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WHATCOM COUNTY COUNCIL
Special County Council

May 3, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 2:05 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

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

Absent:

Sam Crawford

OTHER BUSINESS

Brenner stated she received a letter asking the Council to support an application for a federal grant for jail diversion. This is a diversion grant. They do a pre-incarceration evaluation to see if incarceration is appropriate. Time is critical. She asked the Council to write a letter of support for the grant application. She would work on a letter to bring to the Council.

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

Hal Hart, Planning and Development Services Director, stated staff wants to schedule the next few meetings so they can plan the staff's work schedule. Councilmember Fleetwood gathered comments from everyone about everything they want to address regarding Lake Whatcom. He wants to make sure staff has addressed the universal group of policies that the Council wanted. Staff wants to address those policies as systematically as possible. It's an organizational matter.

Brenner asked when the new draft cluster regulations will come to the Council. Hart stated they can come forward either sooner or later in the process. Now is the time to lay out the schedule for the sets of recommendations staff should bring forward and in what priority. He doesn't want a schedule that is too ambitious, but by July, staff will do everything they can except for stormwater.

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1 Roy asked why they are not going to work on stormwater. Hart stated they
2 are, in a sense. They are dealing with the land use pieces, low impact, subdivision,
3 and broader land use issues first.
4

5 Roy stated Mr. Hood's comments at the last meeting suggested that the
6 current stormwater regulations aren't good enough, and they're allowing a lot of
7 pollution from every new house. She senses from Mr. Hood that this should be a
8 higher priority.
9

10 Fleetwood stated this moratorium response phase was to put together an
11 outline for response. The Council gave general direction on what should be in the
12 outline, but staff hasn't responded. Not doing anything about stormwater is in
13 opposition to the Council's direction.
14

15 McShane stated stormwater is a Public Works Department item. The actions
16 now are to avoid impacts as much as possible through development standards,
17 including impacts that may have no impact to stormwater, such as agricultural
18 activity in the watershed. It's clear the Council has not adopted a stormwater
19 program in Whatcom County that complies with the current State Department of
20 Ecology (Ecology) stormwater manual. The Council should think about doing that.
21 Get information from the Public Works Department staff on why they haven't done
22 that yet.
23

24 Roy stated she has the same understanding. The Council is trying to prevent
25 runoff from running into the lake. Another component of the problem is runoff that
26 is already running into the lake from existing impervious surfaces. She would like
27 to talk about this with the Public Works Department staff. The Council keeps
28 bringing it up, but staff isn't addressing it.
29

30 Steve Hood, Washington State Department of Ecology, stated
31 Councilmember Roy had asked what he meant by saying each development going
32 in would be just over 5,000 square feet of impervious surface, or converting three-
33 quarters of an acre of lawn is not up to standards. The thresholds for applying the
34 minimum requirements in Ecology's manual are the criteria where one must meet
35 all the requirements. Whatcom County has a different set of thresholds that don't
36 kick in an examination about whether those minimum requirements must be met at
37 those levels. Those are the smallest developments that wouldn't get evaluated for
38 conditions to be applied.
39

40 Not all of Whatcom County's criteria, from chapter two of the development
41 standards, are as protective as Ecology's manual. He sent a summary of where
42 Whatcom County is compared to the 1992 manual. A lot of work went into the
43 2001 manual. Recent updates and corrections have been made. The most current
44 manual is the 2005 version, but there isn't anything substantial that would apply to
45 Whatcom County.
46

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1 Kurt Baumgarten, Planner I, stated the County has section 2.21, which is the
2 stormwater special district standards. They apply to every single family residence
3 and duplex in the watershed. Those meet or exceed Ecology's manual. Mr. Hood is
4 talking about subdivision requirements. Long plats are tough to do in the
5 watershed. Short-plats still come in from the watershed, especially for lots of over
6 five acres. He asked which developments don't meet Ecology's standards.

7
8 Hood stated the Ecology has a different criteria for when flow control is
9 added, for example. Storms around here aren't 24-hour storms. They're season-
10 long storms. A detention facility that is designed to drain between storm events
11 doesn't. The new detention requirements look at continuous runoff and the
12 duration of different flows. That means most developments need a larger amount
13 of storage.

