

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR MARCH 3, 2004

- A. OPENING BUSINESS**
- B. DELIBERATION/RECOMMENDATION TO BOCC ON MLA#04-26, UDC AMENDMENTS ASSOCIATED WITH AGRICULTURAL ACTIVITIES**
- C. ADJOURNMENT**

A. OPENING BUSINESS

The regular meeting was called to order at the WSU Learning Center at 6:30 p.m. by Vice Chair Eileen Rogers. Planning Commission members present were Phil Flynn, Robert Morgan, Dennis Schultz, and Edel Sokol. David Whipple arrived at 6:45 p.m. Jenny Davis, Tom Murray, and Tom McNerney were excused.

DCD staff present were Josh Peters and Cheryl Halvorson, secretary.

There were no members of the public present.

The minutes for February 18, 2004, were approved as submitted.

Eileen Rogers invited staff updates.

Josh Peters reported that the BOCC had set the Final Docket for the 2004 Comp Plan amendment cycle by accepting the Planning Commission's recommendation.

Josh Peters reported that staff had discussed the Comp Plan update for 2004 with the BOCC. He stated that staff had reported to them that staff would focus on the statutory requirements while the Planning Commission Comp Plan Review Committee would focus on the Planning Commission report the UDC addressed in terms of an overall review of the Comp Plan. Mr. Peters stated that staff had briefly presented the idea that one result could be to basically retain the goals and policies of the Comp Plan as the new Comp Plan and to delete all of the text, with the current Comp Plan only being retained as a historical document. He reported that the BOCC had not expressed any immediate objection to the idea; they had simply listened to it.

Josh Peters reported that the BOCC had held a public hearing on the Brinnon Subarea Plan compliance resulting from an appeal brought to the Hearings Board after the 2002 Comp Plan amendment cycle. The hearing subject had been a Brinnon Plan Epilogue which had been prepared. He reported that the BOCC had adopted the Epilogue by ordinance after the hearing. Mr. Peters stated that a notice of adoption would appear in the March 10 Leader, which would begin a new appeal period. He stated that the next step would be a compliance hearing before the Hearings Board.

Josh Peters reported that a Draft Supplemental EIS had been issued related to the Mineral Resource Land Overlay on the Fred Hill Materials appeal to the Hearings Board. He stated that a public comment period had opened. After that, there would be a Final SEIS issued. The BOCC would make a decision after that. Mr. Peters stated that the DSEIS was available on the county web site or copies were available for purchase at the DCD office.

Eileen Rogers asked for further clarification about the Comp Plan update and the Planning Commission committee's role. She stated that there was some confusion on the committee's part after their last meeting. Ms. Rogers stated that they needed some clear direction. She stated that the committee thought its direction was to delete all of the extraneous narrative and review the goals and policies. She reported that staff had indicated that was not their understanding. Josh Peters stated that the BOCC's direction, unfortunately, had not been real clear. In subsequent general conversations with the BOCC, staff had not received more clear direction either. He acknowledged that was his fault. Mr. Peters stated that the committee had received copies of the state checklist. He stated that, in terms of the county's statutory obligation, we must meet the requirements of that

checklist. That was the material the staff would be concentrating on. Mr. Peters stated that the next message was that the UDC talked about a 5-year Planning Commission review of the Comp Plan. He stated that the almost radical idea of stripping out the narrative text was not referenced in that passage. Mr. Peters stated that there were some other jurisdictions that had done it that way, however. Phil Flynn asked if those jurisdictions had "cleared muster" with that approach. Mr. Peters replied that staff thought so, although they needed to do further research before adopting that idea. Mr. Peters stated that the third message was the letter from the BOCC in which one sentence talked about the "verbosity" in the current Comp Plan. However, the letter did not say anything specifically about how to deal with it. Mr. Peters stated that staff did indicate to the BOCC that, with the current staffing situation, staff would focus on meeting the state requirements and would provide as much staff support to the committee as they could.

