

1 WHATCOM COUNTY COUNCIL
2 **Public Works and Capital Projects Committee**

3
4 December 11, 2001

5
6 The meeting was called to order at 1:37 p.m. by Committee Chair Barbara
7 Brenner in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

8
9 Also Present:

10 Marlene Dawson
11 Dan McShane

Absent:

None

12
13 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

14
15 **1. DISCUSSION REGARDING THE LAND OCCUPIED BY THE GOOSEBERRY**
16 **POINT FERRY DOCK (AB2001-437)**

17
18 Jeff Monsen, Public Works Director, stated he could describe the basis of the
19 lease agreement under the premise that the lease agreement is valid.

20
21 Brenner stated she just wants to find out if the lease is or is not valid.

22
23 Dawson stated five properties were supposedly transferred to the Tribe as
24 part of a lease agreement with the former County Executive. Shirley Van Zanten
25 understood that the properties were transferred to the Tribe to settle a lease
26 agreement. She questioned whether the County can transfer part of a road system
27 without some kind of public hearing or Council action. She also asked why they
28 need a lease.

29
30 Brenner questioned whether there was Council action on this transfer. If
31 there was Council action, there would have to be paperwork on it.

32
33 Dan Gibson, Senior Civil Deputy Prosecutor, stated the County Executive
34 executed the lease agreement in 1988. He is not prepared to speak on whether or
35 not there was Council action.

36
37 Brenner asked if a county executive could unilaterally transfer public property
38 without Council action. She asked what the Executive did. Gibson stated that
39 regarding this property, the County Parks Board divested itself of ownership of a
40 particular property to the Tribe. The County Public Works Department is paying the
41 Parks Board for the property that was transferred to the Tribe. The exchange in
42 1988 was from the Parks Department to the Tribe, for which the Public Works pays
43 the Parks Department.

44
45 Brenner asked if the Parks Board could take government property away from
46 the County without Council action. If so, she asked whether the Parks Board can
47 give away any County property. Gibson stated they were not examining whether or

1 not the Council or Executive should have done something with this property. He
2 did not second-guess the Executive in the exercise of that power.

3
4 Brenner stated she didn't know whether the County Executive could give
5 County property to the Tribe without Council approval. Gibson stated the
6 councilmembers have to think long and hard before asking that question.

7
8 Monsen stated the premise is that the lease is valid. The transaction was in
9 exchange for any interest the County didn't already hold, according to the map he
10 handed to the councilmembers. That entire area is described in the lease. There
11 are areas that the County had an easement right to prior to the lease agreement.
12 The lease agreement can be described as a gross area, and the County acquired
13 lease right to anything it didn't already hold for 25 years. The compensation for
14 that right was the transfer of a single piece of property that was held by the Parks
15 Board and transferred to the Tribe. There was a single payment to the Tribe for
16 that 25-year lease in the transfer of that property. Any financial transaction, since
17 the execution of the agreement to transfer that property, is the transfer of funds
18 between the Road fund and general fund to make the transaction whole. Under
19 that scenario, if indeed the agreement is invalid, then what the County asked for,
20 which is the right to use that space, is happening. If the County asks the question
21 of whether it is invalid, the question is whether the County must abandon the use
22 of the property in the meantime.

23
24 Brenner asked if this land transfer is valid.

25
26 Dawson asked what part of the land the County didn't own. Monsen stated
27 there are some portions within the area that the County did not have control over.
28 It is not the County's position that they absolutely control the tidelands. The
29 interest that the County holds in this area is as an easement or a lease. The
30 County does not now and never has owned any fee simple land there. A road right-
31 of-way is an easement. The County does not own the land underneath it. The
32 County occupies the land through the right-of-way easement, transportation special
33 dedication for easement purposes, and anything else that the lease would cover.
34 The easement did not go away.

35
36 Dawson asked why the County would pay for an easement.

37
38 Brenner asked if it is an easement or lease. Monsen stated there is an
39 easement and right-of-way that would cover a good part of the area, but not the
40 entire area. He indicated the lease area on a map. The lease describes an area
41 that includes the tideland area. The Council had historical easement of some of the
42 area through a separate transaction or an old right-of-way. It does not include the
43 entire area on the map. The County does not have control of the tidelands, no
44 matter who says they do.

