

**Lewis County Planning Commission
Lewis County Courthouse
351 NW North St.
Chehalis, WA 98532**

**May 11, 2010
Meeting Notes**

Planning Commissioners Present: Bill Russell, Jim Lowery, Mike Mahoney, Rachael Jennings, Richard Tausch, Bob Guenther

Commissioners Excused: Arny Davis

Staff Present: Dianne Dorey, Phillip Rupp, Glenn Carter, Barbara Kincaid, Pat Anderson

Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes from April 27, 2010
- Open Space Recommendations
- Lewis County Code Chapter 17.140
- Locator Map
- Legend for Maps
- Rezone Maps, snapshots and aerials
- WAC 365.190.050
- Workshop Schedule for Rezones
- Bullet Points for RCW, WAC and Lewis County Comprehensive Plan and Goals and Policies
- Matrix of Applications with Staff Comments

I. Call to Order

Chairman Jennings called the meeting to order at 7:02 P.M. The Commissioners introduced themselves.

II. Old Business

A. Approval of meeting Notes from April 27, 2010

The Chair entertained a motion to approve the meeting notes from April 27, 2010. The motion was made and seconded and carried unanimously.

B. Public Hearing on Open Space Tax Program

Chairman Jennings recognized Ms. Dianne Dorey.

Ms. Dianne Dorey, Lewis County Assessor, summarized how the open space comes about through the public benefit rating system. There are properties that are open space farm and ag properties that are going into a conservation program in the hopes that those properties will come back into farming once again. There are ten properties for consideration to send to the BOCC for approval of classification.

Commissioner Russell asked if the Lewis County Code would also be addressed. Mr. Rupp stated that would be a separate public hearing.

Chairman Jennings opened the public hearing on the open space tax program. She asked for comments or questions from the Planning Commission or the public. There were none. Chairman Jennings closed the public hearing on the open space tax program and opened the public hearing on the Lewis County Code 17.140.

Commissioner Russell asked if there would be time left open for written testimony. Chairman Jennings stated with the need to get these recommendations to the BOCC fairly quickly, and since no comments were received since the last workshop, there would be no time allowance for written testimony.

Ms. Dorey stated as part of an audit conducted by the Department of Revenue on the open space program in the County it was recommended that our County ordinance not be more restrictive than the state law. The County ordinance allowed 10 years for the amount of time someone could be in open space farm and ag conservation, which is contradictory to the RCW. There were other changes that needed to be made, such as the scoring tool and being consistent with the RCW. These changes will bring it in line with state law and requirements.

C. Public Hearing on Revisions to LCC 17.140

Chairman Jennings opened the public hearing on LCC 17.140 and asked for comments or questions. There were none. The Chair closed the public hearing.

D. Workshop on Open Space Tax Program

Chairman Jennings asked if workshops could be held simultaneously for the open space and code revisions. Mr. Rupp stated there is no letter of transmittal for the Lewis County Code. The letter of transmittal before the Commission only addresses the ten applications.

Commissioner Lowery asked if the letter of transmittal could be forwarded without making the amendments to the Code. Mr. Rupp stated there must be findings for the Planning Commission to adopt and transmit the Lewis County code revisions to the Board. That will come before the Commission at the next meeting. The code revision time element is not as critical as it is for the open space applications.

Commissioner Mahoney understands that the ten applications will comply with 17.140 as the code will be amended, that the process was changed to make sure we are in compliance either way. We can recommend approval on those and send changes to the language at a later time.

Mr. Rupp stated that is correct and that the Planning Commission will be adopting the open space program recommendations because they were compliant with the existing code.

Ms. Dorey stated the County was restricting the property owners to ten years. Immediately when the Department of Revenue explained that we could not have that restriction, we quit telling people that there was that restriction. These applicants are aware of that issue and they know that there is no time limit.

Chairman Jennings asked for comments. There were none and the workshop was closed.

F. Letter of Transmittal on Open Space

Commissioner Mahoney made a motion to forward the letter of transmittal on the open space to the Board of County Commissioners. Commissioner Lowery seconded. The motion carried.

Chairman Jennings opened the workshop on LCC 17.140. Mr. Rupp stated specific questions could be asked of Ms. Dorey.

Commissioner Mahoney stated with the explanation of being in compliance with the WAC he did not see that any changes to the code would change the intent of the ordinance.

Chairman Jennings asked for comments. Commissioner Mahoney asked if a motion could be made now to approve the letter of transmittal for the code revisions as soon as it is prepared and Chairman Jennings can sign it. Mr. Rupp stated that was the Commission's prerogative. The workshop can be closed and staff will draft a letter of transmittal, send it out via e-mail for approval and have Chairman Jennings sign it. The Commissioners agreed to do that.

Chairman Jennings closed the workshop.

Commissioner Mahoney made a motion to prepare a letter of transmittal to the BOCC recommending the code revisions. Commissioner Tausch seconded. The motion carried.

III. New Business

A. 1st workshop on Rezone Requests

Mr. Rupp stated this is the first of several workshops to consider changing the land use designation and the comprehensive plan. Mr. Rupp described the documents in the Commissioners' packets. The plan is to go through each application and consider the staff comments. The Planning Commission can offer considerations to be included in evaluating the requested change. We will go through all the applications before we make a recommendation because we are required to review changes to the comp plan in its aggregate. While we look at specific parcels and what the proposal is, we must also keep in mind the overall effect of land use patterns throughout the county.

Mr. Rupp stated a question had been raised by Commissioner Russell at the previous meeting regarding the old applications, processed between 1999 and 2008, including applications outside the invalidity area, were going to be reviewed under a different set of criteria.

