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WHATCOM COUNTY COUNCIL
Special County Council Work Session

February 22, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 1:30 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner
Dan McShane
Sam Crawford
Seth Fleetwood
Sharon Roy
L. Ward Nelson

Absent:

None

1. COUNCIL TO DISCUSS ISSUES AND CONCERNS RELATED TO THE RECENTLY ADOPTED BUILDING AND SUBDIVISION MORATORIUM IN THE LAKE WHATCOM WATERSHED (ITEMS TO BE DISCUSSED INCLUDE: THE PROCESS, JUSTIFICATION FOR LIFTING THE MORATORIUM, BENCHMARKS, AND PRIORITIZATION OF TASKS) (AB2005-072B)

Sue Blake, Senior Planner, read a presentation (*on file*) regarding the Council moratorium response, a review of issues identified in the moratorium ordinance, land acquisition, and urban growth areas zoning, density, and standards.

Brenner asked for an explanation of development tracking improvement. Blake stated they would like to do a better job of monitoring and tracking different development permits that come in to the City and County. It's not to do with enforcement.

Blake continued the presentation on related development information. They need to get a better sense of where the remaining lots are that can be developed. There are substantially fewer lots remaining to be developed in the watershed than they initially thought. Those are numbers staff is trying to refine.

Blake continued the presentation on other development codes and regulations.

Brenner asked if the County is required to adopt the new State onsite septic system codes.

Bruce Roll, Assistant Director, stated adoption of State codes has to do with how the County would implement the State regulations. Of concern is how the

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1 County would inspect onsite septic systems. Now, there are no requirements for
2 maintenance. There would have to be a program that identifies maintenance as an
3 issue.
4

5 Crawford stated the new State septic codes are being considered. They are
6 not yet adopted. Proposed is an inspection schedule and a minimum parcel size for
7 septic tanks. There is a public hearing on March 9.
8

9 Blake continued the presentation on other programs focusing on phosphorus
10 reduction.
11

12 Brenner asked the status of a potential ordinance banning phosphorus-
13 producing chemicals in the watershed. Blake stated staff is working on an
14 ordinance regarding fertilizers. They are still trying to work out enforcement.
15

16 Blake continued the presentation. Regarding Lake Whatcom modeling, staff
17 realized they need more than concentration information to help them with
18 management. They also need to know the total loading of a pollutant that is
19 getting into the watershed and where it is getting in. That requires things like
20 stream flow, so it can be combined with concentration to see where it is coming in.
21 They will try to identify loading for the various drainages in the watershed. The
22 model will look at all the different land uses, including residential, forest,
23 commercial, rural, and roadways. The model will attribute a certain phosphorus
24 loading level to each of those land uses.
25

26 Crawford asked if the land use referenced as "forest" is a forested area and
27 not active forest practices. Blake stated that is correct.
28

29 Blake continued and completed the presentation regarding phosphorus from
30 different land uses, phosphorus sources, the phosphorus cycle, and a summary.
31 Her example is an illustration of how the County might put together a prescription
32 from a particular area knowing the phosphorus loads. Internal phosphorus loading
33 from the lake is another source they don't have a good handle on yet. They do
34 know that phosphorus can be available for algae and plankton to grow in the lake.
35 It ends up being a big contributing factor. They could get rid of surface loading,
36 and still have to deal with internal loading.
37

38 Brenner asked where the County is with the Cable Street retrofit.
39

40 Bruce Roll, Assistant Director, stated staff completed an inventory of
41 publicly-owned assets in that area. They are beginning to design a feasibility study
42 for how big that project is. That will occur in 2005. Actual construction is
43 scheduled for 2006 and 2007. A question is if the County is going to limit the
44 project to road-related pollutants or expand into off-road areas and right-of-ways.
45 If that happens, they will need an enforcement person.
46

