

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

WHATCOM COUNTY COUNCIL  
**Special County Council**

April 13, 2004

Council Chair Dan McShane called the meeting to order at 5:30 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner  
Laurie Caskey-Schreiber  
Seth Fleetwood  
Sharon Roy

Absent:

L. Ward Nelson  
Sam Crawford

**1. ORDINANCE ADOPTING A REVISED LUMMI ISLAND SUBAREA PLAN WITH REVISIONS TO CHAPTER 20.34 OF THE WHATCOM COUNTY ZONING ORDINANCE (AB2004-147)**

McShane opened the public hearing and the following people spoke:

Fred Kinney, 4164 Legoe Bay Road, Lummi Island, submitted (*on file*) and read his testimony. He does not like the plan. The plan isn't consistent with the Comprehensive Plan visioning process. Community input was ignored. Property rights are not protected. The plan discriminates against large property owners. The maps are incorrect. Find the money to fund a hydrological study and table the plan until the study is complete.

Charles Antholt, 2265 Tuttle Lane, Lummi Island, submitted (*on file*) and read his testimony. He is opposed to the plan. This plan is not much different from the current Lummi Island plan, which allows low density urban sprawl. Most islanders want less growth. Water availability is unknown. The ferry has not been able to meet its adopted level of service since 2000. He recommends that the Council send the plan back to Lummi Island Planning Committee to make it consistent with the majority of islanders and impose a moratorium on further development until a water study is completed.

Steve Luke, 3342 Sunrise Cove, Lummi Island, submitted (*on file*) and read his testimony. He is a lifetime resident of Lummi Island. He does not support punitive and excessive regulations, mandatory clustering, or special interest groups contributing to the plan. He supports updating the 1979 plan, a water study and water management, increased ferry service, sheriff protection, a fire department, and the changes made by the Planning Department and Planning Commission.

Pat Hayes, 2072 Granger Way, Lummi Island, described the island and stated Whatcom County needs to regulate growth. She supports a the minimum of five

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 acres per parcel, a maximum house size limitation, keeping County-owned land in  
2 the public domain, and keeping Lummi Island a rural paradise.

3  
4 Rich Frye, 2072 Granger Way, Lummi Island, stated Lummi Island faces four  
5 different specific constraints on development: water supply, water quality and  
6 septic systems, the ferry system and level of service, and the rate of growth.

7  
8 Anna Lou Hall-Hallenbeck, 1594 S. Nugent, Lummi Island, stated she signed  
9 and agree with the petition. Until a water study is done, 1979 should stay in place.

10  
11 Sheila Marshall, 2781 West Shore Drive, Lummi Island submitted (*on file*)  
12 and read her testimony. The rural residential, one unit per acre (RR1) zone and the  
13 lack of standards for allowed light industrial and commercial uses need to be  
14 addressed.

15  
16 Albert Marshall, 2781 West Shore Dr, Lummi Island, stated he is a member  
17 of the Lummi Island Planning Committee. The County staff and Planning  
18 Commission did not consider any of the Lummi Island Planning Committee  
19 recommendations. Put the interest of the community first. Preservation of rural  
20 character should be the Council's primary concern.

21  
22 Pam Gould, 2384 Tuttle Lane, Lummi Island, submitted (*on file*) and read her  
23 testimony. She is a member of Lummi Island Planning Committee. She explained  
24 the process the committee took in coming up with its recommendations for the  
25 Planning Commission. Institute the five-acre density, require lot consolidation, and  
26 protect water quantity and quality by limiting septic systems.

27  
28 Wynne Lee, 2171 Tuttle Lane, Lummi Island, stated she moved to the island  
29 for it's rural character. There are times when growth is not good and, if unchecked,  
30 can kill. Protect water quality and maintain rural character. There is evidence from  
31 the Department of Health to show they have water quantity and quality problems  
32 now. Take a conservative approach to prevent the water problem from getting  
33 worse. Last, the survey went to 1,400 people. It went out equitably. There were  
34 multiple questions in which people could provide multiple answers. She does  
35 survey research for a living. In contrast to the survey, the petition had one  
36 statement that people could or could not agree to. The quality of information on  
37 public opinion is not comparable to the planning survey. Take that into account as  
38 people talk about the petition and survey.

