

Lewis County Planning Commission

Public Meeting

Virtual Meeting via Zoom

June 14, 2022 - Meeting Notes

Planning Commissioners Present: Lorie Spogen, District 1; Jason Alves, District 1; Gretchen Fritsch, District 3, Bob Russell, District 2; Corbin Foster, AL; Frank Corbin, District 3

Planning Commissioners Excused:

Staff Present: Lee Napier, Community Development Director; Mindy Brooks, Senior Long Range Planner; Megan Sathre, Office Assistant & Clerk; Amber Smith, Prosecuting Attorney; Karen Witherspoon, Sr. Planner

Others Present: Public Participants

Materials Used:

- Agenda
- Draft Meeting Notes – May 24, 2022
- Staff Report: SEPA Code Amendment; Addendum
- Staff Presentation: SEPA code Amendment
- SB 5275
- Letter of Transmittal

1. Zoom Guidelines

The Chair dispensed with the Zoom Guidelines.

2. Call to Order

A. Determination of a Quorum

6 Commissioners were present; there was a quorum.

3. Approval of Agenda

The Chair entertained a motion to approve the agenda. Commissioner Corbin made the motion to approve the agenda; second by Commissioner Russell. The motion carried unanimously.

4. Approval of Meeting Notes

The Chair entertained a motion to approve the meeting notes from May 24, 2022. Commissioner Russell made a motion to approve; second by Commissioner Alves. The motion carried unanimously.

5. Public Hearing – SEPA Appeal Code Amendment

A. Staff Presentation

Mindy Brooks, Senior Long Range Planner with Community Development gave a presentation on the SEPA Appeal Code Amendment.

Tonight I'm going to provide an overview of SEPA and a summary of the Proposed Amendment.

SEPA is intended to help local agencies, such as the county, identify environmental impacts that may result from specific actions. SEPA applies to projects, like construction, fill and grading, etc. It also applied to actions Planning Commission takes including amendments to the development regulation codes Title 17, rezones, UGA boundary changes, etc. For project actions like construction or fill/grading, SEPA is fully integrated into the local process. However, for Type V non-project actions like rezones or amendments to development regulations, SEPA is not fully integrated with the local process. This is the subject of the amendment.

I'm going to focus on the rezone process to demonstrate why the SEPA process is not fully integrated right now. Rezones are a Type V non-project action. *Mindy displayed a graphic showing the full process for a rezone.* First, the application comes in. The application includes the SEPA checklist, that portion is already integrated. Next is SEPA review, issuing a SEPA determination and the comment period. Following the comment period, the public has a 7-day appeal period. Then is Planning Commission and your process to make a recommendation. Finally, BOCC's typical process to approve the recommendation, which is followed by another appeal period. These two appeal periods should be integrated. Having two appeal periods is redundant, unnecessary and creates confusions.

The proposed amendment would not change the current process for Type I, II and III permits for construction or fill and grade. There would still be the 7-day appeal period after the determination. For Type V non-project actions that come to Planning Commission and BOCC for decisions, the amendment would eliminate separate SEPA appeal and integrate it with the final appeal.

Mindy displayed graphics on the screen. The separate SEPA appeal period would be removed and integrated with the final appeal period for the whole project. We are not removing the opportunity to appeal the SEPA determination. The SEPA determination can still be appealed. The difference is that the SEPA appeal would come at the end, along with any other procedural or substantive appeals – it would be fully integrated.

This is better for the following reasons. It removes redundancy and streamlines the process. This is better for the public. Rather than tracking two separate timelines related to SEPA appeal and underlying project appeal, the public will know that all appeals will come following BOCC decision. Also, it recognizes that the SEPA determination is tied to the underlying permit. SEPA is only one part of a larger question of a rezone or a non-project action like a code amendment. Finally, integration is required by the state law, so this helps us better meet the rules.

The exact amendment reads:

"Those aggrieved by the requirements, decisions, or determinations made by the responsible official in the completion of the threshold determination process may appeal such decisions to the Hearing Examiner pursuant to Chapter 2.25 LCC; except, there is no administrative appeal for procedural issues or for substantive issues of a SEPA threshold determination on a Type V non-project actions or Type V site-specific rezone applications."

Mindy concluded her presentation and turned it back to Chair Spogen.

B. Commissioner Discussion

Lorie: Looking at the proposed code language, it says "Those aggrieved by the requirements, decision, or determinations made by the responsible official in the completion of the threshold determination process may appeal such decision. So if you can't appeal a procedural or substantive decision what would you be appealing? Can you give me an example?"

Mindy: There are only two kinds of appeals - procedural error that's been made or the substance of the determination that was made.

Lorie: Then why does it say, "except there is no administrative appeal?" Is this referring only to Type V?

Mindy: The administrative appeal is the 7-day appeal period in the graphic. The amendment would remove the 7-day administrative appeal on the determination. That means that all appeals, including a procedural or substantive appeal of the SEPA determination, would come at the end after a decision is made on the full Type V proposal.

Amber: We are consolidating administrative appeals so there's only one appeal period.