14
15 Baumgarten stated that Whatcom County does meet Ecology's standards for
16 the single family residences, which are based on the King County surface water
17 manual, which is in concert with Ecology's standard. They have to be careful to
18 frame the conversation around single family residences or larger developments.

19
20 Nelson asked if only King County is meeting the Ecology standards. Hood
21 stated many communities adopted Ecology's manual for their technical guidance,
22 which meets the standard. Most jurisdictions don't develop their own manual.
23 They just adopt Ecology's manual. Some large jurisdictions will modify the Ecology
24 manual or adopt their own manual.

25
26 Nelson asked if the County can adopt Ecology's standards for subdivisions or
27 long plats. Baumgarten stated that is up to the Public Works Department. It's an
28 engineering issue. The Planning Department regulates single family residences
29 based on standards put together by the Technical Advisory Committee, which are
30 the stormwater special district standards that are verbatim from the King County
31 surface water manual, which was developed at the same time the Ecology manual
32 was being developed in conjunction with the research going on at the University of
33 Washington. The standards now meet the intent of the stormwater manual. They
34 stress low-impact development and onsite retention of stormwater.

35
36 The continuous model for a storm event works better at a larger scale.
37 They're talking about 10,000 square foot lots. That's where the single-family
38 residential standards came in. Ecology may take to task how the County manages
39 stormwater countywide. However, he's keeping his response framed to just the
40 watershed.

41
42 Hood stated his comments last week were relevant to the subdivision
43 moratorium. Ecology's standards aren't for protecting a lake, but all of Puget
44 Sound. They are relevant countywide.

45
46 Brenner stated the Council has the option of adopting Ecology's manual. The
47 Council needs to find out if that's what the Public Works Department is doing or

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1 why it's not doing that. Hood stated adopting the manual means making decisions.
2 Ecology is ready to help make those decisions.
3

4 Roy stated this should not get lost in the process. She asked Mr. Hart to tell
5 the Public Works Department the Council wants to discuss this more. Hart stated
6 he will.
7

8 Amy Pederson, Planner II, stated she wants to make sure the fundamental
9 topics are addressed. Review the overall goal and what is necessary to lift the
10 moratorium. To date, they've addressed items one and two from Fleetwood's
11 memo. They are on item three. Staff can get that discussion going at the next
12 meeting with the Public Works Department. She asked if these items are still the
13 goal.
14

15 McShane stated the objective hasn't shifted much. Item three is to direct
16 them toward reducing costs for coming up with a stormwater comprehensive plan
17 to address phosphorus. The moratorium recognizes that they have already gone
18 over the acceptable level of development impacts and phosphorus loading in the
19 watershed. They will have to reduce that number. Pull back from going further
20 beyond what is acceptable by adding to the problem. Look at how much they've
21 reduced potential build out from the zoning mechanisms. Be very aggressive about
22 it. Look at the urban growth areas, which are currently being reviewed. They
23 began a discussion of the transfer of development rights (TDR) program last week.
24 It needs to be tweaked, depending on how aggressive they want to be to reduce
25 potential build out.
26

27 Brenner stated the councilmembers didn't agree with the suggested
28 prioritization criteria for implementation measures to lift the Lake Whatcom
29 subdivision moratorium. Pederson stated the memo from Fleetwood outlined the
30 big topics. The criteria were to figure out which alternatives presented relate to the
31 topics.
32

33 Nelson stated he is not interested in maintaining the moratorium if they keep
34 expanding the elements they discuss. He's willing to look at subdivisions and
35 mechanisms for retrofitting. The other elements should be ongoing discussions, but
36 not tied to the moratorium.
37

38 McShane stated he would like to make progress, reverse trends, and meet
39 the total maximum daily load (TMDL) requirements before allowing additional
40 building lots in the watershed. They can reduce the burden created by a
41 subdivision moratorium. Given the costs they are facing and the fact that they
42 don't know what the TMDL will require them to do, he is leery. A review of the
43 urban growth areas (UGA's) is already happening. He needs to see how the UGA's
44 play out. Those are the areas where they will have the biggest stormwater
45 challenges. The actions and review that are occurring will influence how he views
46 things. Finish the changes to Whatcom County Code (WCC) 20.71, then

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1 concentrate on a stormwater management program. After a program is created,
2 talk about lifting the moratorium at that time.

