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WHATCOM COUNTY COUNCIL
Planning and Development Committee

February 10, 2004

Committee Chair Seth Fleetwood called the meeting to order at 3:10 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Sharon Roy
Laurie Caskey-Schreiber

Absent:

None

Also Present:

Sam Crawford
Sharon Roy
Dan McShane

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL

2. RESOLUTION INITIATING COMPREHENSIVE PLAN AND ZONING AMENDMENTS FOR 2004 (AB2004-082)

Sylvia Goodwin, Planning Division Manager, stated the initiating procedure is in Whatcom County Code (WCC) chapter 20.10.

Docket #2004-B: Ferndale Urban Growth Area

Goodwin stated the City of Ferndale proposes to remove a portion of the urban growth area (UGA) on the west side of the city and add UGA to the east and north sides of the city to make it more efficient for transportation. The areas to the east and north of the city have existing development and existing services. They have to decide if the areas are logical places to grow. She described the property in the proposed amendment.

Brenner stated there is little prime agricultural soils to the west.

Fleetwood asked the City's original intentions regarding ingress and egress when it originally included in the UGA the area to the west of the city. Goodwin stated their intention hasn't changed.

Brenner stated someone who lives on the west side of town doesn't have to cross the little bridge or the single lane overpass. She doesn't understand how the amendment would alleviate traffic. The place they would go would be straight to the east, and there's nothing there but the people who live to the east.

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1 Caskey-Schreiber asked the reason for adding the 212 acres to the north.
2 Goodwin stated she can't speak to the City's reasoning.
3

4 Brenner stated this application is incomplete. It doesn't include the text
5 amendments. It also includes a map that is incorrect regarding the location of
6 services. There are sewer and water services going to a new development to the
7 west. The services are there.
8

9 Caskey-Schreiber stated she would like an opinion from legal counsel about
10 whether the application is legal.
11

12 Dave Grant, Senior Civil Deputy Prosecutor, stated the County is required to
13 docket a proposal if the proposal is filed in a timely fashion. To be filed in a timely
14 fashion, the application has to be complete. WCC 20.10 sets out the parameters
15 the County must consider to decide whether an application is complete, including
16 whether the proposal includes the proposed map and text amendments. In this
17 case, there is a map that is included that provides for significant changes to the
18 Comprehensive Plan and which would necessitate text changes as well. However,
19 the application fails to propose any text changes that would bring the map changes
20 into compliance with the existing Comprehensive Plan. Without an appropriate text
21 amendment in addition to the map amendment, the County would have a conflict
22 between the Comprehensive Plan and the zoning map. That would be a basis for
23 the Council to decide the proposal is incomplete. A core question is whether there
24 is a sufficient amount of information in the application for the Council to write an
25 appropriate ordinance that would reflect the sought after change. The map is
26 proposed, but they don't have any proposed text changes that would create a code
27 that is consistent with the map. Since they didn't propose text amendments, the
28 question is whether there is enough information for the County staff, Planning
29 Commission, and Council to craft the text amendments that would be necessary to
30 put in place the map change. If they don't feel comfortable doing that, don't deem
31 the application complete.
32

33 Doug Robertson, attorney, stated the County code and State law make sense
34 in this instance. There are ways that an amendment can be docketed. For a
35 proposed amendment to be automatically docketed, it has to be proposed by a city.
36 The Revised Code of Washington (RCW) requires the City to go through a legislative
37 action with a public process to propose a Comprehensive Plan amendment.
38 However, the City of Ferndale didn't go through the appropriate public process with
39 legislative action for this proposed amendment. It didn't comply with the Growth
40 Management Act (GMA), so the amendment can't be automatically docketed.
41

42 Dick Mattila, church pastor in Ferndale, stated they invested \$1.5 million in
43 property on the west side of the UGA. When they started the process three years
44 ago, they went through a conditional use process (CUP) with the County and City.
45 At that time, there was no indication the UGA would change. They moved into an
46 area where they believed growth would move. The City required him to make
47 improvements to the water line. He would not have invested the money in this

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1 location if he knew the City would not move in that direction. The City is aware of
2 his project.

3
4 Carl Reimer, 1055 West Laurel Road, North Bellingham Community
5 Association, stated he represents people on the east side that would be included in
6 the UGA. The issue today is if the application is complete. The application is not
7 complete. Don't docket this item.