Eileen Rogers stated that the committee did not want to spin its wheels. Therefore, the committee needed clear direction from the BOCC. Edel Sokol stated that she, as the committee chair, was charged by the Planning Commission Chair with deleting any verbosity and deleting any regulatory language. Ms. Rogers stated that would be a really drastic change; it could be three quarters of the Comp Plan. She reiterated that the commission needed to get a straight idea of what the BOCC wanted the committee to do. She stated that Ms. Sokol had already spent many hours on the project.

Eileen Rogers stated that one idea presented was for the committee to take the Rural section and the UGA section of the Comp Plan and review and re-write them in terms of the ag lands issue and the Hadlock/Irondale UGA.

Eileen Rogers stated that if staff thought it would be better if the committee members went directly to the BOCC, they would do that. Josh Peters stated that this seemed to be a situation where there were several layers of interpretation. There was the BOCC, there was the Planning Commission's liaison with staff, and there was the Planning Commission Chair, who had apparently given direction to the committee chair. So there appeared to be different things going on. Mr. Peters stated that what he was hearing from Ms. Rogers was that she wanted to know what it was the BOCC wanted and what the commission's scope of work was. Ms. Rogers agreed, stating that the commission was happy to do whatever it was the BOCC wanted, but it seemed that everyone had different ideas about what that scope was. Edel Sokol stated that she thought she had been given the committee's scope of work by the Planning Commission Chair and she thought he had gotten his scope of work from the BOCC. Mr. Peters asked Ms. Sokol if she was comfortable with that scope of work or if she had questions also. Ms. Sokol replied that, after talking with staff, she now had the same questions as Ms. Rogers. Mr. Peters stated that he could say that staff had not been given that same direction. Mr. Peters stated that from the perspective of the 5-year Planning Commission review, it may make sense. He stated that it did not say the staff would write a report every five years; it said that the Planning Commission would write a report every five years after taking a look at the Comp Plan in a broad way. He noted that it did not say anything about deleting sections, although that could be one approach. Mr. Peters stated that it was possible that the Planning Commission's direction was correct, which would be a concurrent process with the staff's direction, which was to comply with the statutory obligations of the GMA. He reiterated that, as liaison, staff would try to provide as much staff support as possible. However, staff did not have the resources to re-write the entire Comp Plan. Ms. Rogers stated

that the commission understood that clearly. Mr. Peters acknowledged that at least one County Commissioner had been talking about re-writing the Comp Plan for a couple of years, so it was not a new idea, and that may be the direction the BOCC wanted.

Eileen Rogers suggested that staff work with Ms. Sokol as the chair of the committee to resolve the issue. Ms. Sokol and Ms. Rogers suggested that the committee not meet until the committee received clear direction. Josh Peters suggested that the committee meet on March 10 as scheduled. By that time, staff may have some further direction for the committee. He stated that he would take the issue to the DCD Director and perhaps staff could go to the BOCC on March 8. The committee agreed with that suggestion.

B. DELIBERATION/RECOMMENDATION TO BOCC ON MLA#04-26, UDC AMENDMENTS ASSOCIATED WITH AGRICULTURAL ACTIVITIES

Josh Peters reported on the staff process since the public hearing, noting that Karen Driscoll had taken ill. Consequently, he had not been able to do a staff report. However, they had been able to provide a memo listing staff's concerns and questions. He thought they would be able to provide a staff recommendation by the next meeting. Mr. Peters stated that Mr. Schultz also had some questions and concerns which he had presented in writing at this meeting. Mr. Peters suggested that the commissioners discuss the issues from both staff and Mr. Schultz and the rest of the UDC proposal at this meeting but wait until the next meeting to take a vote. However, if the commissioners wished to take a vote at this meeting, it could do so and staff would provide its recommendation directly to the BOCC. He pointed out that the work plan scheduled the ag lands issue for both meetings in March, so the commission still had time.

The Planning Commission began its discussion with the memo received from Dennis Schultz. Mr. Schultz reviewed the issues he thought the current proposal did not adequately address. The issues included repair, maintenance and construction of ag equipment; industrial activity; best management practices; veterinary clinics; and farm campgrounds. He proposed that some of the other UDC sections held further regulations that should apply to ag lands, although he did not think all of them should apply in every case. Mr. Schultz stated that the Conservation District was referenced in the best management practices section, but the Conservation District did not have any regulatory authority. He thought the sections should be revisited. Josh Peters commented that Mr. Schultz had raised some of the same issues that staff had raised in its memo.