3
4 Caskey-Schreiber stated she agreed. She wants to finish WCC 20.71 before
5 moving into stormwater. There are changes the Council should adopt as soon as
6 possible.

7
8 She asked if the City of Bellingham can do anything to reduce the UGA. Hart
9 stated this discussion is occurring at the Planning Commission. Staff will meet
10 tomorrow with the City staff to discuss these kinds of issues generally. It has been
11 an ongoing discussion. The City doesn't want it in the UGA. They want some of
12 these areas out of their UGA. Then, the County will have all the responsibility. As
13 they work out the land use question of the UGA, they are also working out the
14 interlocal agreement. The staff is working out the interlocal agreement as a
15 separate issue, which overlays the complexity of the issue. As the City rewrites its
16 Comprehensive Plan and urban growth areas, the County must negotiate what is in
17 the City's plan so the two plans are more consistent. That negotiation is occurring
18 over the next six to eight weeks.

19
20 Brenner stated the City said several years ago it doesn't want those areas.
21 She asked about something in the City's Comprehensive Plan that the City won't
22 allow those areas in the UGA. Hart stated the County makes that decision, not the
23 City.

24
25 Brenner stated that just leads to an impasse if the City won't annex the area.
26 Hart stated that's why they're negotiating delicately.

27
28 McShane stated do whatever they can to reduce the potential build out in
29 those areas. They've already gone beyond the problem. Take actions to minimize
30 the problem. A substantial part of the current Lake Whatcom UGA should remain in
31 the UGA's. The reality is, the County is going to have to provide an urban level of
32 service for stormwater regardless of whether or not the density changes. It is
33 already in need of urban infrastructure. Hart stated the County and City are
34 discussing areas of the UGA that can be cut back. However, citizens are clearly
35 saying they've counted on being in the UGA to develop their properties, and they
36 expect to remain in the UGA. The Planning Commission is looking at the UGA on a
37 parcel-by-parcel basis.

38
39 McShane stated that's when the TDR program will be critical. Make sure
40 there is fair compensation. That ties in with the other UGA's in the city. Be
41 extremely aggressive on potential build out. The data is very clear. Treating for
42 phosphorus and stormwater won't be a great solution. They won't be able to get
43 the phosphorus out of the stormwater systems.

44
45 Fleetwood stated he's hearing that the Council doesn't agree on what is
46 necessary to lift the moratorium. At a minimum, keep looking at stricter building
47 codes and finish WCC 20.71.

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1
2 He asked where low impact development standards would be incorporated
3 into the County code. Pederson submitted a handout (*on file*). She's cited where in
4 the code the development standards would go.

5
6 Fleetwood asked how Ecology is assisting King County, and if Ecology is
7 offering to bring forward a County stormwater plan ordinance. Hood stated there is
8 a model ordinance that the Puget Sound Action Team developed. He can't prepare
9 something for the County, but he can sit down with staff and get other agencies
10 involved, if necessary. As they come up with what they want to do, he can work on
11 getting the resources to determine whether the ideas are equivalent to the Ecology
12 standards.

13
14 ***Fleetwood moved*** to request Mr. Hood and Ecology to start working on this
15 issue sooner rather than later.

16
17 (*Clerk's Note: The motion was not voted on.*)
18

19 Baumgarten stated staff is working on a comprehensive stormwater plan for
20 Birch Bay, which would look at a variety of issues similar to Lake Whatcom. Many
21 people are looking to that product to assess the challenges and possible solutions.
22 It's a very specific tool that could be used to lay out a road map. Also, staff is
23 involved with the Puget Sound Action Team to look at how to infuse low impact
24 development, or create stand-alone standards for low impact development, to be
25 used countywide or in specific areas. Staff is looking for expertise from this group.

26
27 (*Clerk's Note: End of tape one, side A.*)
28

29 Baumgarten continued to state Whatcom County has a different geologic
30 makeup compared to the rest of the state. They don't want to use Ecology's low
31 impact development manual. Use local expertise to come up with the options they
32 will accept locally. The Technical Advisory Committee would review the methods.
33 Then, the councils could approve a set of standards that are appropriate to the area
34 and apply them to certain areas. That process has funding and momentum.