45
46 Crawford asked if there could be repercussions by the tidelands becoming an
47 issue, if the County tried to assert its right to an easement that it had historically
48 and stopped payment on a lease that was not executed properly by the County

1 Council. Monsen stated the County has made 100 percent payment to the Tribe
2 already. There are no more payments to the Tribe for the lease.

3
4 Dawson stated there is a renewal. Monsen stated there is no money to stop
5 payment other than the money from the Road fund to the general fund. The
6 County knows that it does not control all of the area that it occupies and uses. If
7 they are to say today that the lease is invalid, he did not know what the County
8 could or could not use.

9
10 Dawson asked why anyone would lease part of the road system when they
11 can go to the Department of Interior and demand that they have this road access,
12 because it is in the treaty. Monsen stated it is common because of discrepancies
13 between where the road is located and where they may have a legal description.
14 Documents clarify what the right is today without having to resolve all the facts of
15 the past. He would take the legal description as saying that the County will lease
16 the area, and the compensation is for those interests the County does not
17 adequately hold. It does not grant or give up any of the other rights. It clearly
18 says that, to use the entire space, the County will pay for and gain interest that
19 they already have.

20
21 Dawson stated the County doesn't need to lease. Monsen stated the best
22 interpretation of the compensation is for those areas not shaded on the map.

23
24 Brenner stated there are spots that the County doesn't own or control.
25 Monsen agreed. Whether or not the County still holds a valid interest in any of the
26 old easements can come up for debate.

27
28 Gibson stated the County received whatever interest it has by quitclaim.
29 That is not a guarantee of ownership by the party who quitclaims to the County. It
30 is not a warranty deed. It is a quitclaim deed. The Tribe gives the County an
31 easement to the extent of whatever right they have.

32
33 Dawson asked if there is a direction to take to resolve the issue. They need
34 to sit down and talk about how to firm up this road easement so the County has a
35 clear title, and isn't held hostage at a future date.

36
37 Gibson stated Councilmember Dawson's suggestion is to obtain a permanent
38 form of ownership as opposed to a leasehold.

39
40 Brenner asked if that is possible. Gibson stated municipalities do have the
41 power of eminent domain, but there are pros and cons to that.

42
43 Hoag stated the County could have other options. Gibson stated the County
44 could outright purchase portions that are alienable. There is a question about
45 whether or not the tidelands, which are reserved to the Tribe in trust, are alienable.
46 The County's position is that the tidelands are held in trust for the Tribe by the U.S.
47 Government.

1 Brenner asked if it is correct that even if the County took back what it
2 shouldn't have given, it wouldn't be able to go to Lummi Island because they would
3 have to cross the tidelands, which belong to someone else. Gibson stated that is
4 correct. If the County is going to cross someone else's property, it must obtain
5 permission either by a lease or the exercise of eminent domain.
6

7 Brenner asked if the County can do eminent domain on a jurisdiction that is
8 totally independent. Gibson stated yes. In the case of the lands that are reserved
9 to the Tribe, they are not going to get a full fee ownership of those lands. At best,
10 they will get an easement.
11

12 Crawford asked if it is correct that the County can take one of two paths.
13 The County can do a legal review of its rights in terms of easements, eminent
14 domain, and that kind of thing, with the conclusion that it will end up in litigation.
15 Or, the County can negotiate a simple renewal of a lease. He questioned whether
16 that is a fair characterization of the situation. Gibson stated it is.
17

18 Hoag questioned whether the County could pay a higher price to lease in
19 perpetuity, or purchase an easement without having to use eminent domain.
20 Gibson stated a lease of an entire interest in perpetuity is the same thing as a
21 purchase. One can lease portions of interests in perpetuity. A lease of a full
22 interest for all time is ownership.
23

24 Hoag asked if a lease of the tidelands is a partial interest. Gibson stated a
25 lease of tidelands for the purpose of roads would be a lease of a severable interest
26 in the property.
27

28 Hoag asked if they could do that lease in perpetuity. Gibson stated one can
29 purchase an easement for perpetuity.
30

31 Dawson stated the treaty makes it clear that road easements are to be
32 available to counties and states.
33

34 She moved for County staff to work with the Department of Interior to
35 achieve a clear easement for the ferry system. She asked Mr. DeSpain to clarify
36 how the Parks and Recreation Department got involved, and whether this was a
37 directive.
38