Edel Sokol referred to the repair, maintenance and construction of ag equipment and asked for further clarification. Her concern was about a farmer repairing his own equipment. Dennis Schultz clarified that the section was for an associated business on the farm and not about the farmer repairing his own equipment.

Josh Peters reviewed the issues raised in the staff memo. He stated that staff had some concerns about the details, although staff supported the basic concepts behind the proposal. He stated that each issue listed raised some questions about those details.

Josh Peters raised a staff concern with the "matter of right" and "right to farm" provisions especially where it applied to Rural Residential versus Ag Lands and differentiating between the two. Edel Sokol stated that the Ag

Lands Committee had wanted the "right to farm" provisions to apply to Ag Lands but not to Rural Residential. She stated that, if the RR land owner wanted the "right to farm" to apply to their land, they should get it re-designated to Ag Land. Mr. Peters stated that for some uses the county did not require a permit at all. The commissioners and staff discussed examples of farm type uses in the Rural Residential zoning that could be a nuisance. They discussed whether we wanted to allow such uses in the RR zones. Also under discussion was whether some nuisance type uses could be allowed on the larger RR lands but not on RR 1:5. The commissioners and staff discussed whether we wanted someone on RR land, who had not opted into the Ag Lands designation, to be able to get a conditional use, or simpler, permit to do things that were essentially a matter of right on Ag Lands. David Whipple stated that the purpose of the ag lands provisions were to promote and protect our ag lands. Therefore, we wanted to encourage people to opt into the Ag Lands designation.

Parcel size was discussed. Dennis Schultz stated that the committee had not reached a recommendation for a minimum parcel size for Ag Lands designation. He thought that was an issue the full Planning Commission should discuss and formulate a recommendation on. The commissioners and staff discussed an example of a small parcel in the valley that was zoned RR where the land owners grew and marketed flowers from it. Mr. Schultz stated that under an RR designation, a land owner could not set up a farm stand to sell flowers. But under the Ag Lands designation, they could have a farm stand as a matter of right. The commissioners discussed what kind of criteria should apply to the Ag Lands designation, including whether there should be a minimum parcel size.

Cheryl Halvorson stated that one thing to consider was the economics for the property owner. She pointed out that, if a land owner did not opt into an Ag Lands designation this year, it would cost them \$2,250 in the future to do a Comp Plan amendment to rezone their land from RR to Ag Lands. The cost of a conditional use permit was around \$1,000, if the county allowed the associated farm uses on RR land (e.g. processing of their product). Processing would be allowed on Ag Lands, but the economic incentive for the RR land owner would be to get a conditional use permit if the county allowed such uses on RR land.

Josh Peters stated that staff would draft a proposal for discussion at the next meeting based upon the discussion. He stated that he understood that growing of crops would be a matter of right on RR land. However, basically the other ag type uses would not be allowed on RR land and would be a matter of right on Ag Lands. He suggested that, if there were some uses the commissioners thought should be a conditional use or some other kind of permit in the RR lands, the commissioners should let him know.

Josh Peters stated that another issue related to "right to farm" provisions had to do with noticing to neighboring property. He noted that currently the noticing was only applied to a permit for land adjacent to designated Ag Lands, even though RR 1:10 and RR 1:20 lands also enjoyed the "right to farm" provisions. The question was whether that was the way it was meant to be. A related question was whether we wanted the nuisance protections to be only for designated Ag Lands. While Mr. Peters understood that there may be people who would answer "No", it was a question to ask. The commissioners discussed the types of farm uses, some of which would be a nuisance and some of which would not. Examples were a pig farm versus growing corn.

David Whipple stated that if the goal was to protect and promote the farming activity, then the property owner should get their land designated as Ag Land. Mr. Whipple stated that the Planning Commission's role was to look at the general welfare of the community as a whole and not the benefit of specific property owners and specific cases. He stated that we could not fit everyone's needs perfectly. He stated that the general concept was to protect agriculture, so the incentive was to get the land designated so it would protect the viability of the agricultural activity.

