

# Lewis County Planning Commission *Public Hearing*

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

## **July 26, 2017 - Meeting Notes**

**Planning Commissioners Present:** Russ Prior, District 3; Bob Whannell, District 3; Sue Rosbach, District 2; Mike Mahoney, District 1; Jeff Millman, District 2

**Planning Commissioners Excused:** Stephen Hueffed, District 2; Leslie Meyers, District 1

**Staff Present:** Fred Evander, Glenn Carter

**Others Present:** Please see sign in sheet

### **Handouts/Materials Used:**

- Agenda
- Meeting Notes
- Shoreline Master Draft Program Code Revisions
- Anderson Rezone Application
- Douglas Rezone Application
- Countywide Planning Policies Staff Report
- Countywide Planning Policies

### **1. Call to Order**

Chair Mahoney called the meeting to order at 6:00. The Commissioners introduced themselves.

### **2. Approval of Agenda**

There were no changes to the agenda.

### **3. Approval of Meeting Notes from June 28, 2016.**

Commissioner Rosbach moved to approve the meeting notes as presented; seconded by Commissioner Whannell. The motion carried.

### **4. Old Business**

A. Public Hearing: Changes to Chapter 17.25 Shoreline Master Program

Chair Mahoney opened the public hearing on Chapter 17.25 and recognized Mr. Evander.

Mr. Evander stated the public hearing is for the code changes that accompany the Shoreline Master Program (SMP). Currently LCC 17.25 has a long section that includes definitions, criteria for granting permits, methods to consider appeals, and more. This change would remove those items completely from LCC 17.25 and point to the SMP that has already been considered. Staff believes that will reduce redundancy and that it would avoid the potential for contradictions.

A second component of the change is a small change to LCC 18.05.120. That changes removes the codifier's notes, which refers to a different section of code. The referral is something that has been adopted through a normal public process, rather than a code reviser making a note.

Mr. Evander stated these changes have been reviewed by the Planning Commission, and the hearing was noticed in accordance with Lewis County Code. To date there have been no comments on these changes. He asked for questions or comments.

Commissioner Prior stated the agenda does not mention LCC 18.05.120. He asked if that mattered. The staff report is clear.

Mr. Carter stated it is fine to the extent that all of the materials reflect the changes to 18.05.120. There is also not a large amount of materials to be changed. It would have been preferable but the legal notice mentions both sections.

Chair Mahoney stated there was no Letter of Transmittal so he continued the hearing to the next meeting at which time the Letter of Transmittal will be signed and the hearing would be closed.

The Chair asked for comments from the public. There were no comments. Chair Mahoney continued the hearing to August 9, 2016.

#### B. Public Hearing: Rezone Applications

Chair Mahoney opened the public hearing on the rezones at 6:08 p.m. and recognized Mr. Evander.

Mr. Evander stated there are no Letters of Transmittal on these applications and they will be brought to the next meeting as well.

This public hearing is to hear testimony on two rezones and a comprehensive plan amendment for each. The first concerns TPN 02257020000, a 40-acre parcel at 149 Bowman Rd. This proposal seeks to change the comprehensive designation from Forest Resource Land (FRL) to Rural, and to change the zoning code from FRL to RDD-5. Mr. Evander discussed this rezone at the meeting on June 28.

The criteria used to evaluate this request are found in the comprehensive plan, which is noted in the staff report. There are also zoning code criteria that specifically states what it takes to designate FRL. The key provisions are a predominance of forest land grade 2 and 3 with a minimum block size of 5000 contiguous acres. In the subject area the forest resource zone that this parcel sits in is very large – 82,000 acres. The forest land grade on the property is 2 so it would classify as forest land of long term commercial significance but the block size is very large. This parcel is bound on the north and the west by forest properties: Port Blakely who owns 240 acres; Timber Services, Inc. owns 40 acres to the north and additional 40 acres north of that. The east and south sides are bordered by rural residential RDD-5. Parcels nearby have homes on them and others are within the Boistfort Valley Water Service Area and could service this parcel.

Given these facts, staff feels comfortable making the change from FRL to RDD-5. This would not encourage a lot of requests for the same designation because there are a number of timber companies that own property nearby. Staff recommends that the Planning Commission approves this change, and that it is appropriate with the zoning and comprehensive plan criteria.

Chair Mahoney reiterated what Mr. Evander stated, plus noted there is a steep area and small lots nearby. He also agreed that this was appropriate for a rezone. He asked for comments from the Commissioners.

