

**ISLAND COUNTY PLANNING COMMISSION
 COMMISSIONERS HEARING ROOM, COUPEVILLE, WA
 Mach 23, 2010**

	Members Present	Members Absent
District 1	Val Hillers	
	Dean Enell	
		Mike Joselyn
District 2	Terry Reynolds	
		Vacant
	Mahmoud Abdel-Monem	
District 3	Wayne Havens	
		William Lippens
	Scott Yonkman	

Chair Terry Reynolds called the meeting to order.

ROLL CALL

Wayne Havens, Dean Enell, Terry Reynolds, Mahmoud Abdel-Monem, Scott Yonkman, Val Hillers

Staff Present: Robert H. Pederson – Island County Planning Director, Kyla Walters – Current Use Planner, Justin Craven – Critical Areas Planner

Also present: Larry Kwarsick – Sound Design, agent for ZAA 213/08

APPROVAL OF MINUTES

February 8, 2010

Commissioner Hillers moved to approve the minutes as written, Commissioner Yonkman seconded, motion carried unanimously.

ITEMS FROM THE PUBLIC

None

PLANNING DIRECTOR’S REPORT

Planning Director Robert Pederson provided a briefing on County business

Rex Porter has resigned from the Planning Commission due to a schedule that is too tight.

2010 Docket Items

Listed in the order of priority

Parks Plan – Public Works, with assistance and funding from Whidbey Camano Land Trust has hired a consultant to work on that project. It was part of the 2009 Docket and will finish this year before the Planning Commission. There will not be a large commitment from the Planning Department as Parks is now part of Public Works.

Shoreline Mater Program (SMP) Update to be coordinated with the **F&W update**; will be a three year effort, hopefully coming to fruition and adoption in 2012. There is also State funding associated with this item. There will be ongoing work during the year, with updates throughout the course of the year. The Planning Commission however, will not see any work product this year.

Oak Harbor UGA from the 2005

This item is a left over issue from the 2005 Comprehensive Plan Update. It has been essentially in a state of limbo since May of 2008, when the County withdrew the SEPA Mitigated Threshold Determination of Non-Significance for that project and indicated they would be issuing a Determination of Significance, which would require an Environmental Impact Statement. It appears nothing has happened since then.

Procedural the next step is for the County to take action with respect to a new SEPA Determination and then move forward with whatever course that leads to. The docket item has been through the Planning Commission in 2005, so once the SEPA process is completed it would go to the Board of County Commissioners for final action on that request.

Freeland Sub Area Plan

Is a continuing effort which is actively being worked on throughout this year, recognizing that the implementation and completion will be carried through the year and into the next year, as resources are available.

The remaining items exceed available resources, which is also why other items did not get to the final list. It is also why the Docket items were given a priority, to allow for continuing work as resources are available.

Timber Open Space

This fifth item is not an actual docket item, but is ongoing work and a long range planning item. It is the annual application process for the Public Benefit Rating System and Timber Open Space Tax Program. There are eleven applications in those two areas this year and that work will be ongoing.

Accident Potential Zone (APZ) for NAS Whidbey, OLAF

There are some very large policy discussions and implications opening up this subject matter. We will be at least establishing a work program for that effort, framing out a work program of what needs to be done. Due to the public outreach and the number of affected property owners it would be a very large policy consideration and likely a large amount of controversy, requiring considerable staff time.

Mr. Pederson provided an update of the schedule for the next meetings on the Ebey's Design Regulations to discuss the Design Manual between the Board of County Commissioners and the Mayor and Town Council will be April 6th at 9:00 a.m. in the Commissioner's Hearing Room.

There will be a follow up meeting on April 13th, scheduled from 9:00 a.m. to Noon.

NEW BUSINESS - Public Hearing

ZAA 213/08.

Applicants, Leonard & Susan Perry, propose to rezone parcel No. R22913-200-0970, an 18.5 acre parcel from Commercial Agriculture to Rural Agriculture, amending Island County Zoning Code Map # 321. The parcel is located on south Whidbey.