Bob: When someone shows me a process in pictures or graphics is much easier to understand, but sometimes it is easy to get lost in the language. I have great trust that staff translate the information into the legal language.

Lorie: What clarified it for me is that normally with these types of things, you're only doing the SEPA on a project, not a proposal.

Mindy: Correct, these are different because they are a Type V non-project actions, meaning there isn't a project. For example, a rezone is not a project – it is changing the zoning on the land. Also an Urban Growth Area expansion has no project. Non-projects do not have direct impacts on the environment. After the rezone or UGA is approved, there will be a project proposed and the project itself will require additional SEPA review and determinations. This amendment is only related to the Type V non-project actions, not the projects that come after the rezone or UGA amendment.

Lorie: Those, more often than not, don't have an impact on the land, correct?

Mindy: Almost always, the decision is a determination of non-significance or mitigated determination of non-significance on the Type V proposal because there are no direct impacts to assess.

Gretchen: This seems like a very minor administrative change – we are not commenting or voting on the rezone itself or the project that is going to follow. This is just removing the 7-day appeal period and consolidating the appeal at the end. Is that correct?

Mindy: Correct, this is not specific to any project or any proposal that is going to come before you at a later date. This is a change to LCC 17.110 to consolidate the administrative appeal period on the SEPA determination for Type V proposals.

C. Public Comment

There were no members of the public who wished to testify.

D. Commissioner Deliberation

Commissioner Corbin moved to send a letter of transmittal recommending that the Board of County Commissioners pass an ordinance to adopt the proposed changes to Lewis County Code 17.110, State Environmental Policy Act. The motion was seconded by Commissioner Alves. The motion passed with 6 yes votes and 0 no votes.

6. Workshop

A. SB 5275 – Retail/Food Service Uses in LAMIRDs

Mindy Brooks, Senior Long Range Planner with Community Development gave a presentation on Senate Bill 5275 which passed the legislature this last session and impacts LAMIRDs, limited areas of more intense rural development, across the state including in Lewis County.

Limited area of more intense rural development or LAMIRDs are a designation in the Growth Management Act. GMA defines 3 kinds of LAMIRDs. Type I are mixed use areas that include residential, commercial and industrial uses. Type I LAMIRDs were established in Lewis County when we came into compliance with the Growth Management Act in 2000. The outer

boundaries of Type I LAMIRDs are based on development patterns from 1995 and the outer boundaries cannot be changed unless there is a fundamental error. Once Lewis County established the Type I LAMIRDs in 2000 that was it, no new Type I LAMIRDs are allowed. However, new development and redevelop within Type I LAMIRDs is encouraged under the state law. We just can't change the boundaries or designate new ones. Type 2 LAMIRDs are for small scale recreational uses. Lewis County has no Type 2 LAMIRDs, but new Type 2 LAMIRDs are allowed, as long as there are no residential uses included. Type 3 LAMIRDs are for small scale business and cottage industries. Lewis County does have Type 3 LAMIRDs. Unlike Type I, Type 3 LAMIRD boundaries can expand and new Type 3 LAMIRDs are allowed, again with no residential uses.

Frank: No residential is allowed in Type 3, meaning no new residential?

Mindy: That is correct. If we were to designate a Type III LAMIRD, which is an industrial LAMIRD, and there happens to be an existing house, for example a caretaker of that property, that house would be a non-conforming use and could stay. However, when we write the rules for a Type 3 LAMIRD we have to prohibit new residential.

In Lewis County the following zoning designations are applied to LAMIRDs. I'm not going to walk through all of them and what is allowed, or not, in each. The best place to view allowed uses per zone is in LCC Chapter 17.42. What I will say is that retail and food service uses are allowed in all of these zones. Hold that thought for a second because we will come back to it – retail and food services uses, that's grocery stores, restaurants, catering – area allowed, in some form, in all of these zones.

Mindy displayed a map of the LAMIRDs in Lewis County and some examples of where retail and food service is allowed.

SB 5275 was passed this year and becomes law tomorrow June 9. The bill does a few things, but we are focusing on a change related to the size of buildings that house retail and food service uses. Let's start with what retail and food services are. The RCWs do not define these two uses, so we turn to the Webster Dictionary. Retail means the sale of goods to the public for consumption or use, not resale. This would include grocery stores, convenience stores, sporting goods, etc. Food service is not defined in the Webster Dictionary, so we turn to common understanding which includes restaurants, cafeterias and catering operations. Both of these general uses are allowed in all LAMIRDs in the county, but there are limits depending on what zone you are in. For example, home-based catering would be allowed in STR (small town residential) but a standalone restaurant is not allowed STR. The bill is specific to mixed use zones in Type I LAMIRDs

The bill adds new rules that limit the size of buildings that can house retail and food service uses. First, retail or food service uses can occupy an existing building as long as the structure was previously used for retail or food service and the use will occupy the same footprint as the original footprint or less than 5,000 square feet, whichever is greater. Second, a new building for

retail or food services must not exceed 2,500 square feet. Third, the use of an existing building larger than 2,500 sq. ft. cannot be changed from a non-retail/food service use to a retail/food service use. Currently we allow up to 10,000 to 20,000 sq. ft. depending on zone and with specific permits. So this is a reduction in the allowed size, but only in Type I LAMIRDs. Type 3 LAMIRDs are not impacted.