Commissioner Prior stated he has a personal **and professional** relationship with Timber Services, Inc. but he did not think that had an impact on Commissioner Prior's voting.

Chair Mahoney asked for comments from the public.

Dennis Hadaller stated there is a 250' setback on any buildings from forest resource property lines and asked if the landowners were aware of that.

Commissioner Prior stated for properties neighboring FRL there is a ~~200'~~ **150'** setback to protect ~~property~~ **timber** owners from trees falling on them. He asked if this is taken out of FRL zoning, would that remove the 200' setback. The current neighbors would not have the ~~200'~~ **150'** setback. Mr. Carter stated the current neighbors to the south would not be affected by the setback anymore because the property to the north of them is rezoned. The property that is being rezoned would be subject to the ~~200'~~ **150'** setback where it is adjacent to the FRL.

Mr. Evander stated the second proposal is for a 37-acre parcel at 536 Brown Road, TPN 017984001002. This request was submitted by Keith Mohoric and Annie Douglas, seeking to change the comprehensive plan future land use designation from Agricultural Resource Land (ARL) to Rural, and to change the zoning map from ARL to RDD-5.

The criteria to evaluate this request is more complicated because the criteria for ARL are much more detailed than those for FRL. These are found in the staff report. Staff considered a variety of criteria in designating ARL. Key components are the NRCS definition of prime farmland, or prime farmland if drained or irrigated. Also considered are things that are non-soil dependent, such as poultry, Christmas trees, horticulture and fish hatchery operations. Other factors are under (5) in the staff report, and a key component of those is predominant parcel size, which is 20 acres.

There are ways to remove parcels from ARL designation. These are because of error and those errors are also found in the staff report. The first two would be applicable for this application. The soil is Prather Silty Clay Loam, and is considered prime farm land according to the NCRS. Mr. Evander summarized the other relevant conditions related to this property.

The people who designated ARL did it based on those criteria and it is consistent with those criteria. As a result, staff would find it difficult to state that it was designated in error. The argument that the farm lacks long-term commercial viability cannot be used that the designation was in error. A previous case where that argument was used, the court said what is economically viable to one farmer does not make it economically viable to another farmer.

Since the first criteria cannot be used, then it goes to the second criteria and staff would need to say that the soil is not appropriate for ARL designation. Staff has not been given any information that would support that and as a result, staff would recommend that the Planning Commission deny this rezone

request at this time. If additional information became available, showing that the land is not prime farm land, staff would process the request under that criterion. Mr. Evander asked for questions.

Commissioner Prior stated just because a parcel is prime farm land based on the criteria, does that mean that it has to be? The mapping said it has Prather Sandy Loam, which apparently is prime farm land soil. Commissioner Prior's question is: if a property owner wants to make it RDD-5 because he is surrounded on three sides by RDD-5, it seems reasonable. Because it is prime farm land, does that mean it has to be zoned ARL?

Mr. Evander stated it does not, but you have to consider the other criteria to get it removed. While we can look at ARL and see that he is surrounded by RDD, Mr. Evander would encourage the Planning Commissioners to think about the process that was used to get to that designation. Instead of looking at it in the ARL and thinking of it as a peninsula, look at it in terms of the RDD. They took those criteria and they removed every bit of ARL that did not fit within those criteria. This parcel just happened to be over that predominate parcel size of 20 acres.

Commissioner Prior stated one of the criteria is because there is no public water system. A well can be drilled, or a well drilled for every five acres. It is incumbent upon the property owner to provide a water supply before it can be developed.

Mr. Evander stated he would try to explain it better. To designate agricultural resource land, you take the prime farm land and then you start removing parcels that have too small a parcel size. If there is a group of parcels with too small a parcel size then you remove those chunks. If you have parcels that are served by public water or public sewer then those are removed. You take the combination of those criteria and ask which of these areas in the larger area of prime farm land are within or near an urban growth area. Then those chunks come out.