39 Also, ownership of submerged lands requires that the land be part of the land
40 survey of a Tribe. It was made clear that the lands were not part of the land
41 survey. The Indian claims settlement never addressed the tidelands as being in the
42 land survey. There is no clear congressional intent. There was an executive order,
43 which doesn't cut it. Gibson stated the fact that the survey did not include the
44 tidelands cannot prejudice the rights of the Indians. Court cases have determined
45 that the tidelands belong to the Tribe.
46

47 Dawson stated that was a district court case. In June, the U.S. Supreme
48 Court stated there has to be clear congressional intent and that it be part of the

1 land survey. Gibson quoted U.S. v. Stotts, which says there must be clear intent,
2 and the reservation of the tideland was made plain by definite declaration in
3 extending it to low tide.

4
5 Dawson stated it is a boundary. A boundary and land survey are two
6 different things.

7
8 Roger DeSpain, Parks and Recreation Department Director, stated the Parks
9 Board at that time did not have the power to relinquish land. It was a directive that
10 was part of the ferry lease arrangement. It was a directive of the County Executive
11 at that time.

12
13 Brenner stated the County Executive cannot act unilaterally on things that
14 require County Council approval. She asked where the paperwork is that shows
15 there was any County Council involvement. DeSpain stated he does not have those
16 records.

17
18 Brenner stated that her bigger concern is what the County does to protect
19 the Lummi Island residents if the Lummi Nation decides to charge the County a lot
20 of money to go back and forth from the island. Gibson stated that protection was
21 included in the lease of 1988, and included a procedure of arbitration by a third
22 party if the two parties were unable to reach a satisfactory agreement on price.

23
24 Brenner asked if it is binding arbitration. Gibson stated it is.

25
26 Dawson stated the lease that requires binding arbitration is null and void
27 because the Department of Interior was not a party to it. The County can't
28 quitclaim things to the U.S. Government in trust for a tribe because it has to be
29 reviewed. The five parcels of property are not in the name of the Tribe according to
30 the Portland Office of the BIA. She assumed that the County still has control over
31 those lands legally.

32
33 Crawford stated the County has the power to subpoena the former Executive
34 to get a clear answer on what happened.

35
36 Desler stated that the County government at the time was still in its infancy.
37 The extent to which they used signature formats that they do today, the procedures
38 may not have been in effect. However, it doesn't mean that the Council did not
39 approve the lease.

40
41 Crawford stated he looked up that information for 1988. The County
42 Executive simply gave a report to the County Council that she, the Executive, had
43 entered into the agreement. There was no record on the minutes of any Council
44 discussion. The Executive simply reported it.

45
46 Brenner stated there needs to be an investigation of this. If there is no
47 record of Council involvement, it isn't fair to say that they can't find the records.
48 Either the records exist or there was no Council involvement.

1
2 Desler stated the question is whether it is still a legally binding thing if the
3 Executive did it without Council approval.
4

5 Brenner asked if there is a binding lease without the signature of the
6 Department of Interior. Gibson stated the County entered into the agreement in
7 1988, and has received the benefit of that agreement. The agreement contains a
8 provision for binding arbitration.
9

10 Brenner stated they can go through a binding arbitration if the other party
11 wants to charge an exorbitant amount. If Councilmember Dawson is correct, then
12 the binding arbitration is not binding. The other party can take the County to court
13 after it doesn't get what it wants. They may go to court because the Secretary of
14 Interior did not sign off on it.
15

16 Dawson stated leases of trust land are null and void without Department of
17 Interior authorization. It is a federal statute. She received a letter from a tribal
18 solicitor that verifies the same thing, and who says that services to tribal land have
19 to have the Department of Interior signature, or be null and void.
20

21 Brenner stated her concern is that if they don't have a legally binding
22 arbitration, they could end up going through a process to go to court to find out
23 they never had binding arbitration option. She didn't want to get to that point.
24

25 *(Clerk's Note: McShane arrived 2:12 p.m.)*
26

27 Gibson stated it's fair to say that they should either have that matter settled
28 prior to the year 2010, through the execution of a new lease, or obtain the property
29 by some other fashion. Go into executive session to decide whether or not they
30 want to declare a lease, for which they have been getting the benefit, null and void.
31

32 Dawson restated her motion to achieve a clear easement for the ferry road
33 system.
34

35 Brenner asked why they would not want to investigate. Gibson stated that
36 by the year 2010, the County needs to have entered into an extension of an
37 agreement or a new agreement that provides the County with continued permission
38 to use the tidelands. At this point, the Tribe is not calling into question the
39 permission for the County to cross the tidelands for the purpose of ferry traffic.
40 The focus needs to be on the continued use of the ferry dock area for traffic
41 purposes. Currently, the other party to the lease is not calling it into question.
42 That party is proceeding with the assumption that the permission granted is valid.
43 He is puzzled at why they would call that into question.
44

45 Dawson stated people on Lummi Island have questioned how the County can
46 make a long-term transportation plan when this thing will come up in less than ten
47 years. Gibson stated this matter should be resolved by 2010, when the lease
48 expires.