39  
40 Linda Kinney, 4164 Legoe Bay Road, Lummi Island, submitted (*on file*) and  
41 read her testimony. The new subarea plan is flawed. Many fear that property  
42 rights and quality of life are threatened. Site and building design standards in  
43 policy 1.8 and 3.1 have no place in a rural setting. Cluster housing of up to 15  
44 single family dwellings aren't rural. The redefinition of the aquifer recharge area is  
45 concerning. The change creates a five-acre downzone on the north end and will  
46 take property rights from a number of people. This map substitution is not best  
47 available science. There are map errors. Mr. Kremen suggested that a new water

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 study is paramount, which he would fund, and that any update to the subarea plan  
2 needs to be tabled until a water study is complete and implemented into the plan.  
3 She asked what has been done about this suggestion.  
4

5 Jerry Brown, P.O. Box 32, Lummi Island, stated he has confidence in the  
6 Lummi Island Planning Committee's work. The process is fatally flawed by the  
7 County. He urged the Council to pass the plan as written by the Lummi Island  
8 Planning Committee, not the County version.  
9

10 Jean Kershner, 3417 Sunrise Road, Lummi Island, stated the rural character  
11 of Lummi Island is extremely important. She supports the Lummi Island Planning  
12 Committee's recommendation.  
13

14 Tamara Hall, 1594 South Nugent Road, Lummi Island, stated it appears the  
15 plan intends to devalue the non-resident land. Many of the properties owned by  
16 non-residents is passed down from generation to generation. Rural character  
17 should not be pursued at the loss of the non-resident property owners' ability to  
18 build or spend time on the island. Property owners, especially non-residents, do  
19 have some rights.  
20

21 John Robinson, 3679 Sunrise Road, Lummi Island, stated he is a member of  
22 Lummi Island Planning Committee. People value rural character, a sense of  
23 community, and a sense of belonging. He values the wildlife of the area. Don't  
24 destroy that by allowing small lots with park-like lawns. He asked the Council to  
25 look at lot consolidation incentives. Comply with the Growth Management Act  
26 requirement of having a minimum of five-acre lots in the future.  
27

28 Victoria Luhrs, 1642 Seacrest Drive, Lummi Island, stated she owns 16.3  
29 acres and does not plan to subdivide. However, people who want to subdivide  
30 should be able to. Don't allow an island that only wealthy people can move to.  
31

32 *(Clerk's Note: End of tape one, side A.)*  
33

34 Luhrs continued to state that Planning Commission recommendations 11, 12,  
35 and 14 don't have anything to do with growth management. There is no definition  
36 of what low-impact standards are. The language is vague and can be interpreted  
37 many ways by County staff who want to push their own agenda. Low-impact  
38 development is for more urban areas, not a rural island community. She is  
39 opposed to the plan.  
40

41 Richard Harris, 1642 Seacrest Drive, Lummi Island, stated selection of the  
42 Lummi Island Subarea Planning Committee members was not done lawfully. The  
43 public had little or no input. Minutes of critical meetings have disappeared. Most of  
44 the committee has small lots with homes already built. They have much to gain  
45 from the regulations and nothing to lose. The committee has tried several ways to  
46 stop growth. Science does not support their agenda. These regulations will result  
47 in inflated building prices and higher land prices. Keep the present plan. Appoint a

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 lawful committee to come up with a plan that supports the majority of the  
2 landowners, including the absentee landowners. He is opposed to the plan.

3  
4 Hugh Cameron, 4351 Cedar Place, Lummi Island, submitted (*on file*) and  
5 read his testimony. There are ferry-related problems, excessive and punitive  
6 regulations, and proposals with unknown consequences, such as designating Lummi  
7 Island as sole source aquifer. The proposed subarea plan contains many proposals  
8 that are not supported by the majority of residents and property owners.

