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WHATCOM COUNTY COUNCIL
Planning and Development Committee

October 21, 2003

The meeting was called to order at 3:05 p.m. by Committee Chair Seth Fleetwood in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Dan McShane
Laurie Caskey-Schreiber

Absent:

None

Also Present:

Barbara Brenner
L. Ward Nelson
Sharon Roy

**COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL –
COMPREHENSIVE PLAN**

1. ORDINANCE ADOPTING AMENDMENTS TO THE LAND USE CHAPTER OF THE WHATCOM COUNTY COMPREHENSIVE PLAN (CHAPTER 2), WHICH INCLUDES RURAL LANDS (AB2003-075E)

Matt Aamot, Senior Planner, handed out a copy of his Power Point presentation (*on file*). He read from his presentation. The 1970 Comprehensive Plan had three alternatives for development: a concentrated development pattern with open spaces in the country; a dispersed settlement pattern, called sprawl today, or; a moderation between the two. The third alternative is the one implemented. They have had a history of public policy to preserve and protect those countryside rural areas. The legislature adopted rural areas of more intense development, based upon existing development patterns in 1990.

One issue that comes up is whether the County and rural, one unit per five acre (R5A) zoning preserves open space like it is designed to do. Zoning is a main implementation tool. There are 45 square miles of city areas in the county. Most of the R5A zone was put into place before the 1997 Comprehensive Plan.

The policies in this chapter are good. It's good to step back and look at the vision. Ask whether implementation will get them to achieve the vision in five to twenty years. He highlighted the proposed changes, reading from his presentation.

Brenner asked if the reason for the density bonus was to encourage more open space between developments. Aamot stated the intent of the bonus was to encourage people to cluster. The Growth Management Hearings Board didn't go along with that for rural areas.

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1
2 McShane stated Whatcom County still allows clustering. One can't beyond
3 just the cluster he or she has for development rights. That's not allowed.
4

5 Fleetwood asked if it is legally not permitted, and if they are deleting this
6 provision because they are not legally able to have it. Aamot stated they are
7 retaining clustering in rural areas, but this proposal would strike the policy that one
8 should get a density bonus and get more dwelling units on a parcel if one clusters.
9

10 Caskey-Schreiber asked if it is going from to a mandate to an incentive.
11 Aamot stated it's an option right now. It used to be an incentive. Now it's just an
12 option, except in the agricultural overlay soil areas. If someone has agricultural
13 overlay soils, that person has to cluster. It's mandated.
14

15 Clustering is a good idea and has merits for certain sites. Some people don't
16 like clustering for a variety of reasons. Clustering is optional. There is merit to
17 retaining the option in rural areas. He continued his presentation regarding limited
18 areas of more intense rural development.
19

20 Fleetwood asked if they can change the type of building in the limited area of
21 more intense development to create more commercial or industrial use. Aamot
22 stated he'd have to research the answer to that question.
23

24 Aamot continued to state that the Council adopted cottage industry
25 ordinance. They want consistency with zoning so anything over two employees
26 would require conditional use.
27

28 Roy asked for an example of a resource-based industry. Aamot stated it
29 includes anything using wood products, for example.
30

31 Caskey-Schreiber stated she liked the recommendation to amend policy 2EE-
32 4. However, she remembers a case when a use was allowed because it wasn't
33 specifically listed as a use that was prohibited.
34

35 Kraig Olason, Senior Planner, stated that issue was with the County code.
36 Policies are more general.
37

38 Brenner asked when the correct time is to bring up amendments to interlocal
39 agreement. Aamot stated it could be brought up concurrently with the
40 Comprehensive Plan amendments.
41

42 Aamot continued to read his presentation. Overall the policies are good.
43

44 Olason stated staff took a tour around the county to get input from the
45 community. They talked about rural character. Staff put together an overview of
46 current and future development. They focused on five-acre zoning. About 85,500
47 acres are in the rural zone. Almost 18,000 parcels already exist, with 2,668 parcels

1 available to be divided. That's 60,000 additional acres that could be divided. There
2 are still some acreages that typify rural character.

3
4 Staff looked at rural parcelization. There are two areas that staff looked at,
5 one west of Ferndale and one east of the Guide Meridian. Staff looked at the
6 acreages in 1995-1996. The area west of Ferndale had 77 percent subdivided to its
7 smallest lot size. Staff looked at the same area in 2001. There was additional
8 development in that time. People added another 50 lots that are less than five
9 acres. All are on septic and many have exempt wells. Eighty-four percent is
10 developed. Staff looked at this area to find agricultural property still in rural zones.
11 They need to question the value of agricultural open space designation on some of
12 these parcels.

