

# MASON COUNTY PLANNING ADVISORY COMMISSION

April 16, 2012

*(This document is not intended to be a verbatim transcript)*

=====

## 1. CALL TO ORDER

The meeting was called to order at 6:00 pm by Chair Randy Neatherlin.

## 2. ROLL CALL

**Members Present:** Randy Neatherlin, Bill Dewey, Dennis Pickard, Jim Sims, Ken VanBuskirk, Cathi Bright, and Kristy Buck.

**Staff Present:** Barbara Adkins, Rebecca Hersha, and Susie Ellingson.

## 3. APPROVAL OF MINUTES

None.

## 4. NEW BUSINESS

Barbara Adkins opened the public hearing on Collective Gardens. This hearing was continued from March 19, 2012. The amendments to Title 17 are looking at addressing the zoning as allowed under the RCW when it comes to collective gardens. There were some suggestions and edits that came out of the first public hearing. The BOCC had requested expanding the definition of collective gardens to more accurately reflect the way the RCW describes collective gardens. The definition was originally proposed as a single paragraph that is part of the description in the RCW and I have added to it with more of the specifics of the gardens themselves; patients, number of plants, number of ounces, etc. I originally didn't put more in the description as far as the definition was DCD staff could be placed in a position to actually go in and verify plants, etc. On page 2 under development requirements, we amended some of the items that the PAC felt was beyond our ability to realistically implement when it came to video surveillance and the log sheets, as well as constant onsite security. Our building inspectors added some language in regards to the fire code guidelines. You also asked for some additional information which includes a white paper, health department codes, the RCW as it currently exists, and a copy of the Lewis County ordinance. You may or may not want to include all of the information I have provided you with. We can shape this to what makes sense for our community. When it comes to the counties that were surveyed, 90% of the communities have chosen to either continue

## Planning Advisory Commission Minutes, April 16, 2012

their moratoriums or basically turn a blind eye and not deal with it.

The location being only in the commercial zoned districts made sense; keeping it out of residential is a good idea. You will need to decide about that. The only commercial areas I did keep it out of were the ones in the Belfair UGA, such as the Festival Retail, which is more conducive to walkable areas.

Randy Neatherlin inquired about dispensaries. Barbara Adkins stated that dispensaries were vetoed. Including something that was vetoed by the governor is something you probably don't want to do. I understand that they exist but we can't regulate them, and it's still a very grey area right now as to whether or not they are legally existing. I'm not getting a lot of clear answers and it's in the prosecutor's office right now to help me understand it all.

Ken VanBuskirk inquired what the current moratorium involves. Barbara Adkins explained the current moratorium involves gardens only. There was nothing in the governor's bill or the RCW that allows us to place a moratorium on dispensaries. As gardens are defined, they are gardens even though there are dispensaries out there. Dennis Pickard noted it might be better instead of saying where they can be permitted, but instead say where they are excluded. From the white paper it's potentially the case that active permitting at the local level could be construed under federal law as a violation on the part of the jurisdiction that's granting the permit. That can expose the county and it's employees to potential liability. Barbara Adkins stated that still doesn't get us out of the business. Right now I have change in tenant applications, which any business that moves is required to go through that process. Originally I had given guidance to a couple of dispensaries that you need to go through that process, which ensures safety and fire issues are addressed. Now if I allow an inspector or planner to sign off on that permit, it clearly says co-op for medical marijuana dispensary, are we saying that we're approving their use? That's still very up in the air.

Miscellaneous discussion regarding what zones to allow the gardens in.

Bill Dewey stated we can deal with the collective gardens here, but make a recommendation back to the BOCC that from our deliberations we are still concerned about the dispensaries that are located in Mason County. Barbara Adkins explained that the City of Shelton was leaning more to the industrial areas than the commercial areas. That's entirely something you can consider is to put it in agriculture, but that's not necessarily conducive to the kinds of traffic and the buildings and security. They will have to be secured and having that kinds of constant business and traffic there may not work in the agriculture areas. Randy Neatherlin stated right now we grow mushrooms and bean sprouts in our industrial areas. Randy Neatherlin also inquired if the BOCC has instructed her to put something in regarding the dispensaries. Barbara Adkins noted the BOCC put a moratorium on collective gardens in order for us to draft regulations regarding collective gardens. Dispensaries were not part of the deal, so we're not really dealing with them. Randy Neatherlin stated that if you were told to go after collective gardens, then that's what we're supposed to do. Hopefully the BOCC will consider dispensaries and ship it back to us. That's a huge issue we have to talk about eventually. In Belfair there is a dispensary literally right next door to a pre-school. It is within 1000 feet of an elementary school. There's a limit to what can be acceptable. There's also a huge law about anybody having any types of drugs in a school zone. That's a whole different law.

Dennis Pickard noted that our directive is to deal with specifically collective gardens, since we're looking at the larger issue with the zoning consequences, I don't think it's inappropriate to consider adding preclusion on other forms that may not presently be appropriate. There are also health and safety issues to consider.

Kristy Buck inquired about what many other jurisdictions are doing. Barbara Adkins stated she has a list of jurisdictions and how they're handling the issue. Cathi Bright inquired if we can restrict signage. Barbara Adkins explained there are sign regulations but not regulations for sign content. There might be something in the RCW that talks about what kinds of signs you can have. People that are growing plants are not necessarily telling you where they're growing pot. Ken VanBuskirk stated that Lewis County passed their regulation in January, and he inquired how many collective gardens they have permitted since that time. Barbara Adkins stated she did not have that number at this time. He also inquired about the special hazard issue. Debberra Coker of the Building Department explained it had more to do with the low plants and lights. Is it normal in a nonresidential building when we have the public involved we would require that there be portable fire extinguishers located in the building. Ken VanBuskirk stated there are a couple of critical

## Planning Advisory Commission Minutes, April 16, 2012

aquifers in some of the commercial zones and that's why we don't allow dry cleaners.

Randy Neatherlin opened it up to the public for questions of staff. There was no questions or comments from the public. The public comment portion of the hearing was closed.

Cathi Bright wants to add under ©) on page 1 addiction and mental health facilities, and providers and possibly hospitals and clinics to the list of places that needs to be at least 1000 feet away from. Barbara Adkins explained they still have to obtain medical authorization. Cathi Bright claims they are a attractive nuisance.

The PAC continued to review the regulations with the following changes:

Under (b), add industrial.

Under ©), take out within 100 feet of a and change it to 1000 ...; Include public parks, addiction & mental health treatment facilities

Under (f), strike (see (p))

Under (h), strike

Under (l), strike razor wire; add self locking gates

Under (k), strike

Under (l), strike first sentence

Under (m), strike 'other'

Under (n), strike

Under (q), Substitute 'equipped' for 'shall be provided'.

Cathi Bright made a motion to strike out RC 1 & 2, and keep RC 3, 4 & 5. Also strike V C district in Allyn. Also HC in Allyn, along with all other changes as recommended. Bill Dewey seconded the motion. The motion carried with one nay vote from Dennis Pickard, and Ken VanBuskirk abstained.

Rebecca Hersha opened the public hearing on the proposed amendments to the Resource Ordinance specifically relating to the Landslide Hazard Areas chapter. Rebecca Hersha reviewed the changes requested by the PAC from the previous workshop. Those changes include the exemptions, stormwater controls, reports versus assessment. Discussion regarding simplifying how exemptions are categorized in the document. Under Assessment required uses, PAC requested adding 'drainage' along with retaining walls. Discussion regarding public process and how neighbors are notified of the permit.

Ken VanBuskirk expressed concern regarding if he was a resident at the bottom of a hill he would be concerned about what his neighbor would do above him on the hill. Randy Neatherlin noted if the geo report says it's safe, can you have a say on theirs. Ken VanBuskirk stated whether or not they have a geo report as a public person you should be able to comment on the permit. Randy Neatherlin was also concerned if a neighbor wanted to have a separate report done, do you have to allow them on your property.

Having more geo tech is not the answer. Cathi Bright inquired if the geo tech report is distributed to the surrounding properties. It allows me to comment but it doesn't necessarily allow me to stop the proceedings unless something is glaringly wrong. Rebecca Hersha noted it was very time consuming and when we got responses we couldn't do anything with them because we had a geo report from an engineer who stated it was safe to build there and that it was mitigated. The conditional use permit could also be an option. Cathi Bright noted that it is not completely out of the realm of possibility that the person who prepares the geo report could make a mistake. It's a valuable part of the process that the person that you notify who expresses an opinion who says the report is wrong for whatever reason that that would be brought to your attention through that process. The PAC stated there can be public comment and leave it at that. Also, do not add staff to require a conditional use permit.

Rebecca Hersha deleted (G) on page 9 as it is referred to in (A) on page 8. You asked me to remove all the requirements to gain approval from the county or go to an arborist to remove a danger tree and I did that and just left in that the stumps be left and that the tree trunk be left lying on the ground next to the stump and that's per recommendations from the WRIA 16 committee. Ken VanBuskirk noted Mr. Diehl's suggestions but stated that it is pretty much industry standard that it's a tree length and a half length. Rebecca Hersha stated that can be changed.