1
2 Hoag questioned whether the land by the Stommish grounds, which the
3 County gave for consideration of the lease, was given for perpetuity or only for 20
4 years when the lease came up for renewal.

5
6 Crawford stated it was a transfer of property, not a lease.

7
8 Dawson restated her motion for staff to work with Department of Interior to
9 achieve a clear easement for the ferry road system.

10
11 Brenner asked if they need to have that discussion in executive session.
12 Gibson stated it would be wise to discuss whether or not they are going to declare
13 the lease null and void.

14
15 Dawson withdrew her motion pending receipt of new information.

16
17 **2. ORDINANCE AMENDING CHAPTER 24 OF THE WHATCOM COUNTY**
18 **CODE TO INCLUDE MINIMUM REQUIREMENTS FOR AN ADEQUATE**
19 **WATER SUPPLY AND MINIMUM REQUIREMENTS FOR THE SELLER TO**
20 **PROVIDE INFORMATION TO THE BUYER CONCERNING THE WATER**
21 **SOURCE WHEN SELLING DEVELOPED PROPERTY (AB2001-369)**
22

23 Paul Chudek, Environmental Health Supervisor, stated that in 1999, a drinking
24 water subcommittee was formed to see if it is necessary to have a drinking water
25 ordinance for Whatcom County. It has worked its way through the process. There
26 are three issues. One issue is to codify the interim guidelines for approving water
27 availability for building permits. Another issue has to do with water requirements
28 for platting. There are specific requirements for disclosure at the time of the real
29 estate transaction. It also adopts by reference group B rules that would be
30 enforced locally through a joint plan of operation that they already have in place
31 with the State Department of Health.

32
33 The Board of Health has seen a similar document on two previous occasions.
34 The Board of Health directed staff to seek a State Environmental Protection Act
35 (SEPA) evaluation, which it did. There was a declaration of non-significance and a
36 public hearing two weeks ago.

37
38 McShane moved to recommend approval.

39
40 Brenner spoke regarding definition number ten and suggested adding
41 language, "...when the applicant owns **all** property within the sanitary control area."
42 Otherwise, there is no difference between a declaration of covenant and a
43 restrictive covenant. Chudek stated the difference is that, in some instances, the
44 individual does not own all 100 feet, and they can't get a restrictive covenant from
45 the neighbor. They don't own all of the area within the 100-foot sanitary control
46 zone. The best the County can do is require a declaration of covenant, which does
47 not include all 100 feet. It only has 80 feet on one side.
48

1 Brenner asked how that is different from a restrictive covenant. Chudek
2 stated a neighbor has to sign a restrictive covenant. The neighbor doesn't have to
3 sign this. The property owner signs it and agrees that he or she won't undertake
4 certain activities within the sanitary control zone.

5
6 Brenner questioned Council packet page 362, section (5)(c).
7

8 Regina Delahunt, Interim Health and Human Services Director, stated
9 Councilmember Brenner had questioned the origin of the 1/2-acre designation. It
10 comes directly out of the State law.
11

12 Brenner stated some people have more than 1/2 acre where they use a hose
13 to water shrubs and landscape plants. She was concerned that the County doesn't
14 explain this. If someone has property that is over 1/2 acre, he or she could
15 conceivably be accused of needing a water right to do their gardening.
16

17 McShane stated it is an existing State law.
18

19 *(Clerk's Note: End of tape one, side A.)*
20

21 Brenner suggested creating a definition of what "irrigation" means. One
22 woman who is a master gardener has five acres with different landscaping
23 everywhere. The woman uses a combination of drip irrigation and hoses. Someone
24 could conceivably say that this person irrigates more than 1/2 acre. It is not
25 regular irrigation. Delahunt stated the rationale behind the irrigation of 1/2 acre is
26 because they want to make sure that a person is not using more than the allowed
27 5,000 gallons per day. That is an estimate of what would be used if irrigating 1/2
28 acre.
29