Josh Peters stated that if we were to change the code to make it clear that the "right to farm" provisions only applied to designated Ag Lands, it would not take away someone's ability to do agriculture on RR land. What it would take away was someone's ability to look to some kind of nuisance protection provision in the code for operating a pig farm in RR, for example. At the same time, we did not want to prohibit someone in the RR 1:5 zone from having a few horses, cows, or even pigs for their own use. Edel Sokol stated that if someone lived next to Ag Land, they should expect to experience some nuisance from farming. However, someone living on RR land should not have to experience a farming nuisance use, such as a pig farm, on adjacent RR land. Mr. Peters stated that currently there were no provisions to differentiate between RR and Ag Lands with respect to such uses. He stated that he would draft a recommendation from staff for the commission to consider at the next meeting.

Eileen Rogers asked if there would be a notice to title for RR land adjacent to Ag Land. David Whipple stated that it should be part of the disclosure to someone buying the RR land. Josh Peters stated that when someone came into the county for a permit, it would be disclosed on the permit. Dennis Schultz stated that it would be no different than someone living next to Forest Land or a designated Mineral Resource Land.

Josh Peters raised a staff concern about the Open Space Tax Program, stating that it needed to be clarified to the public that an Ag Lands designation and the Open Space Tax Program were two different things. He stated that it would be important for people who were enrolled in the Open Space Tax Program to have the opportunity to consider whether they wanted their property zoned Ag Land as well. David Whipple suggested using a footnote in the code to explain the difference. A related issue was the difference between Open Space Ag and Open Space Timber. Someone may have their property enrolled in the Timber tax program but may be using some of their property for agriculture. Mr. Peters stated that such people may question whether they were eligible for the exemptions under agriculture. He stated that the answer was "No" because the exemptions were for designated Ag Lands or lands in the Open Space Ag program. The person could opt into an Ag Lands designation or they could adjust their Open Space Tax Program category. Mr. Peters stated that this was just a clarity issue and was not necessarily something that would require an amendment to the code.

Josh Peters raised a staff issue concerning best management practices [BMPs]. He suggested that we reference the process that was going on now, adding that it was an issue raised by Washington Environmental Council, which was an original appellant of the UDC. He stated that staff would propose some language for consideration.

Josh Peters raised a staff concern about activities requiring a stormwater management permit. The concern was that the ag activities in the section were exempt from stormwater management standards. He stated that the

question was whether the farming activities would be exempt and the associated activities would not, or whether the intention was that all of the uses would be exempt. David Whipple suggested that there be a difference between whether the farmer was paving or whether the ground was left pervious. An impervious surface would require a stormwater permit. Dennis Schultz stated that the committee had not talked about uses that would create impervious surfaces, other than parking for a farm stand, for example. Edel Sokol stated that one of the committee's main goals was to keep the regulations affordable for the farmers, adding that the commission had received comments from farmers to that effect. She stated that was the reason the committee wanted to exempt the farmers from the stormwater management standards. Mr. Peters responded that there was an exemption from a building permit for ag structures. However, the issue was whether a stormwater management plan should still be required even for those exempt buildings. At issue was the size some ag buildings could be. Mr. Peters stated that the first question was whether it was alright to do a very large structure as part of the Ag section in terms of "matter of right". The second question was, if it was okay, whether you needed to comply with the Stormwater Management Standards and submit a stormwater site plan. He stated that a large structure might create enough runoff that it could affect neighboring property, or streams, or county roads, etc. He stated that the stormwater management thresholds were 7,000 square feet of land disturbing activity and 2,000 square feet of impervious surface. Mr. Peters stated that the basic question was whether the associated uses on ag lands would be qualified for an exemption or whether that kind of activity would not be exempt and would have to get a stormwater permit, and the only exempt activity would be the actual growing of crops. Mr. Schultz agreed that there had to be a limit somewhere. Robert Morgan raised a concern about the safety of buildings, stating that some large farm buildings were not necessarily structurally sound. Mr. Peters stated that he would do some research, adding that he understood the balancing of the goals the committee wished to strike.