To put this in context the grocery store in Packwood is roughly 10,000 sq. ft. It can stay and it can be replaced in its current footprint, but no new retail that large can be allowed. A typical Dollar General is 7,400 sq. ft. Under the bill, Dollar General could occupy an existing retail structure that large, but could not build a new structure that large. The intent of the bill is to not allow big box retail in LAMIRDs. The state is saying, big box retail is appropriate in urban areas or in industrial areas, but not rural areas.

This is what the law means for Lewis County. In Type I LAMIRDs existing retail and food service uses can stay right where they are, be maintained and be replaced in their current footprint. New retail or food services uses can occupy an existing building, if it was used for retail or food service before, and that building can stay the same size or expand to no more than 5,000 sq. ft. A new building for retail or food service must be no larger than 2,500 sq. ft.

Again, the bill only impacts the Type I LAMIRDs. Lewis County allows retail and foods service in all of the LAMIRDs, but the new size limitations are specific to the Type I's.

Mindy displayed maps on the screen. In Packwood, the new size limitations will impact the purple and red areas, which are Type I LAMIRDs, but not the light blue, which is a Type 3 LAMIRD. The light blue is the old Mill site. In the Highway 12 example, the limits impact the orange areas, which are Type I LAMIRDs, but not the blue or green, which are Type 3 LAMIRDs. The green is where Spiffy's (now Papa Bears) is located. That building is 9,000 sq. ft.

SB 5275 is effective June 9, 2022 and Lewis County needs to come into compliance with the state law. In order to come into compliance, staff will analyze the LCC and determine all the code section that need edits. The zoning code is like a very complex sweater. Pulling any thread can impact many of other things. We need to be thoughtful and not rush. While we do this work, the RCW law, shown on the screen, will be controlling. That means, Community Development staff will follow the state law directly until we can update LCC Title 17. Amendments to Title 17 require first going to Planning Commission and their docket is very full this year, as is BOCC. We anticipate bring code amendments to implement SB 5275 forward in early 2023.

Back to the slide that describes what the law means. I'll leave it up for a second so everyone can re-read it or take a screen shot from Zoom. As you can imagine, there were concerns raised by BOCC. We've reached out to WSAC to discuss the intent of the law and if there are opportunities to amendments going forward. For now, we are following the law as written, but there may be changes coming. We will keep you up to date.

Frank: There's no room in the law for us to make any changes or exceptions to the rule, so what if some people in Packwood wanted a really nice sporting goods store? Say the stores that are already there aren't able to offer what everyone wants and business is booming. The state is forcing us to live less and not be able to do what the people want to do. We are being forced into this – it isn't something we are saying we want. My initial reaction is that I do not like the state telling us what to do. Is there any room for Lewis County to do what they want to do?

Mindy: My personal opinion is that this heavy handed of a regulation is overreach by the state. This seems inappropriate because each county is unique. I would have rather seen a form-based code or an envelope within which to operate. As the law is written now it is very specific – there is no wiggle room. There were some pretty strong reactions from the Board of County Commissioners when I presented it last week. We are going to do some analysis on our end to see what the building stock of retail and food service is in our LAMIRDs and get a sense of how it compares to these new rules. That may give us a sense if we want to propose an amendment to the state rule. If we find that most of our stock is larger than what is allowed, we could argue that our rural character is bigger. On the Packwood side, a building that you described could go into the old mill site. The subarea plan is likely going to propose some significant changes to zoning. In order for it to meet the need for affordable housing and adequate employment going forward it is likely we are going to need to apply an Urban Growth Area to Packwood. If we do that, it would no longer be a LAMIRD and no longer under those rules.

Frank: I thought an UGA had to be tied to a city?

Mindy: All cities must have an UGA, but we can also apply an UGA to a location without a city in it. Onalaska is an UGA.

Gretchen: Would there be room to do a multi-story establishment? Is the rule based on the square footage or footprint?

Mindy: I suspect the state means total square footage, but we are still working on making sure we understand the intent.

7. Public Comment

There were no members of the public who wanted to provide public comment.

8. Good of the Order

A. Staff

Mindy – I would like to check in with the commissioners about in-person and Zoom meetings. I wanted to see how the commissioners are feeling about it.

The commissioner all expressed their appreciation for having the Zoom and in-person options and would like to continue with the hybrid approach. The primary reason is flexibility to attend even when traveling for work or when there are other obligations the commissioners have that make traveling to Chehalis difficult. All commissioners expressed that they would like to attend at least a portion of the meetings in person. Mindy acknowledged their feedback and confirmed that staff will continue with these options.

B. Planning Commissioners

There were no items from the commissioners.

9. Calendar

The next meeting of the Planning Commission will occur on June 28, 2022 and the agenda item are a public hearing on the YMCA Rezone Proposal and a workshop on Urban Growth Area expansions.

10. Adjourn

Commissioner Corbin made a motion to adjourn. The meeting adjourned at 6:46 p.m.