30 Brenner stated some people do mitigation and enhancement that is not
31 ongoing, but just during the planting time. She is concerned that they would have
32 to get a water right. That is not the intent. She asked how to fix it. Delahunt
33 stated the Council could eliminate section (5)(c) from the local code. It does not
34 change State law.
35

36 Brenner stated it would require the State, not the County, to explain what
37 they mean. Delahunt stated that when people request approval for water
38 availability, the Health Department has to make sure that they don't need a water
39 right. This is one of the questions they are asked.
40

41 Brenner stated the 5,000-gallon limit is already covered. She is concerned
42 about someone misusing this section.
43

44 McShane stated it is important that it is in local code. If someone is trying to
45 figure out whether or not they want to invest in a property or build, he or she
46 needs to think about those legal issues. Those things come up. The person needs
47 to recognize that they need a water right if they want to irrigate more than 1/2
48 acre. That could be, in some places, a significant issue. Someone might recognize

1 that the person is out of compliance and using more water than they have a right to
2 use. The water belongs to the citizens of the State of Washington. It is important
3 that the language be left in the code because people don't go to the State
4 regulatory requirements. The County people need to think about these things.
5

6 Brenner stated the gardener she knows would be illegal, according to section
7 (5)(c). Chudek stated they don't know that she is illegal. Someone would have a
8 difficult time proving that the gardener is irrigating all five acres of a five-acre
9 parcel. When this was originally written, it was about people who are using the
10 sprinkler irrigation continuously.
11

12 Brenner stated she agreed, but that is not what the language says. She
13 moved to insert language in section (5)(c), "Irrigating more than ½ acre of lawn or
14 noncommercial garden when it is evident to the department that more than 5,000
15 gallons per day may be used." There has to be something that gives the Health
16 Department the authority to make a determination on whether or not someone is
17 using more than 5,000 gallons when it relates to irrigation.
18

19 Hoag asked the interface between the State regulation and this section.
20 Delahunt stated the County has to ensure that a person has water rights if they are
21 going to build.
22

23 Brenner stated the 5,000 gallons is supposed to serve the house and the
24 irrigation. An average house uses 900 gallons per day. That leaves 4,100 gallons
25 for irrigation.
26

27 McShane stated the motion passes the interpretation on to the local County
28 Health Department, versus the interpretation that is up to the State. That is a
29 mistake.
30

31 Dawson questioned whether there would be a problem with the State.
32 Delahunt stated the change passes the interpretation on to the local Health
33 Department. Another option would be to tell people to go ask the State
34 Department of Ecology whether or not they need a water right. The County can
35 deny it and tell people to go ask for a water right.
36

37 Brenner stated the County could still do that. At the local level, the County
38 will not get involved unless it believes more than 5,000 gallons per day are being
39 used.
40

41 Dawson stated the neighbor could go complain to the Department of Ecology.
42

43 McShane stated the entire purpose of this is that people shouldn't be
44 irrigating that much land unless they've got a right to do so. The reason the State
45 law is written that way is so people will think about how much water they are using.
46 It has an impact to other water users in the area. Irrigating happens at the most
47 critical time in the year, the summer, and can dry up a neighbor's well. That is the
48 reason the language is written the way it is.

1
2 Brenner stated she understood Councilmember McShane. The problem is that
3 the State is unclear about what it means by "irrigation." It is not supposed to apply
4 to someone who is using 100 gallons to water their landscaping on a five-acre
5 parcel, for example.

6
7 Hoag asked staff to find out if the State defines "irrigation." Delahunt stated
8 she didn't believe there is a State definition for "irrigation."

9
10 Dawson questioned whether this has ever been an issue. Delahunt stated this
11 issue has never come up. This regulation has been in place since 1991. These are
12 the interim guidelines.

13
14 Chudek stated the County has a set of interim guidelines that have been in
15 place since 1991. They were modified in 1993. The interim guidelines have
16 addressed the issue of water availability and water rights since 1991. This is the
17 most discussion that they've had on the topic since 1991.

18
19 Brenner stated interim guidelines are not the same as an ordinance, and don't
20 have the same strength of law as an ordinance. Delahunt stated the department
21 has been implementing the guidelines as if they were an ordinance.