Josh Peters raised a staff concern about a clear process by which the Administrator would determine the appropriate permit process for a proposal that exceeded or was outside the "matter of right" terms of the section. He wondered whether the Administrator would handle it like a "D" use (Discretionary). A related question was whether there would be a different process for a proposed activity on RR land versus the same activity on Ag Lands. He asked the commissioners to consider the issue and talk about it at the next meeting.

Josh Peters raised a staff concern about more clearly defining and distinguishing some terms and relating them more closely to ag activities, and defining when a permit would be required and when a permit would not be required. Currently the proposal used some of the existing definitions, but they did not clearly fit the intended ag use of the term. Of particular concern were the "industrial" definitions. Mr. Peters suggested that it may be necessary to stay away from those other parts of the code and not try to marry those parts to the Ag Lands section. He thought that trying to do so would cause difficulties, citing the other commercial uses as an example.

Dennis Schultz stated that the "heavy industrial" also bothered him. The commissioners discussed examples of light or heavy industrial agricultural activities. They discussed whether a definition for the ag industrial activities would be necessary. Josh Peters stated that we did not have a definition for "light agricultural processing". He stated that there was a definition for "agricultural processing-heavy". He suggested that we could

start with that definition to create a definition for "agricultural processing-light". We would need to distinguish between those activities. Mr. Peters read the existing definition for "industrial use, heavy or resource based". He stated that the current proposal indicated that you could do an industrial use, but if the use used hazardous materials or some other dangerous materials, it would be outside of the terms of the "matter of right". He suggested that was something the commission should think about further. Mr. Peters read the definition for "light industrial". He thought the definition for "industrial use, heavy or resource based" seemed to be a combined definition that may need to be separated.

Robert Morgan described an Eastern Washington farm stand where the farmer sold his fruits, but he also sold jams and preserves which they produced on their farm. He thought that type of processing represented a "light agricultural industry". They grew the products, they processed the products, and then they sold the products. Mr. Morgan stated that, if they had big stainless steel tanks and were bringing in raw materials and containers and were belching steam or smoke and had forty people working in a large food processing situation, it would represent a "heavy agricultural industry". Edel Sokol questioned what would be wrong with that. Mr. Morgan stated that there was nothing wrong with it. Dennis Schultz stated that if we wanted to allow such a large processing plant, there should be some kind of permit. Ms. Sokol stated that the input the commission had from the farmers, and the reason they were so excited about this proposal, was because of the possibilities it opened up to them. She stated that we did not want to lose that. Mr. Schultz stated that we also needed to take a reasonable approach and look at the possibilities. David Whipple questioned why such a large use would need to be on prime agricultural land rather than on our currently zoned industrial land.

Josh Peters commented that this was a very good discussion. He suggested that the commissioners think about the most extreme example that could be allowed under this proposal as a matter of right and then think about that example for every parcel the commission would be considering this year for ag zoning.

Robert Morgan was excused from the remainder of the meeting.

Dennis Schultz stated that he liked Mr. Peters' approach to consider the largest practical activity we would want to allow on our Ag Lands and draw the limit there. Then anything else would have to be a conditional use. Eileen Rogers agreed that was a good approach. David Whipple commented that perhaps there would be some things we would want to prohibit in the Ag Lands. He stated that if a use was not prohibited, it was allowed. Josh Peters stated that a conditional use permit process contained criteria whereby the Hearing Examiner could deny the permit because it was the wrong location for the proposed use. Mr. Schultz stated that if the commission re-defined "agricultural processing, industrial" and then set an upper limit as a matter of right, anything above that limit would be a conditional use.

Edel Sokol referred to the current Use Table, stating that in some cases where it said "No" the use may really be allowed. Now, under this proposal, the table said "Yes" with a reference to Section 4.3. Josh Peters stated that in some cases those uses may be fine, or the section may need to be tweaked. He suggested that in some cases, we not do it that way. He cited the "unnamed commercial use" as one example. He wondered why we would want to put a "C" in the Use Table instead of "No". Dennis Schultz suggested that

the Use Table say "No" in those instances, stating that the UDC was a "growing" document that may be modified in the future. Ms. Sokol stated that she would rather have it reference Section 4.3 instead of prohibiting all such uses.