13
14 On the property east of the Guide Meridian, eighty-five percent of the area is
15 developed out at a five-acre density. The area south of Smith Road will be a
16 potential urban growth area in the future.

17
18 Fleetwood asked if this area looks rural. Olason stated it doesn't look like it.
19 A lot of it hasn't been built on yet. Some of the properties that look like large,
20 open areas will be developed.

21
22 Nelson asked how they decide rural zoning has character like forestry or
23 agriculture. Olason stated that's what the policies and zoning text state as the
24 purpose and intent of that zone. The predominant uses were considered to be
25 agriculture and forestry with residential use.

26
27 Nelson asked why they are leaving out the residential. Olason stated they're
28 not. He would look at the usefulness of a property once a house goes on it. It is
29 residential. That's one of the issues they're struggling with. The Comprehensive
30 Plan also says that they are looking to the rural area to provide agricultural land.
31 The question is the quantity of agricultural land in rural lands is something they
32 looked at closely.

33
34 Nelson asked if everything out of the urban growth land is agricultural or
35 forestry land. Olason stated it's a mixture. The discussion here is whether this is
36 defined as a rural landscape.

37
38 Brenner stated it's not so much whether the zoning is R5A, it's how people
39 build on the land zoned R5A. People have done farms on five acres.

40
41 Fleetwood stated it's a legal definition as they've established it. Under one
42 definition, that's rural.

43
44 McShane stated the councilmembers have different opinions of what is rural.
45

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1 Olason stated the point is to look at what specific five-acre zoned parcels are
2 rural. Areas are approaching total build-out. They have to decide if that's the
3 vision. If not, then update the language.
4

5 He compared an area with cluster development with an area with traditional
6 five-acre development, showing historical aerial photographs of the property.
7

8 *(Clerk's Note: End of tape one, side A.)*
9

10 Nelson asked if the population changes are from the recent forecast. Aamot
11 stated they are estimates of population.
12

13 McShane stated the estimates are based on the median projection from the
14 Planning Commission.
15

16 Fleetwood stated a reason for rural zoning is as a buffer between population
17 and agriculture. Aamot stated the Growth Management Act (GMA) talks about
18 minimizing conflicts.
19

20 Fleetwood stated there is an enormous rural buffer that is largely zoned R5A.
21 He asked if anyone considered re-designating areas to agriculture that are
22 presently designated rural, one unit per ten acres (R10A) and adjacent to
23 agricultural areas. Olason stated rural zoning was established as anything left over
24 after establishing resource lands and urban growth areas. There are some
25 provision in the resource chapter about reviewing agricultural lands and designating
26 other lands as agricultural lands. In some cases, there were two or more tiers of
27 agricultural zoning. There may be some secondary agriculture that is more like
28 R5A and R10A that might not be the best of the agriculture. Much of the R5A is
29 outside of the most intensively farmed areas. It was used for livestock pasture.
30 It's difficult outside the core area to get that property farmed. There are isolated
31 areas that have a lot of activity. A purchase of development rights (PDR) exercise
32 is to look at those areas and take in some rural zoned land of value. That option is
33 always there. It's called out in the Comprehensive Plan currently. It's hard to find
34 additional rural units.
35

36 Fleetwood referenced proposed policy 2CC-10 and asked if the converse of
37 that would also fit, and if they should have a guideline that says they should
38 encourage downzones from R5A to R10A. Olason stated that's a policy decision.
39 The concept was that they shouldn't entertain upzones to R5A if they want to retain
40 R10A zones. To go to the next level, they must think about what they are after
41 with R10A zone. The R10A zone may also be questionable for resources value of
42 lot size.
43

44 Caskey-Schreiber stated many R5A parcels belong to separate property
45 owners. She doesn't know how they could possibly downzone them. Olason stated
46 they'd end up downzoning the few large parcels that are left. In some cases,

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1 they're in the middle of a lot of development. The value over the future of
2 agriculture is suspect.

3
4 Fleetwood asked if a voluntary downzone is easy or complicated
5 procedurally. Aamot stated they've never done a voluntary downzone.

6
7 McShane stated the Comprehensive Plan amendment changes were
8 suggested as means of laying out the groundwork for carrying out the visioning
9 process. Look at the goals of the rural area. He asked the advantage an R10A
10 zone has over an R5A zone. Olason stated R10A zones are typically larger parcels
11 out of the old agriculture zone and off the best soils.

12
13 Aamot stated part of the rural vision talks about having less traffic
14 congestion and preserving more open space.

15
16 McShane stated they have a range of goals. He asked what they are trying
17 to do with this chapter. Olason stated the update was trying to look at what has
18 changed legally. They've found that it's not really out of compliance. The real
19 question is what they can do differently in development regulations, if they can
20 agree on what rural is.