9  
10 Dorothy Granger Hanson, 2608 North Nugent Road, Lummi Island, submitted  
11 (*on file*) and read her testimony. The current plan works fine. The existing plan  
12 doesn't address the water question. A water study, promised by Mr. Kremen,  
13 needs to be completed and implemented before the plan is adopted. She  
14 questioned the reason for the change to the aquifer recharge map. None of the  
15 changes to the plan have been made in good faith.

16  
17 Jack Mulhern, 3820 Lane Spit Drive, Lummi Island, stated he supports the  
18 1979 plan. Executive Kremen stated that he would find the money to do a water  
19 study and implement it into the plan. He agrees. This process has been flawed  
20 from the beginning. Many on the island haven't been notified. He just found out  
21 last June about the Planning Committee. Start over. They can't agree on a  
22 definition of rural character.

23  
24 Margaret Cameron, 4351 Cedar Place, Lummi Island, submitted (*on file*) and  
25 read her testimony. Blizzard Road should be open from North Nugent Road to West  
26 Shore Road. Look at the present plan to make sure human and property safety  
27 concerns have been addressed.

28  
29 Joanne Hammerberg, Lummi Island, stated significant growth will not  
30 maintain rural character on the island. Most of the people want to preserve the  
31 uniqueness of what they have. Do anything to maintain that uniqueness.

32  
33 Bob Busch, 3612 Sunrise Road, Lummi Island, stated he would yield his time.  
34 He can't add anything more than what has already been said.

35  
36 Kent Doughty, 4285 Matia View, Lummi Island, stated the Planning  
37 Committee expressed the community's view. There was a lot of information that  
38 went out about the formation of the Lummi Island Planning Committee. There was  
39 an open invitation to participate. Some people chose not to participate until they  
40 realized they don't like the results. Planning doesn't mean that they should do  
41 nothing until there is a problem. Do a five-acre downzone. There is a density  
42 transfer out of aquifer recharge areas. The map in the plan now is a conservative  
43 approach for an unknown problem. The conservative approach is the way to go. It  
44 is balanced and allows people an opportunity to use their land.

45  
46 Michelle Luke, 3342 Sunrise Cove, Lummi Island submitted (*on file*) and read  
47 her testimony. The survey had too many flaws and biases, so a petition was

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 created. They collected 350 signatures with comments on the petitions. Consider  
2 all community input.

3  
4 Mary Sadler, 3316 Sunrise Cove, Lummi Island, stated she favors continuing  
5 with 1979 plan until a water survey or evaluation has been completed.

6  
7 Wanda Terry, 2882 North Nugent Road, Lummi Island, submitted (*on file*)  
8 and read her testimony. She is a casting director and producer for firm and  
9 commercials. She has not experienced any water shortage from her well. There  
10 are two main concerns in the community. The first is about water supply and use.  
11 A water study from a graduate student will soon be done, and can be used as a  
12 base for a professional study. Before making a decision, wait for a water study.

13  
14 Mary Culbertson, 4102 Lego Bay Road, Lummi Island, stated there is a  
15 strong need for a water study before significant changes are made to the 1979  
16 plan. Some of the policies and implementation measures in the current plan are  
17 too vague. Significant growth management issues aren't addressed in the plan.

18  
19 Todd Granger, 2101 West Shore Drive, Lummi Island, stated public  
20 participation goals and requirements of the Growth Management Act were not  
21 followed, which are required to conform to the due process clause of the  
22 Constitution. Revised Code of Washington (RCW) 36.70A.090 is the density bonus  
23 transfer in the 1979 plan. It has been removed. The committee passed out a lot  
24 consolidation relief handout after it voted for mandatory lot consolidation, against  
25 the Fifth Amendment. It's a taking of vested legal lots of record. People have  
26 spent money transferring legal vested lots of record.