Mr. Carter stated it is difficult to understand without understanding the context of how this was developed. Commissioner Prior stated he did not care why this parcel was zoned ARL. The owner wants to remove it from the zoning and he saw no compelling reason to deny that request. Mr. Carter stated that was because he did not understand the context. The context is: when ARL was first developed in this county we designated everything outside of the Centralia-Chehalis corridor. We established an area alongside of I-5 on either side and said that this area is urban and we will not designate anything as ARL within this corridor. We took the position that the lands that include this land are primarily settled and are going to be expanded into over a period of time, and therefore should not be ARL and should not be designated as ARL but should be under the RDD zoning. The Growth Board would not accept that. They stated there are areas within this corridor that should be designated as ARL. They gave criteria in the decision sent back to us that is basically what is in front of you. They required that we had to designate areas within this corridor that are put together into economically viable units of ARL; the idea being that we would put together 20-acre parcels (there are some that are less than 20 acres). The Growth Board's theory was that we not consider the individual parcel. What is considered for purposes of ARL is the viability of the industry. If you were to consider each individual parcel, you would address it just the way that Commissioner Prior just addressed it. The Growth Board does not see it that way and required us to put together packages of substantial land and designate them as ARL for the good of the agricultural resource industry. If we did not have that and took those pieces out, there would not be a viable agricultural industry in that corridor. The Growth Board is asking if you are impairing that model that they accept by removing some of the parcels.

Commissioner Prior stated the Growth Board is saying if it is viable prime farm land it has to be ARL. Mr. Carter stated that is not what they would say, and there are ways that you can look at these. Some would say it is prime farm land because it has prime farm land as defined by the NRCS. But that is not how the Growth Board sees it. The way they see it is that is the first criteria. When the designations for ARL were made by this Commission and staff at that time, they applied these criteria to each of these parcels to come up with those packages in the compliance process for the Growth Board.

Mr. Evander stated, based on Mr. Carter's comment, this is not the smallest parcel in this zone. In the previous rezone request (Bowman Rd) in the FRL zone, staff felt there was little chance of a whole series of people requesting rezone changes as a result of the application. There are smaller parcels within this group. Again, the designation is based on predominate parcel size. They were looking for groups of 20-acre parcels; this group just happens to include smaller parcels.

Chair Mahoney stated there were three or four ARL designation plans rejected before we came up with one that the Growth Board would accept. One reason this particular piece may have been included in ARL is it is over 20 acres, it is presently being taxed as a working agricultural piece of property, and it comes close to having 50% prime soils. On the west side there are some streams with some very good soils; it is surrounded by ground that is prime if drained, although there is no indication that it is drained. If less than 50% of this parcel is actually prime ground, even by the NRCS regulations, then the parcel does not qualify as ARL and could be taken out for that reason alone. Chair Mahoney thought it looked like less than 50% but that is not a scientific determination. He believes that because this parcel is surrounded on three sides by RDD-5 is a heavy argument for allowing it to be rezoned. The County's zoning has nothing to do with the development of the property. The property owner would have to make proposals, provide access, water and sewer, before he could do any building. Is this property most appropriately zoned as ARL or RDD-5? The fact that the current land owners have accepted the lower tax rates based on agricultural use, and that it appears to be currently at least pasture, weighs heavily with leaving it as ARL. If the land owner could provide testimony as to how much is prime soils and how much is hydric, that could affect the decision.

Commissioner Millman asked where the map came from. Mr. Evander stated it was downloaded directly from NRCS; the dark green is prime farmland and is well over 50% of the parcel.

Commissioner Prior noted there is a significant chunk of the land that is taken up with trees. That area can't be farmed unless they are tree farmers.

Chair Mahoney stated that forestry is a primary use in both ARL and FRL. Quite a bit of timbered property was included in ARL because they are on good soils. Chair Mahoney referred back to the map and stated a significant portion of the green is prime only if drained, and it can't be assumed it is drained; there must be evidence that it is drained. Mr. Evander pointed out the prime if drained portions.

Commissioner Millman asked if the Commission votes to allow this [rezone], what would be the next step. Chair Mahoney stated the Planning Commission makes a recommendation to the BOCC and the BOCC makes the final decision.

Mr. Evander stated the areas of the green prime farm land are larger than the zone itself. Whoever drew this was looking for predominate parcel sizes of 20 acres.

Commissioner Prior stated he understood the history but we are making a decision about a single parcel. He only cares about this parcel and what this land owner is trying to do. He does not feel comfortable telling this landowner that he cannot rezone his property because of a decision by a mapmaker. He does not agree with Mr. Evander's denial recommendation.

Mr. Evander stated he agrees at a gut level but he does not have that ability. He suggested that the Commissioners look at the criteria, look at whether or not it meets the criteria. That's what Mr. Evander has to do; that is what the Commission has to do. There are laws that you have been given. Evaluate it based on those. If you feel it is wrong, what criteria that it is based on is wrong?

