Lewis County Planning Commission

Public Meeting

Lewis County Courthouse, 2nd Floor
Commissioners' Hearing Room
351 NW North Street
Chehalis, WA 98532

February 24, 2009 @ 7:00 P.M.

AGENDA

I. Call to Order
- A. Introduction of Planning Commissioners (roll call)

II. Old Business
- A. Approval of meeting notes from January 27 and February 10, 2009
- B. Workshop: Agriculture Resource Lands, Maps 11 through 18

III. New Business
- A. 1st Workshop: Public Benefit Rating System; set public hearing for March 24, 2009

IV. Calendar

The next meeting will be March 10: Public Hearing: 2007 Comp Plan Compliance; Workshop: ARLs

V. Good of the Order

VI. Adjourn

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

February 24, 2009 – 7:00 P.M.
Meeting Notes

Planning Commissioners Present: Rachael Jennings, Bill Russell, Mike Mahoney, Richard Tausch, Arny Davis
Planning Commissioners Excused: Bob Guenther
County Commissioners Present: Bill Schulte
Staff Present: Glenn Carter, Phillip Rupp, Barbara Kincaid, Pat Anderson
Consultants Present: Andy Lane, Roger Wagoner, Mike McCormick
Others Present: Please see sign in sheet

Handouts/Materials Used:
- Agenda
- Meeting Notes from January 27 and February 10, 2009
- Memo from Dianne Dorey re: Public Benefit Rating System (PBRS)
- Staff Report re: Open Space
- PBRS Committee Recommendations
- PBRS Final Approved Applications

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

III. New Business
Chairman Jennings moved to New Business to hold the workshop on the Public Benefit Rating System Open Space Applications.

Mr. Phil Rupp stated the Assessor received applications for the tax deferral programs designed to set aside part of the property for open space program. There were 57 applications made; some were withdrawn and some were denied by the Public Benefit Rating Committee. The Assessor is proposing that 46 of the applications be considered by the Planning Commission and take to public hearing for inclusion in the open space tax deferral program.

Commissioner Russell pointed out some discrepancies between the two lists that were provided. It appears some names are missing from the first list. It is important that the public hearing go forward if at all possible.

Mr. Rupp stated the public hearing could be set and staff will check with the Assessor to resolve the differences in the lists and get that information to the Planning Commission.

Commissioner Russell stated the Commissioners are being asked to move these documents to public hearing but the documents are not complete. No one from the Assessor's office is here to explain the discrepancies. Commissioner Russell had no problem with setting the public hearing date but would not recommend moving the documents forward until they are correct and complete.

Mr. Rupp stated the hearing date needs to be set with the intention of hearing these applications as listed; we could amend them based on the Assessor's information provided to the Planning Commission.

Discussion followed regarding changes to this document and the time allowed for public notification of the public hearing.

Commissioner Mahoney asked why there are two lists.

Mr. Rupp stated he did not know; the materials were forwarded to the Planning Commission from the Assessor's office.

Chairman Jennings asked that if in the future someone from the Assessor's office could be present.

Mr. Rupp stated he would make that request.

Commissioner Russell asked if one document could be moved forward without the other.

Mr. Rupp stated he believed the document with the 46 applications should be moved forward. The recommendation from the Assessor is to approve these properties.

Commissioner Mahoney stated he was on the PBRS Committee. The Committee looked at three different classifications and it appears when they were consolidated there were some transcription errors made. The overall list and the list of parcels with the description of what action was taken do not agree.

Mr. Glenn Carter stated there are properties that do agree. There are at least five that do not appear on both lists.

Mr. Rupp asked Commissioner Mahoney if he recalled the names of those that were withdrawn or denied.

Commissioner Mahoney stated they were not included in the list.

Mr. Carter stated the second list has the name, parcel number and address and follows with the score for reduction. It appears that the second list shows the findings made on these specific parcels whether these names show on the other list or not. Mr. Carter believes the intention of Dianne Dorey is that those properties on the second list are the

properties being transferred. If we went on the first list it does not have a statement as to reduction or the justification for that reduction. He suggested moving on the second list.

Commissioner Mahoney agreed that would solve the problem.

Commissioner Russell asked if Commissioner Mahoney remembered certain names in his discussion with the committee: #4, #7, #17, #31.