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1 McShane asked an idea of the County road cost for only the road project.
2 Roll stated the cost is \$1 million just for the road project. To intercept all the
3 runoff, not just the runoff from the road, it expands the size of the project
4 significantly.
5

6 Clare Fogelsong, City of Bellingham Environmental Resources Manager,
7 stated the City has a draft report it gave to the County Council outlining treatment
8 issues. The City is updating and revising that report. It is updating the estimated
9 cost of each option. The City will also talk about the options for location of the
10 intake and the associated cost of improving or relocating the intake. The City is
11 working with County staff to come up with some kind of phosphorus
12 reduction/limitation ordinance. There is a potential phosphorus reduction resolution
13 that would include a fertilizer limitation or ban and also focus on public education.
14 Other than working with County staff on phosphorus issues and analyzing the
15 drinking water supply system, the main focus for City staff is implementing the
16 2005 management program work plan. The City Council tentatively approved the
17 work plan. The next step is a joint City/Council resolution to move forward with the
18 work plan.
19

20 Caskey-Schreiber asked if the City has done any retrofitting of defunct
21 stormwater systems. Fogelsong stated that for 2005 and 2006, \$500,000 worth of
22 stormwater projects are going into the watershed. It is a continuing program that
23 has been in place for three years. The program has done major projects in the
24 watershed, including the project at the corner of Alabama Street and Electric
25 Street. A similar vault system has been put in at Connecticut Street. The City
26 retrofitted the Bloedel-Donovan parking lot and put in some rain garden bio-
27 filtration systems. There are three to five of those kinds of projects being done in
28 2005. The highest amount of acreage for each project is about 26 acres. The
29 average is 12 to 15 acres for each project.
30

31 Brenner asked when the City will get treatment plant and capacity upgrades
32 done. Fogelsong stated the City is still in the discovery phase of what needs to be
33 done for the long term, with considerations being source water quality and
34 capacity.
35

36 Brenner stated it seems like they've been talking about these for a number of
37 years. She doesn't understand why feasibility studies are being done now, and why
38 they weren't done in the past.
39

40 Caskey-Schreiber stated they just voted to move forward with the Austin
41 Street one last fall. It takes a lot of steps to secure outside funding. The Austin
42 Street one alone will be about \$4 million.
43

44 Roy stated she's heard that the treatment levels are increasing. She asked
45 about that part of water treatment. Fogelsong stated reason for the need for the
46 increased alum dosage is being reviewed.
47

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1 Roy asked how stormwater retrofitting is being paid for. Fogelsong stated
2 the City of Bellingham taxpayers and people receiving City water pay into a
3 stormwater fund, which pays for the projects.

4
5 Bruce Roll, Assistant Director, stated a taxpayer pays about \$35 per year.

6
7 McShane asked about the average acreage covered by the retrofit projects.
8 Fogelsong stated the Alabama Street and Connecticut Street project was about 25
9 acres, but that is larger than the average project.

10
11 McShane asked the average cost. Fogelsong stated he would have to check.

12
13 Caskey-Schreiber stated the City's report shows that the City will no longer
14 be able to average the trihalomethanes (THM's) starting in 2006, but will instead
15 have to address and treat the worst site. She asked how the City will address that
16 problem as standards change. Fogelsong stated the City is still meeting the federal
17 standard. The worst site is still under the federal standard. The City will make sure
18 the water quality doesn't become compromised. One influence appears to be the
19 organic material in the lake.

20
21 Caskey-Schreiber asked if the City is comfortable with a THM level of 68, but
22 if it goes up an upgrade will be triggered. Fogelsong stated a level of 68 is an
23 anomaly. The City won't design the whole system for that one point.

24
25 Caskey-Schreiber stated there are proposals to keep servicing it when the
26 urban growth area (UGA) expands. She asked if the City is going to be able to
27 service an expanded UGA, or if people will have to pay to upgrade the system.
28 Fogelsong stated he would have to defer to the people who run the pipes to know if
29 distance is a factor.