21
22 Caskey-Schreiber stated she liked the direction staff is going. People want
23 predictability. They have to infill with like areas. Continue to look at large parcels
24 of land zoned R5A as potential agricultural lands. She doesn't know if she can
25 defend downzoning in that area, even though she might like to see it.

26
27 Roy stated development of a transfer of development rights (TDR) program
28 could be useful. They know when rural areas are gone. Look at urban areas as
29 evidence. People in Whatcom County have a strong sense of what is rural. The
30 TDR program should be continued. It could be one incentive.

31
32 Nelson stated there is quite a bit of rural five and ten acre parcels. He asked
33 how they are going to accommodate people who want to live in the rural area, but
34 don't want to farm or log. That's the pressure that will be put on farmers and
35 foresters. They need to address the available land supply for small lots in rural
36 areas to accommodate septic and water. Find areas that are appropriate.

37
38 Roy stated they have accommodated those people well. They're moving
39 onto the five-acre lots.

40
41 Brenner stated Councilmember Nelson is saying that if they provide more of
42 the very small acre zoning, they could do some TDR's rather than downzoning. She
43 asked why they didn't do cluster requirement on all rural zoning. Olason stated it
44 was specifically trying to address the need to maintain an agricultural land base.
45 Someone may have to transfer within a zone if that person can't transfer out of a
46 zone. Rural zones include a variety of lot sizes. There is some question about
47 internal transfers. As long as they are not increasing overall density in a zone, part

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1 of the question is the way it looks to the neighborhood. Discuss how to
2 accommodate those TDR's. Density won't change if they ignore it. They will have
3 to move them out, move them around inside, or downzone them.

4
5 Fleetwood stated this item would be held in committee for two weeks.
6
7

8 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

9 10 **1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING** 11 **ORDINANCE, CHAPTER 20.72 – POINT ROBERTS SPECIAL DISTRICT** 12 **AND CHAPTER 20.97 – DEFINITIONS (AB2003-317A)** 13

14 Amy Pederson, Planner I, stated amendments are intended to help people in
15 Point Roberts maintain the character of the area while providing opportunity for
16 economic growth.
17

18 Whatcom County Code (WCC) Section 20.72.051 is a new section to allow
19 Bed & Breakfast lodgings in the resort commercial zone. Goals and policies in the
20 subarea plan further support this amendment.
21

22 The amendment to section 20.72.153(3) is new to require a vegetative
23 buffer between a proposed airpark subdivision and any neighboring properties.
24 This originated from property owners to the east of the property they are
25 concerned about. There was a debate about whether the buffers are enough.
26

27 The amendment to section 20.72.154 is unclear about what types of sports
28 facilities are allowed. This amendment allows a horseracing facility and its
29 associated uses.
30

31 The language in section 20.72.155 was inadvertently removed in 2002.
32

33 The language in section 20.72.204 only applies to Gulf Road. There is a lot
34 of focus on a village center concept in the subarea plan. Uses listed are proposed
35 for prohibition because they are inconsistent with the proposed use.
36

37 Section 20.72.270 would exempt Point Roberts from the agricultural overlay
38 district.
39

40 Section 20.72.652 originally included language that stated there are
41 archeological resources in Point Roberts, but there is no regulation to deal with
42 those areas. They also included tree retention regulations, but they are interpreted
43 to only apply to Lily Point. Those two areas were split up. The new section
44 provides protocol for permit applications within 500 feet of a known archeological
45 site.
46

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1 Section 20.72.653 has been amended to be administratively consistent with
2 new watershed tree retention language, but applicability is somewhat different. It
3 would apply to all parcels in point Roberts. In resort, general, and small town
4 commercial zones, tree retention can be applied to required open space
5 requirements. There is not a specific tree retention requirement other than what
6 would be required in open space or landscaping requirements.
7

8 She submitted a substitute version of Exhibit A. She had received additional
9 comment from the Lummi Nation Historical Preservation Office, which made
10 recommendations for changes. Staff and the Washington State Office of
11 Archeology and Historic Preservation worked together to develop those text
12 amendments. The tree retention amendments are proposed to be consistent
13 administratively with what is most recently adopted.
14

15 Nelson asked if any development that occurs has to go through the
16 archeological process. The Lummi Nation has claimed archeological sites on
17 forestry lands, but those sites are kept confidential. He asked how that would
18 work. Pederson stated the shoreline administrator and the State Environmental
19 Protection Act (SEPA) official review permits for those areas. Review is done
20 concurrently with the State. They would be notified if within known archeological
21 sites.
22