Commissioner Mahoney stated all of those were discussed. Commissioner Mahoney proposed this [second] list and the cover letter be moved to public hearing.

Commissioner Russell seconded. Motion carried.

Commissioner Mahoney asked if staff could reach an understanding about the discrepancies from the Assessor's office.

Chairman Jennings stated the public hearing is set for March 24, 2009.

Commissioner Davis asked staff to ensure the seven names that were not on the first list received due process.

Mr. Rupp stated he would ask the Assessor to reconcile the lists.

Commissioner Russell stated numbers 33 and 38 need to be looked at also.

II. Old Business

A. Chairman Jennings returned to the agenda items and entertained a motion to approve the meeting notes from January 27 and February 10, 2009.

Commissioner Mahoney made the motion, Commissioner Tausch seconded. Motion carried.

B. Workshop: Agricultural Resource Lands, Maps 11 through 18

Mr. Andy Lane, Cairncross and Hemplemann, stated there was a recurring issue in the workshops that has occurred so far and he summarized the role that growing capacity and productivity of soils play in the ARL designation process and where it fits in the statutory provisions and the WAC criteria.

Mr. Lane gave a brief summary of GMA agricultural designation criteria, the process, and explained where the NRCS soils survey comes into play, where that information came from and how it is used in the process.

GMA requires counties to designate agricultural lands that are not already characterized by urban growth and that have long term significance for the commercial production of food or other agricultural products. In making the designations required by this section of the GMA, counties shall consider the guidelines established pursuant to the statute.

GMA defines agricultural land as land primarily devoted to the commercial production of horticultural, viticultural, floracultural, dairy, apiary, vegetable or animal products, berries, grain, hay straw, turf seed, Christmas trees, fin fish in upland hatcheries or livestock and that has long term commercial significance for agricultural production.

Mr. Lane broke down the definitions, first: "primarily devoted" to ag products. The Supreme Court states primarily devoted means that land is used or is capable of being used for commercial agricultural production.

Long term commercial significance is defined as including the growing capacity, productivity and soil composition of the land for long term commercial production in consideration with the lands' proximity to population areas and the possibility of more intense uses of the land.

In 1987 NRCS did a soil survey of Lewis County. They went through a technical identification of the types of soils throughout the County. It was a scientific analysis with specific criteria for identifying the types of soils and putting them into classifications. The methodology they used was set out in a federal manual used across the country.

The soils survey states it is designed for many different users: farmers, ranchers, foresters and agronomists can use it to evaluate the potential of the soil and the management needed for maximum food and fiber production. Planners, community officials, engineers, developers, builders and home buyers can use the survey to plan land use, select sites for construction, and identify special practices needed to ensure proper performance.

The soils survey considered factors other than digging holes and conducting soil profiles. Mr. Lane quoted from the soils survey, "How this survey was made". While the soils survey was in progress, samples of some of the soils were collected for lab analysis and for engineering tests. Soils scientists interpreted the data from these analysis and tests as well as the field observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils were field tested through observation of the soils and different uses and under different levels of management. Some interpretations were modified to fit local conditions and some new interpretations were developed to meet local needs. Data were assembled from other sources such as research information, production records and field experience of specialists. For example, data on crop yields under defined levels of management were assembled from farm records and from field or plot experiments on the same kinds of soil.

The soil survey also included a definition of prime farm land. The definition included in the survey of 1987 was amended in 2000. This definition is included in the soils survey handbook and also in the Code of Federal Regulations (CFR) Title 7, part 657.5. Mr. Lane read the amended definition: Prime farm land is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oil

seed crops and that is available for these uses. It has a combination of soil properties, growing season and moisture supply needed to produce sustained high yields of crops in an economic manner if it is treated and managed according to acceptable farming methods. In general, prime farm land has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, an acceptable level of acidity or alkalinity, an accepted content of salt or sodium and few or no rocks. They are permeable to water and air and prime farm land is not excessively eroded or saturated with water for long periods of time and it either does not flood frequently during the growing season or is protected from flooding.

Mr. Lane stated this is the definition NRCS uses when they evaluate the soils that they earlier described for classification for prime farmland or not prime.