8
9 Dennis Hawkinson, 5324 Bel Air Drive, stated he lives in a development that
10 has water and sewer. Work with the City to find him some relief. The residents in
11 his development are presently paying a surcharge for sewer and water. They are
12 developed highly above city standards. Some people with large families are paying
13 over \$400 per month for water and sewer. They're trapped. If annexed into the
14 city, the surcharge would be reduced 50 percent. They can't annex to the city
15 because they're not in the UGA. Some people are in favor of the City's proposal.

16
17 Tim Blomquist, 6168 Olson Road, stated he is a property owner in the
18 current UGA. They have held property that has been in the UGA for 25 years, and
19 was turned down for annexation recently because he was told that the City wants
20 to remove the UGA. Don't docket the item.

21
22 Roger Almskaar, land use consultant, stated the application is incomplete.
23 There's little land in area one, east of the interstate, that is bigger than five acres.
24 They can't build houses at an affordable price on only two or five acres. They need
25 economies of scale. Area two has larger parcels and is adjacent to sewer, water,
26 and arterial roads. The Ferndale school district recently purchased land for new
27 schools on the west side of Church Road. If this went through, the purchase of
28 property for the new schools would be questionable.

29
30 Anne *Unknown*, Ferndale, submitted petitions (*on file*) from Ferndale owners
31 requesting the Council to reject the application from the City of Ferndale.

32
33 Rod Erickson, 6343 Church Road, stated this is the first time the City of
34 Ferndale has ever used the excuse of saving farmland west of town. Of the 1,250
35 acres on the west side they want to remove from the UGA, less than 20 percent is
36 actual farmable ground. He is located adjacent to the new development on the
37 west side. The City of Ferndale used the same arguments to remove this area from
38 the UGA as it used against the people who tried to stop the development. They'd
39 better change their tactics. The application says the amendment will be for the
40 benefit of the community as a whole and not for private financial gain. The
41 community as whole in the west area is doomed for development.

42
43 **Brenner moved** to recommend to the full Council to deny docketing this
44 item.

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1 Caskey-Schreiber agreed. The City needs to do more work on this and go
2 through more public process. The County staff would have to do the work the City
3 should have done.

4
5 **Fleetwood** stated the motion must be in the positive, and **moved** to docket
6 the item.

7
8 Roy stated she was struck by the lack of public process. It appears as if the
9 County will take care of the public process. She's received a lot of feedback on this
10 issue. No one supports this amendment. There hasn't been an opportunity for
11 people to express themselves and come to an agreement.

12
13 Crawford stated the message is clear that there is an absence of support for
14 the amendment. There may be aspects of this proposal that are worth looking at.
15 The northern Grandview Road area is worth consideration for the UGA. The
16 concerns about Bel Air Estates has also to do with street improvements, sidewalks,
17 and schools. There may be a small area east of the city limits that is worth
18 reviewing. However the application as it is submitted does not allow the County to
19 docket those areas. He encouraged the gentleman from Bel Air to continue to work
20 with the City as best he can to docket something next year that makes more sense.

21
22 Brenner asked if cities are allowed to charge a 50 percent surcharge outside
23 the city.

24
25 Grant stated he didn't know.

26
27 Roy stated it's not uncommon.

28
29 Brenner stated they cannot look at what someone pays for sewer and water
30 to annex an area, but there's still the issue of fairness. The surcharge doesn't
31 seem fair.

32
33 ***Motion failed unanimously.***

34
35 Docket #2004-C: Bellingham Urban Growth Area

36
37 Goodwin stated the Council docketed this item last year. The joint process
38 with the City of Bellingham wasn't completed. Staff recommends the Council carry
39 the item forward into this year. This is not a new application. It is part of an
40 interlocal agreement with the City that says the County will update the urban fringe
41 plan for the city last year. There is an elaborate joint process of hearings planned.

42
43 *(Clerk's Note: End of tape one, side A.)*

44
45 Goodwin continued to state the item will look at the urban growth areas for
46 Bellingham, the five-year review areas, the Caitec application, and the Templeton
47 application.