23 Nelson asked if specific archeological areas are defined. Pederson stated
24 they are.
25

26 Sylvia Goodwin, Planning Division Manager, stated the Planning Department
27 has two staff members who have access to the locations of those archeological
28 sites. The rest of the staff and the public are not allowed to know where those
29 locations are.
30

31 Nelson asked how the sites are designated. Goodwin stated there has to be
32 an archeological discovery.
33

34 Dave Niles, Point Roberts, stated he wanted to compliment County Planning
35 Department staff, especially Ms. Pederson and Ms. Goodwin, for the fine work
36 they've done on the Point Roberts text amendments. The text amendments are
37 well thought out. They say what people can do, not what they can't do. They take
38 advantage of the rural character to develop certain projects. He suggested that
39 clustering is more of a natural process. Different areas in Point Roberts have
40 clustered naturally. It's difficult to legislate.
41

42 Fleetwood asked the general state of agreement amongst the people of Point
43 Roberts. Niles stated Point Roberts formed an economic development group. He
44 submitted a list of the current membership of the Point Roberts Economic
45 Development Committee (*on file*). The Planning Department is included in the
46 group. The purpose was to alleviate problems with communication in rural
47 unincorporated areas. A recent meeting addressed better communication between

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1 these areas and Whatcom County. The EDC represents all the various interests in
2 Point Roberts.

3
4 Isaac Bloom, Lummi Nation Tribal Historic Preservation Office, stated that
5 the archeological program is run through the National Park Service. He worked
6 with staff from the County and submitted comments. He appreciated the
7 opportunity of being a part of that discussion. The Tribe has expanded its cultural
8 resource management program. It is proactive in establishing partnerships with
9 outlying governments and community groups.

10
11 **Caskey-Schreiber moved** to recommend approval of the substitute version
12 submitted by staff today, including the amendments suggested by the Lummi
13 Nation.

14
15 Brenner referenced section 20.72.130 and asked if the uses were outright
16 approved before, without administrative approval. Pederson stated they were. The
17 criteria for administrative approval uses weren't referenced.

18
19 Brenner referenced section 20.72.204. Pederson stated the Gulf Road area
20 was targeted as the village center. They want to target retail and business
21 services. Community storage is not conducive to pedestrian-oriented uses.

22
23 Brenner referenced section 20.72.204(3) and asked why marine services are
24 prohibited. Pederson stated marine services are not a pedestrian service. Some
25 marine services are provided for.

26
27 Caskey-Schreiber stated they are trying to have protective measures to keep
28 the downtown core viable. People who need marine services will need them
29 regardless, and may be willing to go outside the area.

30
31 Brenner referenced section 20.72.350(3) and asked what the provisions are
32 that are referenced. Pederson stated the provisions require an additional five feet
33 added to side and rear yards for each ten feet of building height, in excess of 15
34 feet. It won't apply in this area.

35
36 Brenner referenced section 20.72.403 and asked the reason for the change
37 from a conditional use process to a variance. Pederson stated that section talks
38 about changing the height. That is done through the variance process.

39
40 *(Clerk's Note: End of tape one, side B.)*

41
42 Brenner referenced section 20.72.653(2)(a)(i), she asked for clarification on
43 what the pre-existing canopy is. Pederson stated it is whatever is on the site
44 before clearing started.

45

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1 Brenner referenced section 20.72.653(8)(b). Don't require a licensed
2 arborist or forester. Some people who aren't licensed may know a lot about trees.
3 Don't make the language that restrictive.
4

5 Caskey-Schreiber stated that puts staff in a position of arguing whether or
6 not someone is knowledgeable. The substitute version is different.
7

8 Fleetwood stated it may be required, not shall be required.
9

10 Pederson stated that is for the case when someone proposes that a tree is a
11 hazard, but there is some debate about it. If that were to happen, a profession
12 would be hired to make the decision.
13

14 Brenner referenced section 20.97.019a. She asked for a legal definition of
15 how large a geographic locality is. She asked how far out from the found object is
16 considered within the geographic locality. Goodwin stated the language specifies
17 500 feet from a site, but it doesn't say how large the archeological site is.
18

19 Brenner asked if the site is the width of an object is found. Goodwin stated
20 it would then mean 500 feet from the object. If they found a village, then it would
21 be 500 feet from the village. Development activity 500 feet from a known
22 archeological site has to have additional review.
23

24 ***Motion to recommend approval of the ordinance with the substitute***
25 ***Exhibit A to the full Council carried unanimously.***
26

27
28 **OTHER BUSINESS**
29

30 There was no other business.
31
32

33 **ADJOURN**
34

35 The meeting adjourned at 4:55 p.m.
36
37

38 _____
39 Jill Nixon, Minutes Transcription
40
41

42 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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1 Dana Brown-Davis, Council Clerk
2

Seth Fleetwood, Committee Chair