There are also specific objective criteria that are included in the Federal regulations that the NRCS has to follow and it is found in 7 CFR 657.5 (a) (a2). There are other criteria that range from determining the moisture regime of a particular soil, temperature regime, the pH, water table, the depth and context of the management of soil conductivity and exchangeable sodium, frequency of flooding, erodibility of the soil, permeability of the soils and the percentage of surface rock fragments.

These criteria had to be considered by NRCS after they did the soil survey but before they determined the capability of a particular soil. After going through these criteria they were required to prepare a list of prime soils and it is in the record and it is the list we are working with.

Both the Supreme Court and the Growth Board had to consider, in addition to the soils, the non-soil dependent agricultural uses: poultry operations, horticultural, etc that have previously been discussed.

Next to consider is the proximity to population areas and the possibility of more intense uses of the land. That is what the Supreme Court refers to as the development pressures. These things are captured in CTED's ten WAC criteria: availability of public services, tax status, relationship or proximity to UGA, predominate parcel size, etc. We are following what the statute says and what the WAC says. When the Supreme Court looked at the challenge that the County had against the Growth Board it reiterated the statute and instructed the Growth Board to consider everything in the statute but how they characterized the statute by restating it slightly: ag land that is not already characterized by urban growth, primarily devoted to the production of commercial agricultural products, and that has long term commercial significance for agricultural production. The Court also stated that in determining that we construe the development pressures from the WAC criteria. The process we have worked through and the recommendations before you have gone through all these steps.

What if we disagree with the NRCS land capability classification? That is an issue to take up with NRCS. They have gone through the rigorous analysis based on the criteria

they have set and the testing they have done. As far as the County is concerned, it is hard to refute the NRCS data.

Can we use another method if we disagree with NRCS? We have had one disagreement with NRCS classification of two soils in particular. It would be extremely difficult to pick specific soils and say we disagree with NRCS and will not consider those soils prime.

Commissioner Mahoney stated in the last designation process there was a provision that if a land owner got a soils scientist to state that the soils on that parcel were not what the map showed they would have grounds to be reconsidered. Doesn't that take care of what you are saying?

Mr. Lane stated there are two different situations where someone might disagree with the NRCS. One is with the mapping of the soils stating you have Lacamas on your property when you do not. The other is stating you have Lacamas but NRCS states it is prime if drained and the landowner does not think it is. In the first situation the survey indicates a certain type of soil and a scientist digs holes and finds a different type of soil and that soil is not prime. In 2007 Dr. Cogger told us that the NRCS mapping at the parcel level is less and less reliable about where the boundary lines of certain types of soils are drawn. That is the area where there is some ability for a land owner to get information from a soils scientist before the County to refute the mapping. It is different than stating you have Prather, for example, and do not think Prather should be considered prime soils. That sort of disagreement should be taken up with NRCS.

Commissioner Mahoney stated there is a third condition. In the definition of prime soils in the NRCS handbook it also talks about the rooting depth which is 30 or 36". That is where a lot of the concern is. While the top 6-8 inches may be a Prather loam, immediately under that is heavy clay and the depth is not there that is required for prime. This could be established by a scientist.

Mr. Lane stated the criteria in the CFR do take soil depth into account. Several of the criteria talk about the root zone, a depth of 40" or if the root zone is less than 40" deep there is different criterion within the root zone.

Commissioner Mahoney stated the top may be a Prather loam but if it does not have the root depth it would not be prime regardless of what the top 8-10" is. There is a conflict with the prime classification being put on some of these soils that are prime but do not have the rooting depth. This must be a parcel by parcel determination and would need to be left up to the landowner and we did make that provision.

Commissioner Russell stated a lot of the prime soils named in the NRCS handbook that were on the hill are now on Highway 12, a result of the slides in January.

Mr. Lane stated that is something that could be evaluated on an individual basis.

Commissioner Mahoney asked how we look at a piece of property to determine whether it is potentially usable for agriculture. At the last meeting Mr. McCormick stated land covered with timber would not be considered capable of being farmed because of the cost of clearing it.

Mr. Lane stated the staff and consultants determined not capable of being farmed is when there is an existing stand of timber.

Commissioner Tausch read from the Supreme Court decision on these issues: In conclusion as explained above we reverse the Board's decision that Lewis County may not designate agriculture lands based on local farm industry's projected land needs. If the State wants to conserve all land that is capable of being farmed without regard to its commercial viability it may buy the land.