27  
28 Steve Schneider, 2455 Tuttle Lane, Lummi Island, submitted (*on file*) and  
29 read his testimony. A five-minimum density throughout the RR1 zone should be  
30 retained. If the County continues to use the 1979 plan, it will be out of compliance  
31 with GMA and the critical areas ordinance (CAO). Fifteen lot clusters are too large.  
32 Use a maximum of six lot clusters. Last, they need a water study within three  
33 years. Implement a management plan based on that study.

34  
35 Ben Rogers, 2877 North Nugent Road, Lummi Island, stated they could  
36 purchase another ferry of identical size to the existing ferry and would not require  
37 an update of the facilities. He lives in condominiums on Lummi Island. There are  
38 22 units on 22 acres. Ninety percent of that land is open. Growth is going to  
39 happen. It is a means of converting land in a way of preserving the open quality of  
40 the island. Collect most of the water they need from precipitation. New housing  
41 should be required to have catch-basins.

42  
43 Hank Baumgart, 1504 Fairview Street, Bellingham, stated six generations of  
44 his family are from Lummi Island. Lummi Island is mainly a retirement and  
45 bedroom community to Bellingham, where the jobs are. Not all large land owners  
46 are developers. There are about 1,100 buildable lots left on the lot, not including  
47 the 346 lots at Scenic Estates. The five-acre downzone will reduce those lots by

1 65. That unfairly places the burden on a handful. Few people on the island own  
2 more than six acres. He supports the Planning Commission version of the plan.  
3

4 Art Thomas, 2620 Island View, Lummi Island, stated the goal in 1979 was a  
5 plan for the community. He is opposed to the downzone. It won't preserve rural  
6 character. Water is a major problem. A water study is advisable before moving  
7 forward with any kinds of restrictions or regulations.  
8

9 Dave Kershner, 3417 Sunrise Road, Lummi Island, submitted (*on file*) and  
10 read his testimony. The Planning Commission recommendations are out of step  
11 with the community and don't meet the Growth Management Act. The petition  
12 submitted requested a grace period for the five-acre downzone, not that it be  
13 eliminated. The Planning Committee recommended a six housing unit maximum for  
14 clusters, and the Planning Department staff did not challenge it, yet the Planning  
15 Commission increased it. He asked why.  
16

17 (*Clerk's Note: End of tape one, side B.*)  
18

19 Kershner continued to state that the planning survey didn't collect data about  
20 the size of clusters. It's unlikely that 15-house clusters are the preference of the  
21 majority of islanders.  
22

23 David Dickinson, 4100 Legoe Bay Road, Lummi Island, stated the existing  
24 Lummi Island plan from 1979 is flexible enough to suit the present and future uses  
25 of his property. The Lummi Island Planning Committee meetings were not  
26 recorded, and committee formation was not advertised. There are many procedural  
27 and appearance of fairness issues with the process. The maps don't show that any  
28 required best available science was used. The maps are incorrect. The plan invites  
29 the public onto his private property. A definition of rural character as it pertains to  
30 Lummi Island is included in the existing 1979 plan. One aspect of rural character  
31 includes freedom from government regulation.  
32

33 Mary Dickinson, 4100 Legoe Bay Road, Lummi Island, submitted (*on file*) and  
34 read her testimony. Don't pass the plan due to procedural process errors. The  
35 plan violates Washington State law, gives authority to trespassers, and does not  
36 represent the majority of the people on the island. Historically, Lummi Island was  
37 an urban industrial community. There is documented evidence that the Planning  
38 Committee never intended to do a water study. Nonconforming lots are vested.  
39 They were accepted by the community in 1979. The plan talks about trespassers  
40 rights. Trespassers have no rights. They're criminals.  
41

42 Colin (Ken) Brown, 1882 Seacrest Drive, submitted (*on file*) and read his  
43 testimony. There are no prime agricultural soils on Lummi Island. Attempts are  
44 being made to turn Lummi Island into a gated community, with inadequate ferry  
45 service serving as the "gate." Think carefully before removing their sacred right of  
46 freedom from potential neighbors.  
47