Commissioner Whannell stated this is one of the parcels that he went out and looked at. He spoke at the last meeting about cluster developments and conserving resource land. If this is going to be tabled for an indefinite period, the things we discussed about cluster developments would fit a parcel like this, where there could be house sites and still conserve land. If this were presented to the County, he would be in favor of that.

Commissioner Mahoney opened the hearing to oral testimony. He asked if anyone wished to speak.

Keith Mohoric, applicant, stated an issue while working on the application was that Mr. Evander asked for soil samples to disprove the types of soil. In his process of trying to find someone, the County sent him to USDA who did the soil survey. USDA said they do not do that for individual people. The County is asking for something but cannot tell us who can provide the information.

Dennis Hadaller experienced something similar. He hired a soil scientist from Spokane and the Growth Board would not take that information.

Mr. Mohoric continued to say that he understood where the parcels need to remain together. He explained that this is 37 acres and described the houses, buildings and topography. The timber is not commercially viable. If it was next to another 80-acre piece, he could understand keeping it in ARL, but because it is in the middle of RDD zone, and a corridor for housing, he would think the County would want to keep it as a corridor for housing. If he could determine where to get soil samples, he would gladly do it.

Paul Dudel, son-in-law of Ms. Douglas, stated Mr. Mohoric knows what the land provides and what the timber is worth and he is absolutely right. Mr. Douglas got the designation originally. Ms. Douglas' daughters have no interest in farming the land and would like an opportunity to increase the tax base by rezoning to RDD-5.

Chair Mahoney stated one of the maps showed a possible seasonal stream. Is the stream wet year around? (Answer was inaudible). What is the property being used for now? (Answer was inaudible).

Chair Mahoney stated he would continue this public hearing to August 9. He stated additional testimony would be accepted and a final decision and recommendation would be made at that time.

Mr. Mohoric stated if the rezone does not go through, they have learned the property can be subdivided through the will and that is an option the family will explore. Commissioner Prior asked for an explanation. Chair Mahoney stated there is a provision that allows for a piece of property to be subdivided smaller than the predominate size (if zoned RDD-20, it could go less than 20 acre parcels) one time as part of an estate. It could be divided between the heirs. Commissioner Prior stated the number of parcels to be divided into is dependent on the number of heirs. Chair Mahoney stated yes, and that is a one-time option. Once it has been done it cannot be done again.

Mr. Carter asked Mr. Dudel if his father-in-law requested the ARL designation, or was the land designated.

Mr. Mohoric responded, stating Steve Douglas, property owner, had the land designated as ARL for tax purposes. Part of the criteria that was used to designate this property as ARL is because it had the open space designation. From his understanding, the criteria was never met because financial reports need to be turned in for that property and that is what the property is being used for. At some point the designation was to be taken off and the Treasurer's office said they would leave it.

Commissioner Prior stated if forest land is taxed as forest land from the State's standpoint and the owner decides to change the tax designation to build homes, back taxes need to be paid based on what its value was for seven years. Is that true for ARL as well? Mr. Carter stated that was true. Commissioner Prior stated the tax question is covered based on payment of back taxes.

(Inaudible comment)

Chair Mahoney stated he would continue the hearing to August 9 and called a 10 minute recess. The Chair reconvened the meeting at 7:14 p.m.

## **5. New Business**

### **A. Workshop on Countywide Planning Policies (CWPP)**

Mr. Evander stated the Planned Growth Committee (PGC) made some minor changes and recommended that the Planning Commission accept the changes. Policy 1.4 was one of the larger changes. Since Lewis County and the City of Chehalis no longer have an Interlocal Agreement (ILA) for the Urban Growth Area (UGA) some language was added for a little more flexibility.

Chairman Mahoney asked Mr. Carter, since there is no ILA, do the County regulations not prevail in any development that takes place in the UGA? Mr. Carter stated in the UGA, no. The law requires that you try to conform development within a UGA to that city's code. When that became UGA, the County adopted the city's code for that area. That area has a County code that applies to it which consists of the city code. Chair Mahoney stated because it is a UGA they get their building permits, etc. from the city and not the County? Mr. Carter stated only if there is an ILA, and the ILA failed because there was a violation of the agreement. Chair Mahoney asked if this [policy] would reduce the conflict between the city, the UGA and the County. Mr. Carter stated absolutely. At the end of the series of meetings, there was not an issue, and he is hopeful that there will be another UGA agreement.