35
36 Nelson stated the focus is the same. There are varying degrees on time and
37 effort they will put into it. He encouraged them to get information on things that
38 are working and aren't working on the ground.
39

40 Brenner asked if the Technical Advisory Committee includes people with a
41 specialty in low impact development. Hart stated a number of engineers are on the
42 committee. He's made recommendations to add positions to modernize the
43 committee.
44

45 Brenner stated include someone with specific experience and who is in the
46 forefront of low impact development. Find a list of the people who are working on
47 low impact developments, but who are frustrated with the County's regulations.

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1 Baumgarten stated they have to work with the Puget Sound Action Team. As the
2 community moves forward on this, local experts will have to be involved.

3
4 Brenner asked why those constraints would prevent the County from setting
5 up a low impact development users committee. Hart stated the constraint is
6 staffing.

7
8 Caskey-Schreiber stated they need to finish the amendments to WCC 20.71
9 at the next meeting.

10
11 Pederson stated the existing provision for agriculture has been reinstated.
12 The Conservation District has strong concerns about this provision and the role it
13 would have to play in administrating the regulation. The critical areas ordinance is
14 working on amendments that broadens the responsibility beyond the Conservation
15 District.

16
17 Nelson stated he would be willing to drop out the 50 percent threshold and
18 use the critical areas ordinance. Otherwise, they will have to take out the option
19 for allowing agriculture in the watershed at all. The easiest thing to do is allow
20 hobby farms as a permitted use.

21
22 McShane stated he is concerned about additional animals coming into the
23 watershed via hobby farms that won't be well run. Grandfather existing hobby
24 farms, or give them a phase out period. Don't allow hobby farms to expand in the
25 future. The problem is the importation of phosphorus into the watershed and what
26 the animals do to the ground. It's not a big problem now, but it may be down the
27 road as more people convert their properties to a rural use.

28
29 Nelson stated they already have language in the ordinance now to allow the
30 critical areas ordinance regulate the use.

31
32 Caskey-Schreiber asked if the language can stipulate that a user must
33 adhere to the critical areas ordinance. Pederson stated the regulation as written
34 now is less restrictive than the critical areas ordinance.

35
36 Caskey-Schreiber stated that phosphorus will be added to the lake if horses
37 aren't properly managed. Make sure they are doing everything they can. Pederson
38 stated the critical areas ordinance is in addition to and supercedes this language.

39
40 Brenner stated the Council can't do something about certain things, like
41 geese and wildlife. They can do something about domesticated animals. In the
42 best of all worlds, let those who now have the use to continue as a nonconforming
43 use. One concern is with people shopping for property in the watershed who see
44 hobby farm uses existing so people assume they will be allowed the same use.

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1 **Nelson moved** to reinstate WCC 20.71.051, without the provision about the
2 50 percent threshold for animal units that the Council approved at its previous
3 meeting.
4

5 McShane stated he's not sure about grandfathering or phasing out the use.
6 If they grandfather the use, the County must find out who has animals at the time
7 the ordinance goes into place. It would take an effort by the County. Phasing
8 would give people a deadline when animals would no longer be allowed in the
9 watershed.

10 Caskey-Schreiber stated adopt the motion, with the stipulation that the use
11 meets the new critical areas ordinance.
12

13 Brenner stated she would rather grandfather the use. The use will be phased
14 out by attrition, anyway.
15

16 McShane stated he would like to know the cost of identifying parcels for the
17 grandfathering provision. Ban the use, grandfather those with the use currently,
18 and don't use the critical areas ordinance.
19

20 Brenner stated she would rather not spend resources on doing an animal
21 inventory. The process is complaint-driven, which will work. Send out a public
22 notice so everyone knows about it.
23

24 Hart stated typically, they do have to have a snapshot in time of what is
25 going on. People in the rural areas know what the Council is talking about.
26

27 McShane stated the staff might not inventory them all, but it would be to
28 their advantage to have the use inventoried if there is a complaint.
29

30 Brenner stated there are ways for people to prove their use on their own,
31 without spending a lot of money. It would be impossible for staff to inventory this
32 type of use.
33