Kyla Walters provided the staff presentation. The application states this parcel was zoned in error. The applicant's claim the parcel does not meet the designation criteria for the Commercial Agriculture Zone as listed in the Island County Comprehensive Plan and the Island County Zoning Code because it is less than 20 acres in size and it is within a Diking District.

Staff finds this claim to be inaccurate. At the time of designation it met the designation criteria for Commercial Agriculture and therefore cannot be considered an error.

Ms. Walters provided slides of the designation criteria as follows:

From the Island County Comprehensive Plan:

Commercial Agriculture Lands (CA)

Definition:

Areas that meet the definition of RCW 36.70A.030(2): "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, or livestock, and that has long term commercial significance for agricultural production".

Designation Criteria:

- A. Lands which meet the following criteria have been designated as agricultural lands of long-term commercial significance.
 1. The Parcel is at least 20 acres in size; and
Island County Comprehensive Plan • Policy Plan/Land Use Element Adopted September 28, 1998.
 2. At least 25% of the Parcel is comprised of Prime soils; and
 3. The Parcel is in the open agriculture tax program as of June 2, 1999; or
 4. The Parcel is not located within a Drainage and Diking District, UGA, RAID, State Park or owned by the Navy.

Ms. Walters stated the designation criteria found in the Island County Zoning Code is basically the same.

ISLAND COUNTY ZONING CODE 17.03.100.D

Designation Criteria. Parcels that meet the following criteria qualify as resource Agricultural Land and shall be classified in the Commercial Agriculture classification:

1. The Lot, Tract or Parcel is at least twenty (20) acres in size or smaller contiguous lots owned by the same Owner that, in combination, are at least twenty (20) acres in size; and
2. At least twenty-five percent (25%) of the Lot, Tract or Parcel is composed of prime soils; and
3. The Lot, Tract or Parcel as of June 2, 1999, is classified in the open agriculture tax program or if withdrawn, all taxes, interest and penalties were not paid in full as of June 2, 1999; and
4. The Lot, Tract or Parcel is not located within a Drainage or Diking District or otherwise protected by dikes, UGA, RAID, State Park or owned by the Navy.

Ms. Walters continued by explaining that in order to approve a technical amendment to convert a parcel from Commercial Agriculture to Rural Agriculture the criteria under ICC 17.03.100.H must be met:

- H. **Verification of Commercial Agriculture (CA) Zone Classification.** Parcels classified CA shall be converted to RA, processed as a technical Type IV amendment pursuant to Chapter 16.19 ICC with no County permit fee charged the owner if:
1. Water rights are not available to the Parcel and less than fifty percent (50%) of the Parcel contains prime soils; or
 2. The Parcel contains less than twenty-five percent (25%) prime soils; or
 3. The Parcel is not farmable due to the critical area regulations contained in Chapter 17.02 ICC; or
 4. The Owner demonstrates that, as of June 2, 1999, the Parcel did not meet the designation criteria set forth in subsection D above.

The applicant did not provide any information regarding water rights.

Ms. Walters stated the applicants have failed to prove that this parcel does not meet the designation criteria for the Commercial Agriculture Zone or how Island County zoned this parcel in error. Staff recommends denial of this technical amendment.

Director Robert Pederson elaborated on a few items:

- Part of the argument is that the parcel is not at least 20 acres in size as described in the Comprehensive Plan, Resource Lands Policies, Commercial Agriculture, (A). The applicant has pointed to the difference between that section and the wording in the Zoning Code regarding smaller contiguous lots making up that 20 acres, but it is the County's view that the designation criteria under the Zoning Code further defines and establishes how you compute the 20 acres and is not in conflict with the criteria in the Comp Plan, but a further clarification in how it is computed. The parcel met the criteria at the time of designation.

- The parcel is in the Open Agriculture Tax Program and was as of June 2, 1999.

The application could be processed as a Zoning Code Change, but the County does not see the need for a technical correction at this time.