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 Dave Ernst, 2884 West Shore Road, Lummi Island, stated Lummi Island has  
2 an extensive amount of class II Kickerville loam prime agricultural soils. There is  
3 internal inconsistency in the plan. The plan was not very well drawn by the island  
4 community in the first place. One action item is to maintain the existing zoning.  
5 However, that language is not clear, due to the way Title 20 is written. He hopes  
6 the Council will clear up the inconsistencies before adopting the plan. Item 3.5 of  
7 the staff's recommendation calls for an open space plan to be prepared. There is a  
8 more detailed way to organize that process. It will give islanders a chance to do an  
9 open space plan to marry growth on the island to the island's ecology.

10  
11 Meredith Moench, 1185 Beach Avenue, Lummi Island, stated she supports  
12 the definition of rural character, which she read from the Growth Management Act.  
13 Preserve the rural character as it is now. If 1,100 lots are allowed to develop, they  
14 will have congestion and a residential density not consistent with rural character.

15  
16 Polly Hanson, 2781 West Shore Drive, Lummi Island, stated they need to  
17 keep Lummi Island special, which has to be done through regulation.

18  
19 Jim Dickinson, Lummi Island Land Company President, 2094 West Shore  
20 Drive, Lummi Island, stated Lummi Island is not a rural community. It is a  
21 bedroom retirement community interspersed amongst large tracts of land. It was  
22 an industrial community in the early 1900's. Because of the loss of agriculture, it is  
23 no longer rural. They are the largest landowner on the island. Reject the plan.  
24 Every piece of his property is saddled with new regulations. If allowed to be  
25 implemented, he will be unable to survive. His property must pay for itself. On  
26 page 41, the language is in direct violation of the U.S. Supreme Court. It is illegal  
27 to be compelled to invite the public onto private shorelines. Many of the same  
28 members of the local Planning Committee have opposed his legal, sustainable, and  
29 conserving logging efforts, which would help keep his property in its current state.  
30 If he can't keep his property sustainable, he will be forced to liquidate for the most  
31 amount of gain possible from real estate development. He wishes to be left alone  
32 to pursue his usual interest. Reject the plan.

33  
34 Tim Trohimovich, 1,000 Friends of Washington Planning Director, submitted  
35 (*on file*) and read from his testimony. The density provision violates the Growth  
36 Management Act. The highest density allowed is one dwelling unit per five acres.  
37 If the rural residential, three units per acre (RR3) zone were implemented, then 98  
38 percent of the water would be committed. Reduce the density. Update the water  
39 study. Until that's done, don't over-commit the available water on the island. The  
40 plan is not specific about the allowed light industrial and commercial uses on the  
41 island. Be more clear. Include standards to protect rural character. The exception  
42 from lot consolidation requirements doesn't make sense on Lummi Island. The  
43 environment is sensitive and water is limited.

44  
45 David Puckering, 2515 Taft Road, Lummi Island, stated he is the water  
46 manager for Isle-Aire Beach Association. The island is rural. There are no  
47 industries present. The island will always have a rural character. Zoning to

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 prohibit a dense build out is already in place. The island water supply has  
2 supported a much larger past population and the water-intensive industry of the  
3 cannery. Lummi Island is full of water. There are many springs across the island.  
4 There is enough water for the current population. There are locations of arsenic in  
5 wells in many places on the island. More incidents of arsenic in the water may be  
6 attributed to more data being collected and because acceptable levels are lower.  
7 Many controls are necessary to protect wells. A water study is needed.

8  
9 Sue McCaslin, 2025 Legoe Bay Place, Lummi Island, stated rural character  
10 exists in Lummi Island. They all have differences of opinion on what defines rural  
11 character. Something good can happen if they all try to solve the problem rather  
12 than fighting on different sides of the issue.