Commissioner Russell stated he did not see the difference between the applications that we are reviewing now and Birchfield or any other application that was vested. A large number of these applications have paid their fee to be reconsidered. Since anyone who made an application is vested under the current land use laws why aren't they considered under the same rules and regulations as when they applied? Another concern: a considerable number of these applications have already been done, many which were remanded back by the BOCC, and none of which are on the list we have now.

Mr. Rupp stated those were acted upon at a previous meeting when Commissioner Russell was absent.

Mr. Glenn Carter stated the scoring tool used previously was discussed at the last meeting. There were numerous questions that were raised regarding the fairness and accuracy of that tool and as to those criteria that we find not to be effective or fair we are free to refine the process to make it better. We can change that without consideration of vesting.

Regarding vesting, Mr. Carter is unsure of when these applications were made specifically with reference to the invalidity but there has been a lot that has transpired since. Many of them deal with

ARL and we are not free to apply our former understanding of ARL and the designation and the criteria of ARL that we had at a prior time. We now know what the law is that applies as to ARL designation.

Commissioner Russell stated we now know that Birchfield and Cardinal Glass sit on land that they should not sit on. We have applied the law differently for them.

Mr. Carter asked in what sense does Birchfield sit on something that is inappropriate. Commissioner Russell stated some soil in Birchfield would meet agricultural lands requirements.

Mr. Carter asked if we should reconsider Birchfield. Commissioner Russell did not wish to reconsider Birchfield but asked why one application is vested and the other is not.

Mr. Carter stated in a certain sense these applications are all vested but that does not mean that they are free of scrutiny. We still have to apply a process to them. The question is what is the process? Is it the same process that was applied to other properties at that time? If that is what is meant by vested, then we must question whether that same process is applied unless the process has been refined to correct errors or if there has been a legal change in the process. In the circumstance where we review an application and the Planning Commission thinks we are applying a process or a criteria that compromises the rights that were vested, you need to call us on that. Otherwise we need to go through the specifics to see how we are looking at them differently.

Commissioner Mahoney stated we are looking at rezone applications and in some cases the land has been zoned to ARL. If these had been applications for building permits that were put on hold through no fault of the land owner would we be looking at those applications under the law when they applied or changes that have been made since then, as opposed to a rezone.

Mr. Carter stated with respect to the comparison, Commissioner Mahoney is correct. A building permit is an administrative action but we are dealing with a legislative action, and with a legislative action there is no vesting. The government has the right to change the law with respect to those decisions that are legislative. To the extent that we go through these applications, if you think we are applying something differently it could be an interpretation of the legislative act. That would be a valid concern.

Commissioner Russell stated he is concerned for the property owners but he also does not want the County to be sued.

Mr. Carter stated many times a lawsuit is inevitable but we must do things properly so we have the best defense. In this case, it is a legislative action and vesting does not apply. Interpretations might appear to be discriminatory and arbitrary because they are different than what we have done before and Mr. Carter would be concerned about that.

Commissioner Russell stated postcards were mailed out to landowners and there have been several people whose applications are off the list and they are still interested in being considered, and they did not receive a postcard.

Ms. Kincaid stated the process for the postcard was if the application's signature did not match the person that owns the property, cards were sent to those people. In some cases the person who made the application did not sell his property and we did not ask that person.

Mr. Rupp stated staff used tax numbers as a guide and if the person owns several parcels in one area they might have believed that a parcel was included in the application and according to our records it was not. We can check our records.

Commissioner Russell asked about the property in Mineral. Mr. Rupp stated the County has not heard from Mineral. It was the position of the Board that if the Mineral property owners wanted those parcels reconsidered, they must come back with a revision to the proposal and we have not heard from them.

Mr. Rupp referred to the matrix. He stated the staff comments are based on his and Ms. Kincaids' understanding of the RCW, the WAC, the criteria in the comp plan, and the goals and policies of the comp plan.

Application #21: Commissioners Russell and Mahoney did not think this should be taken out of ARL. Mr. Carter stated we must go with the current legislative ruling, which is agriculture.

Application #75: Leave this as RDD-20; the soils are not conducive to more density and changing the density would create a spot zone.

Application #129: Already zoned RDD-5, which is the applicants' request.

Application #24 and #25: This was zoned ARL in 2008 and there is no evidence that an error was made in the ARL designation. Leave this as RDD-10.

Application #26: Majority of the parcels is enrolled in the ag or timber open space and the underlying soils in the ag portion is prime or prime if drained. Commissioner Mahoney stated the owner could testify at the public hearings if he had more information that the Commission should consider. The consensus was to leave it as RDD-10.

Application #172: This would create a spot zone if changed to RDD-5. The consensus was to leave it as RDD-10.

Application #16: Changing the zoning would create a spot zone. The consensus was to leave it as RDD-20.

Application #94: The applicant did not request a specific change in zoning. Leave it as RDD-20.

Application #136: This has already been zoned RDD-5, which was the request. Leave as is.

Application #131: Freeway Commercial is a LAMIRD and we cannot expand LAMIRDS. We can consider a change to a higher intensity residential development; however it is close to the City of Centralia. We don't change rural lands to something that would preclude a city expansion. Leave zoning as RDD-20.

IV. Calendar

May 25 is the next meeting and another workshop on the rezones. Chairman Jennings and Commissioner Guenther will not be attending. Chairman Jennings asked staff to poll the Commissioners to see who would be attending. Mr. Rupp stated a quorum is not needed for discussion; only for voting. It was decided the Commission would meet to discuss the applications, whether there is a quorum or not.

Commissioner Mahoney asked for the matrix ahead of time rather than receiving it at the meeting.

V. Good of the Order

No one wished to speak.

VI. Adjourn

A motion was made and seconded to adjourn; adjournment was at 8:32 P.M.