22
23 Brenner referenced Council packet page 365 and moved to amend section
24 (e)(v), "...~~100~~ 200 feet." Make that change also in other locations that refer to
25 sewage and manure lagoons, including sections (f)(i)(A-B). She is not comfortable
26 with someone putting in a well within 100 feet of a sewage or manure lagoon.

27
28 Chudek stated there are two separate issues. One issue is trying to have a
29 200-foot radius around a well. They don't necessarily need to have a 200-foot
30 radius around a well. Section (e)(v) says that one can't put a well within 200 feet
31 of the manure lagoon. They want to be careful about not allowing any activities
32 whatsoever inside a 200-foot radius of the well. Section (f) includes the short-plat
33 road and other things.

34
35 Brenner suggested amending sections (f)(i)(A-B), "...and the well is at least
36 ~~100~~ 200 feet from the edge of an on-site sewage system..." A well should have to
37 be at least 200 feet from any sewage system or manure lagoon. Chudek stated all
38 other approved setback requirements from a well to an on-site sewage system
39 absorption field are already 100 feet. It is 200 feet from a spring.

40
41 Brenner stated the County can be stricter than the State.

42
43 Delahunt stated it can be reduced to 50 feet if there is clay.

44
45 Brenner restated her previous motion to insert language in section (5)(c),
46 "Irrigating more than ½ acre of lawn or noncommercial garden when it is evident to
47 the department that more than 5,000 gallons per day may be used."
48

1 Motion carried 2-1 with McShane opposed.
2

3 Delahunt stated the State on-site sewage rules have a 100-foot setback from
4 a well. One issue with expanding it to 200 feet is that some lots would not have
5 room for a house, a septic system, and a well.
6

7 Brenner questioned whether there can be an exception to allow it as close as
8 50 feet.
9

10 Hoag stated she shares the concern about sewage and manure lagoons. She
11 suggested amending sections (f)(i)(A-B), "...and the well is at least 100 feet from
12 the edge of an on-site sewage system absorption field or at least 200 feet for a
13 sewage or manure lagoons...."
14

15 Brenner agreed with the suggestion.
16

17 Crawford questioned whether the State standard is 100 feet. Delahunt stated
18 it is.
19

20 Crawford questioned whether the State standard is based on science. He is
21 uncomfortable with saying 200 feet instead of 100 feet, because it seems arbitrary.
22 He asked how the State arrived at the standard. Delahunt stated she didn't know
23 that there is particularly good science behind it. It is a matter of comfort level.
24

25 Brenner asked why there is a setback of 200 feet for a spring, but not a well.
26 Chudek stated that, by definition, water for a spring runs across the top of the
27 ground at some point. They are simply asking for a greater zone of protection
28 around there, because they are not actually withdrawing any groundwater.
29

30 Delahunt stated that a well and an onsite sewage system have vertical
31 separation. The theory is that the treatment occurs in the soil.
32

33 McShane stated he would be comfortable changing section (e)(v) to 200 feet.
34 He is not totally confident in the scientific reports he's read regarding removal of
35 bacteria and viruses at a distance of 100 feet. It is remarkable how quickly the
36 ground removes it, but that is a big load. It is not as much of an issue in section
37 (f). In section (f)(i)(B), there is a clay impervious zone above the unconsolidated
38 layer. There is a clay layer and an aquifer underneath it. The aquifer is protected
39 by six feet of clay. No bacteria can make it through six feet of clay.
40

41 Brenner moved to amend section (e)(v) and any section where the setback
42 requirements are spelled out, "Sewage or manure lagoon, ~~100~~ 200 feet." Section
43 (f) stays the same.
44

45 Motion carried unanimously.
46

47 Brenner moved to amend section (g)(i) on Council packet page 366,
48 "...approved water yield test done at the driest time of the year. The applicant

1 may...." Wells dry up due to the neighbor's well, because the neighbor's test was
2 done during the wet season. She's seen that happen.

3
4 Delahunt questioned whether section (g)(ii) resolves the concern.

5
6 Brenner stated she wanted to change section (g)(ii) so that the director shall
7 require the applicant to provide the results of a four-hour pump test conducted
8 during the dry season.