Commissioner Mahoney asked if that meant the Planning Commission could consider commercial viability or not.

Mr. Lane stated what the Supreme Court told us we could consider is land that is characterized by urban growth, whether it is primarily devoted to commercial agricultural products, whether it has long term commercial significance for ag production. In telling us we can consider the commercial viability, we are considering it in the context of the statute and of the WAC. They were not creating a new rule.

Mr. McCormick stated from his perspective the Court was adding some emphasis and we clearly did not include in our recommendations everything that could be included. They are telling us we are okay to do that. The primary place where we made a distinction is prime soils that had timber on them. We did not recommend those to you. There probably are other more subtle places where we made a call one way or another and that is what the Supreme Court was saying. The Court reinforced what was in the statute and the WAC as the way you must do that. We adhered to that pretty rigorously and consistently.

Chairman Jennings asked for discussion on the maps.

Mr. Lane stated Map #11 would be the first map.

Commissioner Russell asked if regular boundaries are no longer being considered and island zoning is being allowed.

Mr. Lane stated we are just looking at lands with soils we had not looked at in 2007 and soils that had non soil-dependent uses on them. Because the scale of the maps differ from one map to another it may appear that there is island zoning but some of the parcels are quite large.

Commissioner Russell stated it is still island zoning and he remembered it was requested by GMA not to do that.

Mr. Lane stated the 2007 designations show a number of places where there are small isolated groups of ag designation.

Commissioner Mahoney did not believe there was an allowance the last time for any single owner island zoning when it was different from his neighbors' zoning. There is a parcel on Map #11 that is not adjacent to any other ag zoning.

Mr. Lane stated that whatever designations we do we must walk through the criteria. If you look back at the designations from 2007 you will see some rather large parcels that appear to be in isolation.

Commissioner Russell stated he recalled designating some island parcels but he remembered they were attempting to avoid that if possible.

Mr. McCormick stated there was discussion going back to the Ag Advisory Committee regarding what created a reasonable size. There is no basis in statute for doing that and we have moved farther from the general rule to a more specific rule at each iteration and you are seeing more of that now.

Commissioner Mahoney stated with any other type of zoning island zoning is a major consideration and he does not understand why the ag zoning would be exempt from that.

Mr. Lane stated generally it does make sense to avoid isolated zoning. The problem with ag land designation in particular is the special attention it has received from both the Growth Board and the Courts and that makes any deviation from the statutory language and the criteria difficult. If there is a reason that can be articulated from the criteria then that is how it would need to be analyzed.

Map #14 does have one island and it is a horticultural nursery.

Commissioner Mahoney stated the owner of that parcel would like to remain in ag.

Mr. McCormick stated one of the consultants' tasks was to look at all of the prime soils that were located within the forest designated land and then apply the analysis and criteria to them. Those were areas that we had not looked at before and we were directed to look at them this time. This piece is a product of that. Even though there are not very many pockets in the forest areas that we are recommending, we did look at all of them.

Commissioner Mahoney commented on Map #14. There are six parcels south of the river that would probably have some discussion during the public hearing.

Mr. Lane stated Maps #15 and #16 have nothing new on them. They are included because they contain prime if drained soils that were not considered the last time and they had to be evaluated this time.

Commissioner Russell asked if one of the criteria is land that is not frequently flooded.

Mr. Lane stated there is prime land if drained and either protected from flooding during the growing season or does not flood during the growing season.

Commissioner Mahoney stated there is some land like that in the Lincoln Creek area. There is water on it now but it grows hay during the growing season and it would be up to the landowner to prove it is not drained.

Mr. Lane stated that is something that the NRCS took into account when they were identifying the capability of the soils.

Map #17 has some new recommended ARLs.

Commissioner Mahoney stated there is a parcel at the bend of the river on Map #17. He remembered that accessibility to that property was problematic and it was not considered in 2007 for that reason.

Mr. McCormick stated there was property farther west that had an accessibility issue; he did not believe this piece was looked at previously. It is prime if drained.

Mr. Lane stated that is the case for all the new parcel recommendations: prime if drained. There are a few that are prime if irrigated.