## Planning Advisory Commission Minutes, April 16, 2012

On pages 15 & 16 Rebecca Hersha stated she has deleted A, B, C & D as it is already covered in the first part regarding when an assessment is required or a report is required. Ken VanBuskirk inquired about the fact that DNR has published landslide hazard area maps for Mason County. Rebecca Hersha explained they were last updated in 2007 and should be used instead of the Coastal Zone Atlas as they are more up to date.

Rebecca Hersha discussed John Diehl's comment letter. She agrees that the exemptions still need to be contained in one section and easier to understand. Rebecca Hersha stated John Diehl's suggestions are fairly minor, but does bring up the subject of land clearing. John says even cutting down a couple of trees is land clearing, but our definition is more broad and includes the cutting of any vegetation. I will look at the wording more clearly.

Constance Ibsen inquired about the habitat management plan and how is that data recorded and followed. Rebecca Hersha explained that we condition the permits. We have the authority to require an HMP if we feel conditioning the permit is not going to be sufficient. Pat Vandehey inquired about liquidization, and is that taken into account in these reports. Rebecca Hersha responded that seismic factors are definitely taken into account in geo reports. We also have a separate seismic hazard chapter that also says a report is required. Within the report, the engineer has to do some analysis and modeling for seismic impacts. Pat Vandehey inquired if the report is deemed okay, and something happens, who is responsible. Randy Neatherlin explained none of us are in a legal position to answer that. Pat Vandehey inquired what is meant by top heavy trees. Rebecca Hersha stated it could be a problem is someone is pruning up a tree for their view, and if they prune up so that all the weight is at the top, then wind can force it to fall over and take out the bank. Pat Vandehey inquired about the clearing, and doesn't it depend on the acreage. Rebecca Hersha explained that is why she exempted 500 sf of clearing.

The public comment portion of the hearing was opened.

Constance Ibsen stated that she has long advocated that Mason County adopt a clearing ordinance in general. We only have a grading ordinance. Where we have this drainage issue, is that anything that changes the hydrology of a lot is important. It can potentially impact a landslide hazard area tremendously. I don't get the sense of that in this report. What about the tight line drain where it says it shall be collected above the top and directed to below the toe by tight line drain and provided with an energy dissipating device at the toe. I thought we aren't supposed to do that. Rebecca Hersha stated it's the standard recommendation even on the DOE website. You have to account for dispersion. You're changing the hydrology by doing that. Rather than being so specific there, maybe we should just say accepted DOE standards. Constance Ibsen talked about the development at the top of the hill gets a posting on a tree that maybe no one can even see. The people at the bottom of the hill are not notified as they're more than 300 feet away. Then that hydrology changes completely. It's the people down below that are impacted the most. There needs to be a way that we are able to notify the people at the bottom of the hill. The 300 feet is not enough.

Pat Vandehey noted there's nothing in here about landfills. Rebecca Hersha stated we don't address landfill as we consider landfill as a part of grading. Fill and cut along with grading. We've exempted it in small quantities and it does require a geo report. Pat Vandehey inquired about mining. Rebecca Hersha explained that mining is exempt from our rules altogether as it is a state process. Mining regulations go through state review, same as forest practices. We have a say when there's a SEPA involved. It's sent out to all agencies who may want to comment on it and it's sent to us also for commenting. If we have more abilities to control mining, I don't know about it.

Cathi Bright suggested a change on page four under Classification under (A)(v)(b) to simply put a colon after the word seepage, and then add 'or'. Bill Dewey discussed Constance Ibsen's comment about notifying all people impacted. Bill Dewey suggested he public notification section on page 14 could read 'impacted property owners'. Rebecca Hersha stated she would do her best to incorporate that. Ken VanBuskirk suggested adjacent and impacted property owners. Ken VanBuskirk pointed out he knows of well casings that are affected by landslides where it actually bent the casings. It does affect the hydrology as well.

## Planning Advisory Commission Minutes, April 16, 2012

The PAC discussed having staff reformat the document and bring it back with all the recommended changes. Dennis Pickard made the motion to continue the hearing to May 21, 2012. Cathi Bright seconded the motion. The vote was taken and it passed unanimously.

Randy Neatherlin stated I would like a motion to the BOCC that we do something in regards to dispensaries. We had some discussion on that earlier. Cathi Bright noted it may not be a zoning ordinance that needs to be developed as dispensaries are not recognized. Dennis Pickard noted we don't have a definition in order to prohibit something. And do we have to prohibit something that is already illegal as an activity? There's no zoning permitting a meth house. It's just illegal. Bill Dewey made a motion that the PAC express it's concern to the BOCC of the proliferation of marijuana dispensaries, some of which are in close proximity to schools or other inappropriate places. We ask the BOCC to have staff investigate the ability to regulate and/or zone these businesses. Cathi Bright seconded the motion. The motion passed with Kristy Buck voting nay.

Meeting adjourned.