13  
14 Victor Armfield, 1210 Scenic Avenue, Lummi Island, submitted (*on file*) and  
15 read his testimony. The estimate of water used per day per person is intentionally  
16 inaccurate. There has been an urban level of development since 1979. There are  
17 many more water associations than there were in 1979. In the absence of detailed  
18 hydrologic data, rely on land use controls to safeguard resources. Groundwater  
19 deterioration occurs with growth.

20  
21 (*Clerk's Note: The Council took a break from 7:40 p.m. to 7:44 p.m.*)  
22

23 Chris Dillard, 2216 G Street Bellingham, stated he is in favor of protecting  
24 the rural nature of the island. Follow the Growth Management Act, which doesn't  
25 allow density greater than one house per five acres. Use the precautionary  
26 principle in terms of water. Unless there is data on water consumption per person  
27 a hundred years ago, the claim that there is plenty of water today is arbitrary.  
28 Nettles Farm on Lummi Island has very bountiful garden beds, and produce a large  
29 amount of produce from a small area.

30  
31 Bud Jewell, 3805 Center View Drive, Lummi Island, stated rural character is  
32 something that has many viewpoints. Nobody represents the majority because  
33 they don't know what that is. One item in the plan is for public trail access. Lizard  
34 Road ends at the water on the east side of the island. It was a public access area  
35 for a long time. The County has allowed neighbors to put a fence across it and  
36 plant trees in it. It is public property. The situation needs to be taken care of. It is  
37 one of the very few public beach access roads on the island.

38  
39 Bob Wiesen, 3314 Douglas Road, Ferndale, submitted a letter that was sent  
40 to him from the Health Department (*on file*). It was said that water is a big  
41 problem. However, only one person who testified at the Planning Commission  
42 asserted that they had a water shortage. No one said their water was impacted by  
43 a drilled well. People have complained about the process. They felt their opinions  
44 were not being considered at all. The process was flawed. That's what caused the  
45 war. If there were a diverse group of people, such as in Birch Bay, they may be  
46 able to resolve the problems. He has a problem with 1,000 Friends of Washington  
47 asserting that the County has to downzone the area. The area conforms to the

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1 Comprehensive Plan. No one has ever been required to downzone from a historic  
2 zone or plan. They might be able to justify it if they started from the beginning.  
3

4 Wanda Cucinatta, 2303 Tuttle Lane, Lummi Island, submitted testimony (*on*  
5 *file*) and stated she has a concern for the natural environment and natural  
6 hydrology. People don't understand how sensitive Lummi Island is. There's no  
7 study of what will happen to the shoreline if there is build out.  
8

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

10  
11 Cucinatta continued to state that people don't understand how sensitive the  
12 Lummi Island environment is.  
13

14 Janice Walker, 2395 West Shore Drive, Lummi Island, stated she is a large  
15 property owner. The taxes are a big issue. They put their land into open space tax  
16 designation to keep taxes down. They have plenty of water, but her neighbor has  
17 run out. The water study should be done. She appreciates the work of the  
18 committee, however the process was flawed because of the short timeframe and  
19 the changes made by the Planning Commission. Water is an important issue for  
20 people to understand.  
21

22 Hearing no one else, McShane closed the public hearing.  
23

24 McShane stated this plan will go now to the Council Planning and  
25 Development Committee. If the Planning and Development Committee chooses to  
26 recommend any changes to the Council, which is possible, another public hearing  
27 will be required. He thanked everyone for attending the hearing and giving the  
28 Council a good sense of what the issues are. It was instructive to councilmembers.  
29  
30

31 **ADJOURN**  
32

33 The meeting adjourned at 8:00 p.m.  
34  
35

36 \_\_\_\_\_  
37 Jill Nixon, Minutes Transcription  
38

39 The Council approved these minutes on May 18, 2004.  
40

41 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

42  
43  
44  
45  
46 \_\_\_\_\_  
47 Dana Brown-Davis, Council Clerk

\_\_\_\_\_ Dan McShane, Council Chair

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

---

1