Chairman Mahoney stated that within the UGA the building codes and processing will conform to the parent city's code, not the County's. Mr. Carter stated selected parts of the code; there are exceptions. The County has to enforce the health code everywhere, which includes septic and water. That was the

issue with Chehalis, which dealt with the septic code and the water code. If there is an agreement, then the agreement must be that everyone must cooperate and enforce all of the codes. The only parts of the city codes that can be adopted are those that exist and the city does not have a health code.

Chair Mahoney asked from Community Development's standpoint, does this makes it easier. Mr. Evander stated yes, and it allows flexibility to treat different UGAs in different ways.

Policy 1.7 removes the specific mention of zones in the Countywide Planning Policies. The CWPPs apply to all jurisdiction planning, so why the County zones were mentioned did not make sense. Also, if a zone were to be changed for some reason, there could be a potential conflict with the CWPPs.

Policy 1.10 was changed to eliminate the 50-year planning horizon for essential public facilities. That is not something that any jurisdiction does; it is difficult enough to project out 20 years. Most facility plans are six years.

Policy 1.12.3 is language to clarify the second sentence. Chair Mahoney stated he understood this was a phrase out of state law; however long term commercial significance has been ruled to be not relevant to any decisions and he would like to see it not added because it confuses issues. Mr. Evander stated at the PGC meeting the word "dedesignation" was questioned as to its meaning and he felt this language clarified the policy.

Mr. Evander stated Policy 1.12.9 was added to acknowledge the difficulty inherent in annexation. That was at the request of the City of Chehalis. The idea is that just because something has not been annexed does not mean it should be taken out of the UGA.

Policy 2.3 is recommended to be removed because similar language is present in Policy 2.4, which is more detailed.

Policy 3.3 was removed because it was not clear as to what it was trying to portray.

Policy 5.0 would be expanded under the recommendation to include all of the different sections within the Growth Management Act to potentially allow more intense forms of development.

Policy 5.8 is recommended to be removed because this is adequately covered in Policy 5.

Policy 6.2 is recommended to be added to speak to the importance of property rights.

Mr. Evander stated the PGC met on three occasions and the draft before the Planning Commission is what staff and the PGC is recommending. He noted that population allocations for Packwood and Onalaska went to the PGC to have those jurisdictions designated as UGAs. Through the discussion of that group, those population allocations will be held off until next year; it would not be wise to adopt the CWPPs and have a comprehensive plan that would be inconsistent with the CWPPs. The population allocations and the comp plan will be adopted at about the same time so they are consistent.

Chair Mahoney read Policy 6.2 and stated this can't be said enough as far as he is concerned but we have to practice it as much as the state will allow us, and that goes back to the rezones discussed tonight. Mr. Evander stated one of the goals of the Growth Management Act is property rights.

Commissioner Prior asked if there was something in the CWPPs that is specific to the proposed UGA for the Packwood area. Mr. Evander stated, no, that will wait until next year. The population allocation is the main avenue to address the UGA. Staff is waiting until next year because all of the jurisdictions must update their population projections at that time and staff felt it would be a good idea to handle them all at once. Also, it needs to be consistent with the comp plan update. On page 17 of the CWPPs are the population allocations. There is an unallocated urban total and taking a portion of that should address the communities of Packwood and Onalaska.

## **6. Calendar**

The next meeting is scheduled for August 9, 2016 and will include the completion of the public hearings on rezones.

## **7. Good of the Order**

Mr. Hadaller had questions on the Shoreline Master Program (SMP). This will affect many people financially. There are many retirees looking at Mayfield Lake to put a motor home and build a reasonable house and a septic. He urged care in putting regulations on septic systems. He's heard some permit fees for a dock are \$20,000; \$5,000 for other things. This is driving potential customers away. It will be good for schools to get people in there.

Chairman Mahoney stated he did not think anything was done at the County level of the SMP that would adversely affect what Mr. Hadaller is speaking about. He recognizes that the Shorelines were totally driven by Ecology and while they cooperated with us they are in the driver's seat and these things Mr. Hadaller is talking about is State, not the County. Chairman Mahoney stated he felt pretty good about the SMP package; it was about as good as it could be and that Ecology worked well with the County. If there are fees for docks, etc. they are not at the County level.

Chairman Mahoney stated it was nice to see a past County Commissioner in attendance.

## **8. Adjourn**

The meeting adjourned at 7:38 p.m.