clear zone as well.

The Navy allows Guest Cottages in APZ-I and communication towers in both APZ-I & II as long as there is no above ground transmission lines from those communication towers.

In Table 6-3, Suggested Land Use Compatibility in Accident Potential Zones, the Navy's land uses and the County's land uses don't always match up. Staff tried to match up some of those uses that our code regulates such as home occupations or home industries with uses listed in the Navy's recommendations. One of those was business office for professional services which the Navy allows in APZ-II. That type of use falls under the County's home occupation uses. The Navy does not have a use that fits with day care nurseries. The closest use was hospital/nursing home. A day care nursery provides for up to 6 persons and staff did not feel that was adding a large amount of people to the one single family residence where it would be located. The Navy had no explicit recommendations for Bed & Breakfast Rooms which can accommodate up to two rooms and staff felt that was equivalent to a single family residence and should be allowed in APZ-II.

Additional conditions of development include the following:

- Should any of the uses be listed twice (e.g. A bed and breakfast inn is also considered a Home Industry), the more restrictive standard shall apply.
- No subdivision of lands, including PRD's, shall occur within the Clear Zone or APZ-I.
- For all utilities and communication development in APZ-I, no above ground transmission lines are permitted.
- Parcels may complete a Farm Management Plan for the purposes of agricultural/forestry management but not the allocation of Earned Development Units.

In the staff report a maximum building coverage of the gross site area of all structures of 10% for APZ-I and 20% for APZ-II was suggested. Staff has since looked at that requirement and determined that the size limits are either extremely large or extremely small and do not act as an appropriate development regulation and therefore proposes to strike that code language.

No subdivision of lands in the clear zone or APZ-I is based on the recommendations from the Navy that state that the minimum density in those zones should be kept as low as possible. Additionally there are only 11 Rural zoned parcels within the APZ-I zone that can be subdivided. Subdivisions would be allowed in APZ-II which is where a majority of the parcels are located.

Staff felt that a Farm Management Plan for the allocation of EDU's was adding density and against the Navy recommendations.

Ray Gabelein asked if a farmer would be allowed to take EDU's from land he owned in one of the APZ's and apply it to land he owned that was outside of the APZ's.

Mike Kershner said that had not been discussed but he would assume that it would be allowable as long as it was outside of the APZ's.

Phil Bakke suggested that the Planning Commission in their recommendation direct staff to ensure that transferring EDU's from farmland that is located in APZ-I to lands outside of APZ-I be allowed.

Scott Yonkman asked if it would be possible or advisable to have a variance process for certain conditional uses in APZ-I.

Mike Kershner said because the uses are based on Navy recommendations he did not know whether those uses could be expanded upon, however the suggestion of a variance process can be forwarded to Navy for their recommendation.

Bill Massey said just from a political standpoint B & B's and day care are not the kinds of uses you want within a crash zone. It would be his recommendation to remove those uses.

Mike Kershner said they would be discouraged but they are considered home occupations. He pointed out that B & B Inns are not allowed in either APZ-I or II.

With regard to Lot Size and Density the current zoning pretty much limits the density in the APZ's to what the Navy feels is appropriate. PRD's would be allowed in APZ-II with a ½ acre minimum lot size requirement. The farm worker dwelling units allow for one dwelling unit per acre and allows for clustering. Obviously, if a farmer has 20 acres he is not going to put those 20 dwelling units all over his parcel he is going to cluster them.

These new changes will ensure that future codes protect the health, welfare and safety of future citizens who choose to live in those zones as well as protect encroachment issues in the future and ongoing use of NAS Whidbey.

Bill Massey said with regard to PRD's in APZ-II even though there is a ½ acre minimum you could have 4 or 5 houses clustered at the end of a cul-de-sac in a crash zone. Most of the land in APZ-II is 5 acre parcels and he thought it was appropriate to leave it that way and not allow PRDs.

Phil Bakke noted that staff talked to Rich Melaas, Community Planning Liaison for NAS Whidbey about the PRD issue and what it boils down to essentially is statistics. If you don't cluster the houses you have more spots on the landscape and less open space.

Bill Massey pointed out that 5 acre tracts are very impressive when you are talking to someone at the Pentagon as opposed to ½ acre tracts whether they are clustered and leaving open space or not. That is why Island County is way ahead of the curve as compared to other bases around the country.

PUBLIC COMMENT

There was no public comment on this issue. Public comment was closed.

Scott Yonkman asked if any changes had been made to construction standards in the noise zone.

Phil Bakke noted that in 2002 in conjunction with adopting the Oak Harbor/Island County Interlocal Agreement the County went through a very extensive review of the Noise Attenuation Code to correspond with Oak Harbor's and are proposing no additional changes as part of this update.

He pointed out that property owners surrounding the base have already gone through some significant changes in their zoning. In 1998 the zoning in that area was downzoned from Residential 3 ½ du/acre to Rural 1du/5 acres and that was probably the biggest step that the County could have taken then or today to address the public health and safety.

Ray Gabelein asked if it was the Navy's recommendation not to allow the subdivision of land in APZ-I.

Mike Kershner noted that there was nothing specific in their use table that says that however within the large ACUIZ document they do state that the density in APZ-I should be kept as low as possible.

Ray Gabelein said he was still hung up on the fact the he did not consider 1 du/5 acres high density.

Bill Massey asked if staff was looking for closure on this item today.

Phil Bakke noted that this item will be set for deliberation with the other docket items probably in July.

Ray Gabelein wondered if it would be possible to talk to the Navy about their feelings on subdivision in APZ-I.

Bill Massey commented that Oak Harbor in particular and Island County have been involved in this process since 1991. Cities and counties around the country have allowed densities to increase slightly here and there from time to time so that eventually the density is at the point that they have so many complaints they can't operate effectively. He is supportive of not allowing PRD's and staffs recommendation to not allow additional densities in APZ-I. He felt they should put as much emphasis on protecting NAS Whidbey as they possibly can. He reiterated that from a political standpoint he was very opposed to uses like day care and B & B's in a crash zone.

Phil Bakke indicated that by their annual review docket deliberations in July staff will have been able to talk to the Navy about the subdivision issue and they will also take another look at the home occupation standards.

The meeting adjourned at 10:00 a.m.

Respectfully submitted,

Pam Dill
Administrative Assistant