9
10 McShane stated he understands the concern. The Council tried to address it
11 when they talked about exempt wells, and possibly restricting their use. That is the
12 more appropriate location to do that, instead of under the drinking water ordinance.
13 A concern for the subdivision rules was eliminating subdivisions that have exempt
14 wells causing that sort of an impact. That is the place to do that. Some people
15 believe it is up to the State, but he disagrees with that legal interpretation.

16
17 Brenner stated that once someone already has a permit and is operating a
18 well, it is extremely difficult to prove whose fault it is.

19
20 McShane stated he agreed. However, it shouldn't be regulated in the drinking
21 water ordinance. It should be regulated in the subdivision rules. The subheadings
22 under section (g) address one of those concerns for the specific wells, and would in
23 part alleviate Councilmember Brenner's concern.

24
25 Brenner suggested changing sections (g)(ii-iii), "The Director ~~may~~ shall
26 require the applicant to provide the results of a four-hour pump test...." Chudek
27 stated section (iii) talks about how much water is in the casing. There are areas in
28 the county where one can pump hundreds of gallons per minute with only ten feet
29 of water in the casing. Inserting the word "shall" would require people to do stuff
30 that is absolutely not necessary.

31
32 Delahunt stated there could be times where they would want to do that.

33
34 Brenner agreed to leave the language in section (iii) as it is, because it is only
35 about the depth of the well. In section (ii), she would like to require it, because the
36 yield is less than one gallon per minute. Chudek questioned whether they still want
37 to require the landowner to wait for the dry season as they develop more
38 information that shows there are reliable sources that truly produce one gallon per
39 minute.

40
41 Brenner stated she wouldn't mind if it can be proved. Chudek stated the
42 language should then be left as "may."

43
44 Brenner asked where they would not require the results of a four-hour pump
45 test during the dry season, when a source yields less than one gallon per minute.
46 Chudek stated that right now they wouldn't. In the future, so they don't have to
47 change the language again, they should leave it as "may."
48

1 Delahunt stated there could be an area where they know homes and wells
2 have been developed that consistently show that they can sustain that yield.

3
4 McShane stated it should be left as "may" in case someone puts in a well, for
5 example, in bedrock, and is dealing with just cracks in the bedrock. Water can't
6 move through those fractures very rapidly, so they are only going to get a gallon
7 per minute out. However, they can get a gallon per minute out forever. It is the
8 structure of the well, not the water source.

9
10 Brenner withdrew her motion.

11
12 Brenner moved to amend section (g)(i), "...less than 4 gallons per minutes.
13 Neighbors with existing wells within 300 feet of the proposed well will be notified
14 regarding test time, to determine if their own well is being negatively impacted."
15 There has to be something to protect people with existing wells. It would be up to
16 the applicant to prove that he or she notified the neighbors. Chudek stated it is a
17 right fine idea, but from a labor and management standpoint, he questioned how
18 they are going to ensure that this is happening.

19
20 Brenner stated they can take the applicant's word for it. A neighbor who
21 wasn't notified would not have signed off on it. It would be complaint driven.

22
23 Hoag stated that they could include a statement saying that applicants shall
24 be required to notify well owners within 300 feet of the time of the test. Leave it at
25 that. That way, most of the time it will happen. If it doesn't, people can complain
26 about it. At least it addresses the problem and doesn't put an onerous burden on
27 anyone.

28
29 Nelson stated that the applicant will either be able or not be able to drill an
30 exempt well. He questioned the point of this.

31
32 Brenner stated the point is that there are people in Whatcom County who
33 have had their well go dry because someone else got a permit and stuck in another
34 well. If an applicant drills a well and causes a neighbor's well to go dry, they
35 shouldn't get their permit.

36
37 Chudek stated one question is whether or not a four-hour pump test is going
38 to show whether a neighbor's well will go dry.

39
40 Delahunt stated she didn't know the answer to that. These requirements are
41 in place to make sure that the well being put on the property has sufficient water to
42 serve that residence. That is why they do the pump test. She was not sure that
43 the pump test is going to be sufficient to determine whether it would draw down
44 the neighbor's well that is 300 feet away.

45
46 McShane stated they would need a 24-hour pump test for that kind of thing.
47 He appreciated Councilmember Brenner's concern. It is right on. However, this
48 isn't the ordinance to do it in.

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Brenner withdrew her motion.

McShane moved to hold in committee.

Motion carried unanimously.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:05 p.m.

Jill Nixon, Minutes Transcription

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barbara Brenner, Committee Chair