34 **Nelson amended his motion** to amend WCC 20.71.051, "**Preexisting**
35 agriculture...two or more acres ~~shall be subject to completion of a conservation plan~~
36 ~~in conformance with...and implemented a conservation plan which provides for a~~
37 ~~smaller buffer.~~" Everything preexisting is permitted. He asked if that allows
38 grandfathering.
39

40 Roy stated she agrees with the complaint process. There is no difficulty
41 about the landowner having to show evidence of the use.
42

43 Brenner stated they should add language at the end of the section,
44 "...provided that these uses may not be expanded or continued if there is a sale of
45 the property."
46
47

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1 McShane asked if existing uses would be grandfathered in if they simply say
2 it's not permitted and there would be nonconforming uses. Pederson stated an
3 existing use that is grandfathered in would be subject to the nonconforming use
4 policy and allowed to expand or change.
5

6 Caskey-Schreiber asked if the language must list that it's a nonconforming
7 use. Pederson stated it's easy to verify with an aerial photo to show a preexisting
8 structure, but they can't verify what animals were on the property at a certain time.
9

10 Brenner stated the animals will go away through attrition. She asked if a
11 nonconforming use will allow for expansion and continuation if someone else buys
12 the property. Pederson stated she would have to check with legal counsel.
13

14 Nelson stated he's not worried about expansion, which would require
15 additional facilities that require permits.
16

17 McShane stated the intent is to strike the language, and without adding
18 language existing uses will be grandfathered in. That will happen either way.
19

20 Nelson asked if a structure that currently exists would be a nonconforming
21 use and wouldn't be allowed to be repaired and maintained. Pederson stated one
22 would be able to repair and maintain a use, even if it burns down.
23

24 ***Nelson withdrew his motion.***

25 ***McShane moved*** to strike WCC 20.71.051.
26

27 ***Motion carried 5-1 with Nelson opposed.***
28

29 Pederson stated WCC subsections 20.71.153 and .154 have been proposed
30 to be stricken. She would like to finalize the Council's direction on that issue. The
31 Council did not identify any existing uses. There may be a few uses that are
32 cottage industries.
33

34 Nelson asked if that would affect the urban areas in the city. Pederson
35 stated it would not.
36

37 ***McShane moved*** to strike WCC 20.71.153.
38

39 ***Motion carried 5-1 with Nelson opposed.***
40

41 ***McShane moved*** to strike WCC 20.71.154.
42

43 Fleetwood asked why they would strike this section.
44

45 Caskey-Schreiber stated these uses use fertilizer.
46
47

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1 Brenner stated the Council could allow the use with phosphorus-free
2 fertilizer. Add it as a condition.

3
4 Roy stated there aren't any of these types of uses that exist currently. This
5 is much ado about a small issue.

6
7 ***Motion failed 3-3 with Nelson, Brenner, and Fleetwood opposed.***

8
9 Pederson stated she needed clarification on subsections WCC 20.71.301(3).
10 and 20.71.350 through .352. It does not relate to cluster development, only open
11 space requirements for commercial development, which is just the Park Store, and
12 about 17 acres in Sudden Valley. There are concerns related to the specific
13 requirements and wording that she wants to discuss with legal counsel.

14
15 Brenner stated the Council already voted on this issue. Staff can go forward
16 based on what the Council already voted on.

17
18 Fleetwood asked if staff will bring forward a clean version of the ordinance
19 based on latest amendments. Pederson stated they will.

20
21 **Roy** stated the motion to remove WCC 20.71.154 failed, so it is still in there.
22 She **moved** to add a condition to require phosphorus-free fertilizer only for uses in
23 subsection 20.71.154(4)

24
25 Fleetwood asked if it will conflict with subsection .154(3).

26
27 Brenner stated it will not.

28
29 ***Motion carried unanimously.***

30
31 Pederson stated the cluster subdivision regulations in WCC 20.71.350
32 through .352 have been before the Council Planning and Development Committee.
33 Any additional amendments to that section will be made when it goes to the
34 Council.

35
36 Brenner stated the Council could have another special meeting at 1:30 p.m.
37 on May 10 to discuss low impact development.

38
39 *(Clerk's Note: End of tape one, side B.)*

40
41 Pederson stated the cluster regulations would be adopted before this item.
42 Staff will submit the cleaned up version of this ordinance next Tuesday.

43
44 Caskey-Schreiber stated the Council can have a public hearing in June.