Cheryl Halvorson commented that something the commission should consider when talking about allowing industrial uses on the Ag Lands zoning was how much of that prime ag soil we were willing to give up to the industrial use. Edell Sokol explained that the proposal indicated that the use could not take up the prime ag soils.

Josh Peters briefly reviewed the remainder of the staff issues and questions, stating that they related to the other issues that had been discussed before or had been raised in the DCTED comment letter.

The commissioners and staff discussed the limitation on number of cattle in a feedlot. It was suggested that the state Department of Agriculture may have a definition for a feedlot with a number associated with it. Josh Peters stated that the point of the limitation in the proposal was that a farmer could have a certain number of animals as a "matter of right"; anything over that would require some kind of land use permit.

David Whipple offered an example of a windmill turbine and a farmer setting up retail sales of such machinery. Dennis Schultz pointed out that the use was not ag related. Josh Peters stated that such a use would be addressed under the Cottage Industry and Home Business section, which was a fairly simple permitting process.

Josh Peters summarized what staff would need to do during the next week with the objective of providing something to the Planning Commission for review by the end of the following week (March 12). The commission will take up the ag issue at the next meeting with that deliberation taking a good portion of the meeting.

Phil Flynn asked if the proposal would really streamline the process and make it easier for the public to understand. He asked if it would result in fewer permits. Dennis Schultz responded that the whole ag issue had been basically left blank in the current UDC. Therefore, the public had not been able to do too much. Mr. Schultz stated that the proposal would open up a lot of opportunities that the farmers could not do before, and they could do it without a permit process. Mr. Flynn stated that the proposal had made it less restrictive. Mr. Schultz agreed that was correct, adding that we were encouraging the farmers to do more things.

Phil Flynn asked for staff's perspective. Josh Peters responded that currently staff really did not deal with the ag community that much. He did not think, in his memory, the county had issued a permit for ag activities. He did not think staff had that many discussions with farmers. Therefore, he did not know if the farmers wanted to do uses and activities and the county had prohibited it or if the farmers had just not asked. Mr. Peters stated that, in terms of the simple activities, he did not think it would change things that much. He stated that the proposal would more clearly define what activities were a matter of right. With regard to some of the accessory activities, it clearly defined what those were. He thought it opened up opportunities that people perceived were not available to them before. Mr. Peters stated that one impact the proposal may have was that, as people began to do some of the activities, the county may receive more complaints. He

stated that, at this time, the county did not have an effective process for dealing with complaints, although the county was working on the issue. However, overall, he thought it was a good proposal.

Dennis Schultz stated that the feedback he had received from farmers was that some were quite excited because now they could do some activities that they could not do before without going through a lot of bureaucratic red tape. David Whipple commented that it would be interesting to see how many of these activities were actually pursued over the next three to five years.

Josh Peters reported that there would be a course at WSU for farmers related to business practices. He stated that he would not be able to attend. However, he thought perhaps Mr. Schultz may want to attend in order to provide information about this Ag Lands process. Dennis Schultz stated that he had just received something from WSU about it. He noted that it was quite expensive.

C. ADJOURNMENT

Eileen Rogers stated that the Planning Commission would take up the ag issue at the next meeting and, hopefully, complete a recommendation on it.

Edel Sokol brought up a news article about a sex shop infiltrating a small town. Josh Peters stated that, according to the Constitution, you had to allow a place to do that business; you could not prohibit that use. He stated that there was currently nothing in our code. Mr. Peters stated that it was within the scope of the Planning Commission's charter to draft a proposal to send to the BOCC. Ms. Sokol stated the opinion that this county should address the issue.

David Whipple stated that this would be his last meeting as his term was expiring. He stated that it had been an interesting and fascinating six years. Eileen Rogers thanked Mr. Whipple for his service. Phil Flynn thanked Mr. Whipple for his insight.

The meeting was adjourned at 8:30 p.m.

D. APPROVAL OF MINUTES

These minutes were approved this _____ day of March, 2004.

Eileen Rogers, Vice Chair

Cheryl Halvorson, Secretary