30
31 Roll stated there is a balancing act. One role is water being treated, and
32 then it's being disbursed. To retain the water's integrity or keep it in a state, as it
33 leaves the treatment plant, to be of good quality when it gets there. They are
34 balancing the chemical constituents against the microbial constituents. Whenever
35 they distribute water, they will always create a balancing act between disinfection
36 byproducts and the ability of the disinfectant to be there to deal with microbial
37 activity.

38
39 Brenner stated she was told that the level of 68 was a blip, and there are
40 other times when the count is a lot lower. The average is not 68.

41
42 Caskey-Schreiber stated the average is 30.

43
44 John Watts, Bellingham City Council Member, stated the City adopted the
45 funding mechanism for the stormwater utility three years ago. The City must
46 prevent flooding and erosion and also treat the chemicals in the water. That is the
47 major cost. If it was just a flood and erosion problem, they could correct the

1 problem. Recently, they estimated the cost at \$35 per year, but the true cost is
2 about double that. The stormwater utility is set up as a separate utility. Currently,
3 the average water user pays about \$65 per year. That fee will go up about \$.50
4 per year and top out in a few years at \$84 per year. The money raised is necessary
5 because the City is responsible for treating the runoff. They have the responsibility
6 of treating the water in perpetuity and meeting the National Pollution Discharge and
7 Elimination System (NPDES) standard for Bellingham Bay. The City has to have the
8 utility in place with a funding mechanism.

9
10 Caskey-Schreiber asked when the total maximum daily load (TMDL) study
11 will be done.

12
13 Steve Hood, State Department of Ecology (Ecology), stated the TMDL
14 technical report should be done in December 2005. Funding to do the scenarios
15 has been approved this week by Environmental Protection Agency (EPA). There has
16 been no change from his last report to the Council.

17
18 Fleetwood asked when there might be usable draft information. Hood stated
19 he will have information available in March to show the model's calibration. It will
20 show the information the model will create. People will get to comment on how
21 they want the information presented so it's useful enough to use it to make
22 decisions. About three months after that, they will start getting an indication of the
23 natural conditions and the amount they need to reduce to meet the natural
24 conditions.

25
26 Nelson asked if Ecology will have federal or State financing. Hood stated
27 Ecology takes all funding sources and has a single application for those sources. It
28 includes, the 319 for non-point pollution, the Centennial Clean Water Fund for both
29 grants, and a State revolving loan for loan monies. The single application will
30 describe the project. Those are evaluated. Most people apply for non-point
31 activities, which have a limit of about \$250,000. For infrastructure and wastewater
32 treatment plants, the limit is considerably more. There would be a matching
33 requirement for the grants and a secure funding mechanism to pay back the loans.

34
35 Fleetwood stated the Council needs a process to follow today that will result
36 in a moratorium response plan. He met with Mr. Hart and Mr. Roll to incorporate
37 ideas he heard from various councilmembers. The leading item of concern from the
38 councilmembers is stormwater. His proposal for a moratorium response plan,
39 referenced in his memo to the Council dated February 18, 2005, is general. This is
40 a plan that would fulfill conditions that would justify lifting the moratorium. Many
41 people want to hear there is a process and timeline. He read the four items in his
42 memo. The County doesn't have a comprehensive stormwater management plan,
43 as referenced in item three of his memo. The Council is not going to do policy
44 implementation in the next couple of months, but it can do policy planning. Start
45 the process to initiate development of a comprehensive stormwater plan. The
46 process of initiating development of a plan would allow consideration of a

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1 stormwater district. The fourth item should not be tied to the moratorium, but a
2 number of people mentioned it.

3
4 McShane stated he agrees with the assessment of the fourth item in
5 Councilmember Fleetwood's memo. It should not be tied to the moratorium, but it
6 should be done anyway.