Larry Kwarsick – Sound Planning Services, POB 581, Langley, WA 98260

This application was submitted in July 2008, it received a notice of completeness in August of 2008. They are not asking for a zone change, they are representing the fact that the property was incorrectly zoned and they are asking for the map to be changed to reflect the designation criteria established in the Comprehensive Plan and the Zoning Ordinance.

Under the specific provisions governing the particular activities of the Planning Commission, ICC 16.26.020, he did not feel this should have come to the Planning Commission, but should have gone directly to the Board of County Commissioners.

Mr. Kwarsick stated he thought the Comprehensive Plan actually referred to a Farm Unit definition with respect to contiguous properties. He further stated he did not feel the slides presented represented the language in the Comprehensive Plan or the language in the Zoning Ordinance.

Mr. Kwarsick provided a copy of the current zoning map. He stated there was no question that the properties indicated were in contiguous ownership on June 2, 1999.

He read from the Findings of Fact and Legislative Intent that went with the Zoning Ordinance in 1999 that resulted from a Western Washington's Growth Management Hearings Board decision.

He stated it was very clear that this property is protected by dikes and the words wholly or totally are not part of the legislative intent. In his opinion when the Ordinance was modified in 1999 a mistake was made.

Questions from the Planning Commission were taken regarding the map under discussion and the portion of the property within the Diking District.

Leonard Perry, property owner provided a statement on the requested Zoning Amendment.

Director Pederson provided some follow up points including the fact that the slides provided on the Comprehensive Plan and Zoning Code are verbatim representations of the Designation Criteria.

Kyla Walters provided additional information on the differences between Commercial Agricultural and Rural Agricultural uses in response to a question from the Planning Commission.

Chair Reynolds declared the hearing closed and the deliberation process began.

Members of the Planning Commission discussed their observations, opinions and concerns.

Commissioner Scott Yonkman moved to accept the request to rezone the property from Commercial Ag to Rural Ag and discussed his reasons.

Commissioner Mahmoud Abdel-Monem seconded the motion and discussed his reasons.

Planning Commission areas of concern and discussion:

- The fact the property does not meet the definition of Commercial Agriculture as it stands today. – *Commissioner Hillers, Commissioner Yonkman*
- It is less than 20 acres of farmland – *Commissioner Hillers*
- It is subject to flooding, the area is quite wet. Due to development over the years it has become an issue. – *Commissioner Yonkman*
- 40% of the land is protected by a Diking District. – *Commissioner Yonkman*
- The type of soil: if used for Commercial Agriculture there would be a need for fertilization and the use of pesticides and that could affect the critical area present or Deer Lagoon that is adjacent to the property. – *Commissioner Yonkman*
- Concerned about some of the uses that would be available under Rural Agriculture. – *Commissioner Yonkman*
- Concern that the original designation was suspect in its purpose; surrounding areas are all Rural Ag and Rural. – *Commissioner Abdel-Monem*
- The parcels were not both originally designated as Commercial Ag, only after the purchase of the second property was the combined property requested to be re-designated. – *Commissioner Havens*
- Concern regarding the fact that it did meet the criteria (over 20 acres of contiguous property) at the time of designation. – *Commissioner Enell*
- The Parcel was in the Open Agriculture tax program as of June 2, 1999 and no evidence was submitted to verify the parcel was (or is) within a drainage or Diking District. – *Commissioner Enell*
- Expressed the importance of retaining properties within the Commercial Ag classification per GMA guidelines. – *Commissioner Enell*
- Concern regarding the reasons behind the rezone. – *Commissioner Enell*

Chair Reynolds called for a vote, the motion carried 5 – 1, with Commissioner Dean Enell in opposition.

Commissioner Hillers moved to authorize the Chair to sign the Findings of Fact for ZAA 213/08 Commissioner Abdel-Monem seconded, motion carried unanimously.

ADJOURN

Respectfully submitted,

By Paula Bradshaw