Commissioner Russell referred to the parcel that borders Spears Rd on the south, Cispus Rd on the northern and eastern boundary. He stated this land is wet all the time and has a lake in the middle of it. It is a protected wildlife habitat. In the southern part they cut hay off of it and that might possibly be considered.

Mr. Lane stated he would confirm the protected wildlife habitat.

The parcel at the bend of the river at the end of Skinner Rd has no access. The road Commissioner Russell pointed out is only accessible by walking.

Mr. Lane stated he would follow up on that piece.

Map #18 has two areas proposed for inclusion and extend the area previously designated. It was confirmed that the parcels have prime farmland and prime if irrigated.

Mr. Lane stated the consultants would go over the parcels that were questioned this evening. At the next meeting he will talk about some comprehensive plan amendments that will be consistent with this round of compliance efforts and some development regulation amendments that were discussed in August. Ultimately the Planning Commission will be making recommendations on corresponding zoning maps that reflect the land use designation.

At the last workshop we noticed on Map #7 south of Toledo there was an area around an existing mine operation that was designated in 2007 but on that particular map it did not have the entire area shown as being included. Roger Wagoner looked at all the maps to make sure that was the only map with a problem and confirmed that was the case. The new Map #7 will replace the old one.

Commissioner Tausch asked if there is a definition of "prime if drained." Does it mean drained so many inches down for a length of time?

Mr. Lane stated he has not seen a definition for that in the regulations. If there is something that defines it he will let the Commission know.

Commissioner Mahoney stated if a land owner can provide documentation that his property is not drained it can be removed from consideration.

Mr. Lane stated if there is information that confirms the land has not been drained or will not be drained then it can be reevaluated.

Mr. McCormick stated this option is open to a property owner at any time in the future.

IV. Calendar
The next meeting will be March 10, a public hearing on the 2007 Comprehensive Plan Compliance and another workshop on the ARLs.

Commissioner Mahoney asked if the public hearings for the ARLs have been set.

Mr. Rupp stated the tentative dates are March 31 in Morton and April 1 in Chehalis. The public notices have not gone out yet but every effort has been made to post notices at the posting places, all Granges and the Lewis County Farm Bureau. No action has been taken yet to set the hearings. Definitive maps need to be completed before action can be taken.

V. Good of the Order
Mr. Dennis Hadaller, Mossyrock, stated he was glad to see Commissioner Russell back.

Mr. Hadaller stated when a septic tank is to be installed the County sends an inspector out to tell what kind of soils the landowner has. He suggested the Planning Commission made a recommendation to the County Commissioners to put a soils scientist on the payroll. A lot of people cannot afford to do what Mr. Hadaller has done to prove they are right. The County is already paying a lot of money for other consultants.

Mr. Larry Hewitt, Centralia, spoke on the open space act. Currently there are changes in the Legislature being considered to the RCW, especially the rule-making capability of the Department of Revenue through the WACs regarding open space. In October of 2008 there was an attempt on the part of several assessors to remove from consideration as commercial agriculture horse activities that did not include breeding. All commercial

boarding and training operations were being denied open space tax status even though they had had that status for some time. Not only were they being removed but they were going to be assessed the taxes at highest and best use for the past seven years plus penalties, even though they are being removed now. Those tax bills needed to be paid by December of 2008. During the public hearings that followed we discovered there was more going on than what related to horse activities, not the least of which was a hog farmer whose business was buying wiener pigs and raising them for slaughter. The King County Assessor decided that did not qualify as commercial agriculture because he did not breed the animals on his farm. His tax liability was going to amount to up to $200,000.

Last November the Department of Revenue issued a temporary emergency order asking the Assessors to not remove these properties and not access these penalties until they had a chance to look at the rule-making process. As a result of that review, a few of the Legislators felt that the review was entirely inadequate. Currently there are five bills trying to deal with this. They tend to clarifying language with regards to definitions, or what constitutes livestock, commercial agriculture and the impact of the passage of one of those bills will likely result in some language that a sub jurisdiction will not be able to adopt any standards more restrictive than the State standards.

If any of these bills pass it will have an impact on ag land issues and several other issues affecting the County.

VI. Adjourn

As there was no other business before the Planning Commission a motion was made and seconded to adjourn. Adjournment was at 8:50 P.M.