7
8 *(Clerk's Note: End of tape one, side A.)*

9
10 McShane continued to state that the Council needs to move forward with
11 addressing the infrastructure needs. It will take a lot of time. He is not
12 comfortable linking the moratorium to it.

13
14 They've had the two-year experiment with the land clearing ordinance. It's
15 time to revisit it. Do an interim land clearing ordinance that is a seasonal
16 restriction, then finalize a land clearing ordinance that may allow for certain
17 exceptions based on soil types. The current version is not workable.

18
19 The first item in the memo is the most important for the short-term, in
20 addition to the land clearing. Any of the actions must be done on an interim basis,
21 and then finalized later. Move toward development standards that may be more
22 restrictive, with the idea they are interim and the details would be worked out
23 based on technical information. Strive for zero hydrological impacts from
24 development. That should be the primary driver of these standards.

25
26 One thing that is missing from the memo is the specifics regarding the
27 amount of development that can occur within the City of Bellingham's UGA. Look at
28 how big those areas are and how intense those areas should develop. Geneva and
29 Hillsdale will never become part of the City of Bellingham. The County could leave
30 those areas as UGA's, but zoning and density should reflect resource protection,
31 especially when they talk about designing a stormwater system.

32
33 Roy stated she thanks Councilmember Fleetwood for putting together this
34 information. She agreed with the prioritization. She agrees that the pesticide ban
35 is not necessarily part of this moratorium. Craig MacConnell convinced her it's not
36 a major problem in the lake. Because of her enthusiasm for the original seasonal
37 land clearing proposal, she wants to introduce as an interim ordinance the seasonal
38 land clearing that is the same one introduced awhile back, before the point system.
39 However, she doesn't want to do it unless the Council wants to work on it right
40 away.

41
42 ***Caskey-Schreiber moved*** to recommend to the full Council that
43 Councilmember Roy's ordinance be introduced at the evening meeting.

44
45 Brenner stated she is not comfortable with the motion because she doesn't
46 know anything about how much enforcement has happened. She had asked the
47 number of fines that have been issued. Until she knows, she's not comfortable

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1 eliminating the point system. She has no idea if the problem is that they don't do
2 enough enforcement. They may have a point system that works if there is enough
3 enforcement. She needs that information.
4

5 Caskey-Schreiber stated that if the ordinance is introduced, the Council will
6 have a public hearing and committee meeting on the issue. Hopefully the Council
7 can receive those answers. There is a lot of research available that links land
8 clearing to phosphorus loading in the lakes. An enforcement officer can't monitor
9 450 potential building sites every day in a wet season. One inspector averages
10 about seven to 12 homes per day.

11
12 Nelson asked if the Council is intent on finding a solution to stormwater
13 management so it can lift the moratorium.
14

15 Caskey-Schreiber stated she is talking just about land clearing. The proposal
16 is that land clearing would not occur during the wet season.
17

18 Fleetwood stated they should not spend a lot of time talking about
19 phosphorus bans today. The object today is to discuss the moratorium response.
20 Everyone seems to agree that this shouldn't be tied to it.
21

22 McShane stated he supports the motion. Make the ordinance an interim
23 ordinance they can deal with promptly as one of the items needed to lift the
24 moratorium. It will take multiple actions to lift the moratorium. Land clearing is
25 one of those actions they need. It doesn't have to be perfect right away. Once the
26 interim ordinance is in place, the Council can get more information and technical
27 expertise to refine it. He advocates for problematic areas to be shut down so there
28 is no clearing in September. It's a significant growing period. If one waits until
29 October, vegetation won't be established because it's too cold to establish root
30 strength and root growth.
31

32 Roy stated her ordinance is not the solution to all of the problems. Start with
33 a seasonal land clearing ban, then see how they can lift it in certain areas for
34 certain reasons under certain circumstances. The Council has until October to fine-
35 tune it. An herbicide ban is not a high priority for her.
36