1
2 Brenner asked if the County has any discretion on this. Goodwin stated they
3 probably do. The interlocal agreement says the County will consider it in 2004.
4 There is not a new city application. If the County doesn't docket the item, then it
5 won't be consistent with the City of Bellingham. They'd want to work with the City
6 to amend the interlocal agreement.

7
8 Brenner stated the Council also approved the growth projections. She
9 though the City approved the medium growth projections. She asked how the City
10 can consider expanding its UGA's. Goodwin stated the City is only about 9,000
11 dwelling units short instead of the greater shortage it would have had if it had
12 approved the higher growth projections. The City still has a considerable shortage
13 of developable land unless it increases density in the city, which the City is working
14 on. The City will go through that process this year. The County may or may not be
15 able to make decisions on the UGA's for the city, depending on how lengthy the
16 City's public process is. The City is first trying to increase density before expanding
17 the UGA's.

18
19 Caskey-Schreiber stated it's something the County needs to look at. It's
20 bound to look at the issue.

21
22 ***Fleetwood moved*** to recommend to the full Council to docket.

23
24 ***Motion carried 2-1 with Brenner opposed.***

25
26 Docket #2004-D: Point Roberts – Rural to Commercial

27
28 Amy Pederson, Planner I, gave staff report and stated the site is 10.6 acres
29 at Tyee Drive and MacKenzie Road. She explained the surrounding zoning and
30 uses. The request is to rezone from rural, one unit per five acres (R5A) to general
31 commercial (GC). The zoning would be the same as three parcels to the north.
32 However, it is a large piece of property. The most significant issue is the habitat
33 conservation area, the Point Roberts Heronry and 300-meter buffer, encroaches
34 into 40 to 50 percent of the property.

35
36 The 2001 Point Roberts Subarea Plan vision for this area is to be maintained
37 as a green buffer area. The commercial land was to be limited to the existing
38 commercial property. The goals and policies of the subarea plan specifically states
39 that the current commercial uses in the vicinity of the border are permitted, do not
40 allow new commercial uses. The subarea plan should be considered when
41 reviewing the application.

42
43 Brenner asked if there has been a discussion to subdivide the property
44 according to zoning into two five-acre parcels so that one parcel that is in the
45 heronry and buffer could remain zoned as it is, and the west half of the property
46 could be rezoned commercial. Pederson stated she's not aware of any such plans.

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1 **Brenner moved** to recommend to the full Council to docket this item, but
2 she is opposed to it.

3
4 Caskey-Schreiber stated she is opposed to the motion. It is not a part of the
5 subarea plan for commercial uses. The community has a plan for their vision. This
6 isn't part of the vision.

7
8 **Motion failed unanimously.**

9
10 Docket #2004-A: 2004 Comprehensive Plan Update

11
12 Goodwin stated the County is mandated to update the Comprehensive Plan in
13 2004. Staff recommends docketing.

14
15 **Fleetwood moved** to recommend docketing to the full Council.

16
17 **Motion carried unanimously.**

18
19 Docket #2004-E: Guide Meridian – Rural to Commercial

20
21 Goodwin gave a staff report and stated the request is to rezone 4.73 acres
22 on the Guide Meridian from rural, one unit per five acres (R5A) to general
23 commercial (GC). Part of the property is already zoned commercial. The parcel is
24 a flat lot that connects to the Guide Meridian next to the Hilltop Restaurant and
25 connects to Axton Road also. The eastern half of the parcel is already zoned
26 general commercial. The property is a large open field. There are three acres that
27 are already zoned commercial that have the access and should be developable on
28 their own without having to include the rest of the property. The applicant's
29 argument is that the parcel is split by zoning, making it unusable.

30
31 There are agricultural protection overlay (APO) soils. Almost the entire
32 parcel has agricultural soils. It's not subject to the APO because it is not five acres.
33 The entire parcel is in a seismic hazard area. The southern half is a wetland and
34 100-foot buffer.

35
36 Fleetwood asked the attributes of a wellhead protection area. Goodwin
37 stated there are special requirements for properties in a wellhead protection area.
38 If within a ten-year time of travel of a wellhead protection area, the property is
39 subject to higher standards. They don't want any activity in those areas that would
40 generate pollution in the aquifers. The areas are regulated in the Critical Areas
41 Ordinance and the Mineral Resource Ordinance. Generally they allow residential
42 development.

43
44 Bob Carmichael, attorney, stated he represents the applicant. The applicant
45 bought the property when he thought the zoning was general commercial. The
46 Assessor's Office shows the entire parcel as zoned general commercial. He
47 submitted a copy of the application for a short-plat that the applicant tried to file on

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1 the property six months ago, (*on file*). The hope was to develop light
2 manufacturing or another retail use. The owners put together the short-plat
3 application, and then found out that the lot had split zoning. One of the difficulties
4 with a split-zoned lot is that the area zoned R5A is only 4.73 acres. The split-zone
5 has turned the R5A portion into a substandard lot. The property is in an area that
6 has experienced some development. It would create problems to develop just on
7 the existing commercial area. The site has good access and would be a good
8 location for what is proposed. He asked the Council to docket this item so the
9 Planning Commission can consider it.

10
11 Roy asked about the substandard lot. Goodwin stated the lot is 4.75 acres in
12 an R5A zone. The owner can build one house, but can't split the parcel further.
13 The owner can have a residential or commercial use on the portioned zoned R5A,
14 but can't divide the R5A portion from the GC portion of the lot because it would
15 create a lot that is too small. To create a five-acre lot, the owner would have to
16 give up a sliver of the commercial portion through a short plat.

17
18 Roy asked the use of the property to the west. Goodwin stated it is a
19 wooded area. The rest of the surrounding area is pasture.

20
21 **Caskey-Schreiber** stated there is no need for more commercial on a route
22 that is already plagued with traffic problems. They're trying to reduce access onto
23 the Guide Meridian so it can be a major transportation corridor. This isn't enough
24 of a reason to approve the rezone. If the Council approves the rezone for this
25 person, it will have to approve rezones for others in this area. She **moved** to
26 recommend approval, but is opposed to the request.

27
28 **Motion failed unanimously.**

29
30 Docket #2004-H: Hazardous Material Policies

31
32 Kraig Olason, Senior Planner, gave a staff report and stated this item is a
33 request to change policy in the environmental section regarding an operating
34 permit program for facilities required to file a risk management plan under federal
35 law 40-68. It has to do with hazardous chemicals. Staff questions whether the
36 County has this authority. He spoke with legal counsel and the County's
37 Emergency Management Division Manager. Another question is whether the
38 County has the expertise to analyze what is more suitable for chemical uses in
39 these facilities. In addition, there would be different standards between the cities
40 and County. The applicant requests the Council to add four new policies to goal
41 11A that deal with creating a process to require an operating permit for facilities
42 that have hazardous chemical as defined under federal law.

43
44 Crawford asked if the request is to regulate or permit the use of the
45 chemicals. Olason stated the purpose of the operating permit would be to require
46 these facilities to review their use of chemicals and determine if there are other,
47 less dangerous chemicals they could use instead.

1
2 Roy asked if someone oversees this currently. Olason stated this is done
3 through review by the Environmental Protection Agency (EPA). They have
4 regulations and requirements.
5

6 Gerald Steel, applicant, stated he represents the Washington State
7 Association of Plumbers and Steamfitters (WSAPS) and himself. This is a request
8 for hazard reduction planning in the county. Currently, the federal government has
9 a process where a risk management plan is required of all industries that have a
10 certain amount of listed chemicals on site. The risk management plan deals with
11 the potential accidents that can happen and identifies who can respond. There is
12 an element of hazard reduction planning that the federal requirements don't
13 address. The county can address the hazard reduction planning. That's what his
14 proposed policies would address. The proposed policies say that when a facility has
15 to do a federal risk management plan, it would also have to do a piece for the
16 County to look at the way the facility handles the hazardous materials. The facility
17 would provide a report to the County about whether the facility can use less
18 hazardous methods and still accomplish its goals. If so, the County staff would
19 have the authority to condition the facility's operation on reducing the risks as
20 identified in the report.
21

22 Caskey-Schreiber asked if this item is related to the proposed British
23 Petroleum (BP) co-generation plant or if Mr. Steel has brought this amendment to
24 other counties. Steel stated he put in an application to Skagit County that is similar
25 to this application. Their staff recommended doing it during their 2005
26 Comprehensive Plan update. He's asking the Council to docket this item so they
27 can decide how the policies should read to accomplish the objective.
28

29 Neil Clement, Emergency Management Division Manager, stated in 1999, a
30 list of threshold facilities were required to report to the EPA. As part of the risk
31 management program, the facilities were required to report a number of things.
32 The intent of the statute itself is to prevent accidental releases into the air and
33 mitigate the consequences of such releases by focusing on prevention measures on
34 the chemicals that pose the greatest risk to the public and the environment. There
35 was originally 65,000 facilities in the United States that would be covered by this
36 rule. As industries looked at this program and decided it was onerous, they
37 reduced their levels of risk by dumping inventory, changing chemicals, and doing
38 exactly what Mr. Steel proposes. They voluntarily reduced their own risks so they
39 wouldn't be required to comply with the federal statute. He explained the
40 requirements of the federal statute. The emergency management services in the
41 region, Department of Labor and Industries, and Northwest Air Pollution Authority
42 considered combining efforts to assume the EPA's audit responsibilities, however
43 they couldn't make it work. One of the EPA's audit functions is to look at the entire
44 safety management process for these industries. Many of the industries, such as
45 the refineries, have extremely complex process safety regulations that they're
46 working under already.
47

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1 There are about a handful of facilities that would be regulated by this
2 proposed amendment. He also questions the authority to impose an operating
3 permit. Some of these facilities are regulated by the Energy Facility Site Evaluation
4 Council (EFSEC). There are other facilities located in three other municipal
5 governments that would not be impacted. Local facilities would have different
6 regulations.

7
8 If approved, he's not sure how the County would determine the adequacy of
9 the required review. He doesn't have the expertise to do that. He doesn't think
10 the County has that expertise.

11
12 The cost of efficiency is a factor. Changing some chemical processes to
13 achieve less risk may be cost-prohibitive and close the facility. He's not sure the
14 proposal would sufficiently reduce risk any more than it has already been reduced.
15 It would impose an additional burden on the industry.

16
17 Caskey-Schreiber stated she is on the board for the Northwest Air Pollution
18 Authority (NWAPA), which does permitting and inspecting of a facility that uses
19 hazardous chemicals, including refineries. Clement stated the State Department of
20 Labor and Industries and the federal Occupational Safety and Health Administration
21 (OSHA) also inspect those facilities.

22
23 Crawford stated he has a hard time picturing this process going on through
24 the Comprehensive Plan process. There are other methods that could be the
25 vehicle by which the concerns could be addressed. Clement stated he agreed. Mr.
26 Steel's intent is a good one. If they can reduce risk, they should, but the industries
27 are doing this already.

28
29 *(Clerk's Note: End of tape one, side B.)*

30
31 Steel stated the concept of the air pollution agency dealing with this is not
32 true. It deals with much smaller quantities of air pollution. This proposal deals
33 with only the most serious places where hazards could happen. There might only
34 be six companies in the county that qualify for this company. Many companies may
35 reduce their use to get out of the program. That's fine. This program only deals
36 with those people who present the greatest risk to the county.

37
38 This amendment is not a significant addition to what is already required.
39 He's asking that the County get involved in the process so it knows what hazards
40 are happening to the people of the county. He's also asking these people to look at
41 the issue of whether or not they can reduce risk as they do their federal planning.
42 Federal planning doesn't address how to reduce risk, just what to do with the risk
43 that exists.

44
45 Caskey-Schreiber asked Mr. Steel to speak more candidly about case
46 scenarios, who it would affect, and what they're talking about. Steel stated this
47 program only takes place when there is a threshold activity such as a major

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1 expansion or improvement that would trigger the process of writing a report that
2 talks about reducing the risk. The County would look at that report to decide if it
3 will direct the company to reduce the risk. The objective is not to make the
4 industry less effective, productive, economical, or competitive. It's just to look at
5 an issue that the County would otherwise not look at and that would be important
6 to the County if there were a major incident at one of these facilities. These are
7 the six most hazardous facilities in the county. The proposal is for the County to
8 look at a report prepared by each facility on how the facilities would reduce their
9 hazards.

10
11 Roy stated risk analysis is how the employees handle chemicals, for example.
12 She doesn't see what amount of paper would prevent catastrophic terrorist events.
13 She doesn't get the connection. Steel stated there would be a section that is not
14 addressed right now. When a major update or improvement is done, the facility
15 would look at the way the hazardous materials are being used and if they can be
16 used safer. Now, they only look at what happens if it breaks. However, the County
17 can require them to write a report about safety improvements that would reduce
18 risk.

19
20 Fleetwood asked if this application is complete. Olason stated it is. The
21 question is whether they have clear authority to step into this role and make
22 demands and regulations.

23
24 Steel stated this report would only be written during a major upgrade. The
25 County authorizes building permits and State Environmental Protection Agency
26 (SEPA) reports. The County has authority to do these things. They may find that
27 the best way to implement these procedures is through SEPA.

28
29 Fleetwood asked if it is appropriate to docket an item when they're not clear
30 if the County has authority. Olason stated that when staff looked at this proposal,
31 the question was in terms of the benefit the County would receive and the ability
32 the County has to deal with these companies that actually don't permit through the
33 County. When British Petroleum (BP) does a realignment, it doesn't come to the
34 County. In terms of land use approvals, not a lot of these are under land use
35 permits. They're either outright permitted or under another regulatory agency. For
36 the companies that the County can deal with, the question is whether it's worth the
37 time.

38
39 Fleetwood asked if the Council can docket something conditioned on staff
40 looking at the question of authority.

41
42 Steel stated the Growth Management Act has provisions that allow the
43 County to do this. There may be some preemption in another place.

44
45 Sylvia Goodwin, Planning Division Manager, stated she would rather not do a
46 lot of work on something if they're not likely to approve it.

47

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1 Fleetwood stated they don't know that yet.

2
3 Goodwin stated the Council can't docket something conditionally. Either they
4 docket an item and go through the process or don't docket something. If docketed,
5 the staff can do further research and recommend denial if there is no authority.

6
7 Olason stated staff will also have to follow this up with code. Staff will have
8 to have expertise to do the review talked about in the proposal. There's always a
9 lot of additional overhead when they take on a new program. They have to
10 evaluate if it will be worth the time and effort, and if they can truly succeed at
11 bringing forward this worthy cause. He's not sure they can. More of this upfront
12 work can be done before docketing to verify the clear authority the County would
13 operate under. That isn't included in the application.

14
15 Steel stated he can provide a legal analysis of the County's authority. The
16 County has authority. The question is the limits to the County's authority.

17
18 Brenner asked if today is the deadline for docketing items. Goodwin stated
19 they have to consider the entire docket together. They can delay them all. This
20 project might not have to be docketed as a Comprehensive Plan amendment. It
21 could just be considered as an ordinance, outside of the Comprehensive Plan if
22 there is merit to the proposal. It wouldn't be a zoning amendment.

23
24 Steel stated it's tied to environmental regulations.

25
26 Goodwin stated the environmental regulations are in Title 16, which can be
27 changed at any time of the year. Another option is to not add it to the
28 Comprehensive Plan, but add it to the Emergency Management Plan, the SEPA
29 rules, or some other regulation.

30
31 **Brenner moved** to table this item. They don't need to docket it. Have staff
32 find out if the County has the authority to do this.

33
34 Olason stated he would be willing to do that if Mr. Steel provides additional
35 background information.

36
37 Brenner agreed.

38
39 Fleetwood stated that would table all the other docketed items.

40
41 **Brenner withdrew her motion.**

42
43 **Fleetwood moved** to recommend to the full Council to docket this item, but
44 recommends against the motion. There is a procedural route that will get them to
45 the same place without docketing.

46
47 **Motion failed unanimously.**

1
2 McShane stated this might fit in the industrial lands chapter. Goodwin stated
3 industrial lands is in the Land Use Chapter. Next year they are working on urban
4 growth areas. Industrial lands is a section of the urban growth areas. They could
5 look at those policies next year.
6

7 **1. ORDINANCE ADOPTING AMENDMENTS TO THE WHATCOM COUNTY**
8 **ZONING ORDINANCE (TITLE 20) CHAPTER 20.85 PLANNED UNIT**
9 **DEVELOPMENT, CHAPTER 20.89 DENSITY TRANSFER PROCEDURE,**
10 **CHAPTER 20.90 AMENDMENTS, AND CHAPTER 20.71 WATER**
11 **RESOURCES PROTECTION OVERLAY DISTRICT (AB2004-081)**
12

13 Troy Holbrook, PDR/TDR Coordinator, stated there are four proposed minor
14 modifications. They are intended to facilitate the transfer of development rights
15 (TDR) program, provide clarity and consistency in the code, establish a framework
16 for a TDR bank and oversight committee, and to address procedural issues.
17

18 The first chapter is Whatcom County Code (WCC) chapter 20.85, Planned
19 Unit Development (PUD). Alternatives to TDR's that can be used to increase
20 density can inhibit the TDR program. The receiving zones allow the PUD process to
21 increase density. The proposed language requires that TDR's be used to increase
22 density before using the density bonus provisions in the PUD chapter. A developer
23 could get a 35 percent density increase, for a maximum of 13.5 units per acre.
24

25 Caskey-Schreiber stated she'd prefer to round it up to 14 units per acre.
26 Maximize density. Holbrook stated that is a PUD change for the entire county.
27 These changes only affect TDR receiving zones. Staff can look at that suggestion.
28

29 The next chapter is WCC 20.89, Density Transfer Procedures. The proposed
30 amendments clarify language, establish consistency with other code sections, and
31 provide the framework for the development rights bank. The language establishes
32 receiving areas in the city. Provisions are added to allow in lieu of payments if no
33 certified development rights are available, using the development rights bank.
34 They would be used to purchase development rights out of the watershed and
35 purchase sensitive areas in the watershed. Transfers are prohibited if the
36 development rights are already encumbered and prohibited from development.
37

38 An oversight committee for the development rights bank would be
39 established and make recommendations to the County Council on policies and
40 procedures for how the bank will function and TDR transactions.
41

42 Brenner stated the City of Bellingham turned down the option of developing
43 a bank. She asked why the County would put itself in that position. Holbrook
44 stated the City Council didn't deny the bank. They supported the development of a
45 bank, but didn't agree on the concept of how it would be operated. That's why he
46 recommends an oversight committee.
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 This language just sets up the framework for developing a bank. How that
2 bank would be structured isn't decided yet.

3
4 Brenner stated she supports the bank, but not having the County be the
5 bank and the depositor at the same time. There's too much of a conflict of interest.
6 Holbrook stated the oversight committee will discuss those issues.

7
8 Holbrook stated the next chapter is WCC 20.90, Amendments. This
9 language is similar to language in chapter 20.89. Rezone requests will be reviewed
10 to determine if they're appropriate as a receiving area. They may be required to
11 use TDR's to achieve their requested densities. Putting this language in this
12 chapter makes the information more accessible to those requesting rezones.

13
14 Fleetwood asked if this language limits their ability to include rural areas as a
15 sending area. Holbrook stated there is not. The language keeps the option very
16 open.

17
18 Holbrook stated the last chapter is WCC 20.71, Water Resources Protection
19 Overlay District. They realized the need for this change from the recent TDR
20 program. If development rights have already been encumbered, they can't be
21 transferred out of the watershed.

22
23 The amendments are consistent with the Comprehensive Plan and facilitate
24 the TDR program.

25
26 ***Caskey-Schreiber moved*** to recommend approval to the full Council.

27
28 Roy stated she complimented Mr. Holbrook and the Planning Department for
29 the work that's gone into this program.

30
31 Peter Watts, 2154 Northshore Road, stated he represents Evergreen View
32 Ventures, Inc. He supports the program. They are affected by the downzone and
33 proposed TDR program. They had 250 development units which has been reduced
34 to 25 units. The press commented that the people who have TDR's are getting a
35 free ride. There are people who have proceeded in good faith with proposed
36 developments of their land. He has incurred \$320,000 in hard costs. He
37 contributed to the Northshore sewer trunk line, Agate Bay water service, and
38 various planning costs. Proceed in good faith. Implement and maintain a viable
39 TDR program based on the recommendations from staff. He complimented the
40 staff for keeping the public informed of this program. The amendments to the code
41 will insure that this program has a good chance of success.

42
43 ***Motion carried unanimously.***

44
45
46 **OTHER BUSINESS**