37 Crawford stated he is against the motion. He voted to introduce some
38 protective measures in the past, including this item. The result was the current
39 point system. The Council has already been through this process. The result was a
40 coalition of folks who are doing the work. He has not been shown what it is the
41 Council is addressing. He is less concerned about the time of year it is than what is
42 coming off the jobsite. They are looking for a regulation of what can come off the
43 job site, not a regulation on the time of year.
44

45 Nelson stated there are two different approaches. One approach is banning
46 wet season clearing, then looking for ways to lift portions of the ban.
47 Councilmember Crawford is saying they should focus instead on how the current

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1 mechanism is applied to specific areas and what those results are, then focus on
2 how it's being applied to specific areas and refining it. He would rather focus on
3 that endeavor rather than a broad moratorium. All they are doing is taking the
4 easy approach of not allowing any development practices at all during the wet
5 season. He hoped to find a way to prevent runoff. The Council can decide that it
6 doesn't want any runoff from any site. Staff would take that direction and work up
7 regulations to accomplish the policy. If there are certain areas where it would be
8 impossible to prevent runoff during a wet season, then those areas would not be
9 allowed to build.

10
11 Brenner stated she doesn't understand if the point system does or does not
12 work. Put it up for introduction so they can discuss it.

13
14 Crawford stated there is runoff from everything. Be clear about the runoff
15 they are talking about.

16
17 Caskey-Schreiber stated they are talking about sediment loading in the lake.

18
19 ***Motion carried 6-1 with Crawford opposed.***

20
21 ***McShane moved*** to tentatively approve Councilmember Fleetwood's
22 proposal for a moratorium response plan, as shown in his February 18, 2005
23 memo, to also include the UGA development density and size.

24
25 Caskey-Schreiber stated item three in the memo is important. However,
26 focus this moratorium on source pollution rather than at the pipe. Addressing
27 pollution at the source is more effective. Addressing pollution at the pipe will be
28 costly and involve a lot of maintenance. That will be a big plan the County will
29 have to develop with the City of Bellingham and Water District 10.

30
31 Nelson stated a significant issue they have to address is the concerns from
32 Water District 10 or other utilities about financial impacts. He agreed that the
33 Council will probably not address item three, although he will commit to
34 implementing that item. This is a countywide issue, not just a Lake Whatcom
35 issue.

36
37 Fleetwood stated it makes good sense to delete item four and insert
38 Councilmember McShane's item. Item three is big, but now is the time to address
39 it. Make the distinction between policy implementation and policy planning. The
40 County can actually implement the first two items listed. A comprehensive
41 stormwater plan is overdue. They don't have one. In the next couple of months,
42 allocate staff resources to begin the process of outlining a comprehensive
43 stormwater plan. This is a tentative work plan. Don't delete that item now. Seize
44 this opportunity to begin the process.

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1 Caskey-Schreiber stated a comprehensive stormwater plan depends on water
2 resource inventory area (WRIA) modeling and the TMDL study results. She doesn't
3 know how they will get that going during this moratorium.
4

5 Brenner stated they should leave in items three and four. Councilmember
6 McShane's concern can be added as a fifth item. Staff keeps saying a pesticide and
7 fertilizer ban is unenforceable. It's not any more unenforceable than seatbelts. It
8 needs to be included. It's important. If someone is clearing land and phosphorus
9 is going into the lake, it's probably because someone put phosphorus chemicals on
10 the property at some point. This is very important.
11

12 Caskey-Schreiber stated she quoted an EPA study from 2000 that said 45
13 percent of lakes in the nation that were studied are polluted and, of that 45
14 percent, 30 percent are polluted from phosphorus loading and only five percent are
15 related to pesticide use. She doesn't see how it's related to a building moratorium.
16 She understands the point.
17

18 McShane stated the Council does need to take into account the fiscal impacts
19 to the Water and Sewer District. However, the Council also needs to consider the
20 fiscal impacts to Whatcom County to deal with the costs of stormwater
21 infrastructure it is facing. That gets forgotten. He doesn't advocate that they be
22 linked to the moratorium. However, add an item to look at transfers of
23 development rights (TDR's) again as a reward to property owners. It's been
24 working to a minor degree, but the County could act a little more on its own and
25 not rely on the City for creating receiving areas. The County could even increase
26 the award for people who transfer their development rights.
27

28 It raises an issue with Sudden Valley. The current agreement with Sudden
29 Valley is to not take too many rights out of Sudden Valley because of the
30 Community Association's fiscal impacts. He asked to start dialogue with the
31 Sudden Valley Community Association to further reduce its growth. See if the
32 County can reward Sudden Valley in some manner so that the association might
33 reduce the County's cost by reducing density in exchange for the County helping
34 Sudden Valley with infrastructure. He's not sure if that is legal. See if it can be
35 done.
36

37 **Caskey-Schreiber restated the motion** to approve items one through four
38 in Councilmember Fleetwood's proposal for a moratorium response plan, including
39 Councilmember McShane's UGA and density and size. A question is whether or not
40 the Council will remove the fourth item in the memo. The Council will meet again
41 on March 15.
42

43 *(Clerk's Note: The motion was not voted on.)*
44

45 Fleetwood stated taking out item four on his memo doesn't mean the Council
46 wouldn't consider it. The Council will still give it consideration. It is going to be
47 presented in the near future.

1
2 Caskey-Schreiber stated she agrees. She is only looking at the items that
3 are tied to the moratorium.
4

5 Brenner stated the Council agreed last week that it's important for the
6 Council to meet frequently, preferably once or twice a week and in the evenings.
7

8 ***The Council concurred to have a work session at 10:00 a.m. on March***
9 ***1, 2005.***

10
11 Roy stated she doesn't have any objection to meeting more often or in the
12 evening once they work out the work plan. They don't have to decide on a meeting
13 schedule today.
14

15 Marian Beddill, 3600 Seeley Street, Bellingham, stated the Council should
16 establish regulations so a person observing a development site can clearly know
17 whether a regulation is being followed or violated. Make rules so violations are
18 obvious. Inspection based on the water running off from the site is not so obvious.
19 It's next to impossible to inspect the chemicals in a water, which is the true goal.
20 However, that kind of rule is almost unenforceable. Don't set that kind of rule.
21

22 The cost of civil public works must include a clear monitoring program,
23 funded and staffed, to review and report on the quality and effectiveness of
24 treatment methods. The real benefit is going to come from addressing the sources
25 of the pollution.
26

27 Crawford asked how they do that. They approve projects with the concept
28 that they will work. He asked what they must do if a project doesn't work. Beddill
29 stated measure project success long-term, so it matches the model used to run the
30 test. Make the background information available so they can see if a measure is
31 working.
32

33 Jane Quinlivan, 2327 Northshore Road, stated there are a lot of stipulations
34 on homeowners and builders. The County has two big piles of dirt and hay with
35 dirty troughs. When it rains, this phosphorus from the feces will run into the lake.
36 The County should set the example for the homeowners.
37

38 Gary Lysne, 2472 Northshore Road, stated he doesn't understand how the
39 Council can talk about lifting the moratorium. The TMDL is not done. They are still
40 waiting for WRIA to come out. The decisions are based on assumptions, not facts.
41 Get the data and information first. The Council needs a plan before it goes forward.
42 The Council should not create moratoria when it doesn't know what they are for.
43 He will take photos of the situation the previous speaker described. The County is
44 a poor example to the citizens.
45
46

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1 **OTHER BUSINESS**

2
3 There was no other business.

4
5
6 **ADJOURN**

7
8 The meeting adjourned at 3:05 p.m.

9
10 _____
11 Jill Nixon, Minutes Transcription

12
13 The Council approved these minutes on March 15 , 2005.

14
15 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

16
17
18
19
20 _____
21 Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair