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WHATCOM COUNTY COUNCIL
Planning and Development Committee

March 15, 2005

Committee Member Dan McShane called the meeting to order at 3:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner
Seth Fleetwood

Absent:

None

Also Present:

None

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. APPROVAL OF REQUEST FOR A ONE-YEAR PLAT EXTENSION FILED BY LOIS MEYERS (LONG PLAT - MEYERS' PLAT, LSS98-007) (AB2005-128)

Brenner moved to recommend approval to the full Council.

McShane asked the location of the plat.

Fleetwood asked the reason for the recommendation for approval.

Sylvia Goodwin, Planning Division Manager, stated it sounds like there has been a change in the Health Department regulations to allow six hookups to a Group B well instead of 11 hookups. They must develop a new water system. She believes the location is on Smith Road.

McShane stated he would like to know the location so he can have a sense of the technical requirements.

Brenner stated she doesn't care where it is. The problem is not something that was under the proponents control, and is something the County did to her.

McShane stated he doesn't know the conditions imposed by the Technical Advisory Committee (TAC). A major holdup was from the TAC, also, and then the water requirements changed.

(Clerk's Note: Discussion continued, below.)

2. ORDINANCE AMENDING TEXT OF THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, SPECIFICALLY THE ADDITION OF CHAPTER 20.15 – MUSHROOM SUBSTRATE PRODUCTION FACILITIES SITING

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1 **REQUIREMENTS, ESTABLISHING LOCATIONAL CRITERIA AND**
2 **ZONING DISTRICTS IN WHICH SUCH FACILITIES WILL BE ALLOWED**
3 **(AB2005-105)**
4

5 Kraig Olason, Senior Planner, stated the County received a response on
6 February 22 from the Hopewell Community Association. He received a second
7 response from Bob Carmichael dated March 8, the association's attorney. He
8 doesn't know which version of the ordinance he's supposed to look at.
9

10 Brenner stated she looked at both versions of the ordinance. The only
11 difference is the formatting. Olason stated that now the committee is working on
12 the Planning Commission's recommendation.
13

14 Brenner stated the Planning Commission didn't get to listen to the Hopewell
15 Neighborhood Association, which was told to bring their recommendations to the
16 Planning Commission hearing. During the Planning Commission hearing, the
17 association was told it should have submitted recommendations sooner. Olason
18 stated the association was given an extra two weeks for the commission to look at
19 the material. The association was granted more time. There's been a lot of
20 discussion about this.
21

22 Fleetwood stated there are two exhibit A's in the Council packet.
23

24 McShane stated the Council has a version dated February 22, which is in the
25 Council packet he reviewed. On March 8, the Council received a version from the
26 attorney that looks the same as the February 22 version. On March 11, the Council
27 received another version from the Hopewell Neighborhood Association that is
28 different from the previous two versions. He asked which version the committee is
29 supposed to work on.
30

31 Cheri McKay, 6781 Ocean Road, stated the February 22 version was
32 submitted before a meeting with a councilmember, who suggested the association's
33 attorney submit a redline version, which is the March 8 version. The March 11
34 version is the same as the March 8 version, only with the formatting cleaned up.
35

36 Brenner stated the committee should go by the copy given to them by the
37 Hopewell Neighborhood Association because their attorney, Bob Carmichael, went
38 through it. Bob Carmichael was a County attorney for a long time. He's an
39 excellent land use attorney.
40

41 Fleetwood asked if the amendments proposed by Bob Carmichael were
42 proposed to the Planning Commission. McKay stated they were not.
43

44 McShane stated the March 11 version is slightly different from the two earlier
45 versions.
46

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1 **Brenner moved** to go through the version submitted by the association
2 dated March 11.

3
4 *(Clerk's Note: Brenner's motion was not voted on.)*

5
6 McShane asked if staff looked at what the Council received two weeks ago.

7
8 Olason asked if that version is the one submitted to the Planning
9 Commission.

10
11 McKay stated it is not. The March 11 version is from the association. There
12 should not be any difference between the March 8 and the March 11 versions.

13
14 Olason stated he commented on the items brought forward to the Planning
15 Commission. Today, the Council received something different. He asked if it is
16 different because there are new proposed amendments from what he incorporated
17 into the ordinance. McKay stated there are new proposed amendments.

18
19 Olason stated the committee should be talking about whether or not the
20 Planning commission's proposal is acceptable and, if not, what they should do about
21 it.

22
23 McShane stated the committee should work from Council packet page 220,
24 the Planning Commission version. If the committee is interested in any suggested
25 changes from anyone, including the Hopewell Neighborhood Association, the
26 committee can consider it. Staff can read through it.

27
28 **McShane moved** to recommend approval of the Planning Commission
29 version on page 220.

30
31 Olason stated he made comments to the Planning Commission in response to
32 these requests. In addition, comments came in from a representative of Ostrom's.
33 He looked at comments from both perspectives. He incorporated some, but not all
34 weren't.

35
36 Brenner stated she didn't receive any comments from Ostrom. Olason stated
37 the file from the Planning Commission public hearing is very large. They haven't
38 produced any additional information since the Planning Commission public hearing.

39
40 **The committee concurred** to work from the version on Council packet page
41 220 because it is more appropriate to the normal process.

42
43 **Brenner moved** to amend the title of Exhibit A on Council packet page 220,
44 "Mushroom Substrate Production Facilities ~~Siting~~ Requirements."
45

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1 Fleetwood asked the reason for removing the term "siting requirements."
2 That's what this chapter is about. McKay stated the change is to be consistent with
3 chapter titles in the rest of Title 20.
4

5 McShane stated being consistent makes sense, except there are also rules
6 regarding mushroom substrate in the Health Code. This is separate from the
7 Health Code requirements, which are in an entirely different chapter.
8

9 Olason stated he really doesn't care whether or not the committee approves
10 the amendment to the chapter title.
11

12 McShane stated he is resistant to some changes because not a lot of them
13 really matter. He wants to get at the changes that are important.
14

15 ***Brenner withdrew the motion.***

16
17 ***Brenner moved*** to amend the second paragraph in section 20.15.010,
18 "...and minimizes any **adverse** human and environmental impacts, ~~particularly~~
19 ~~noxious odors~~, associated with ..." The existing language downplays the total
20 effects of what can happen due to mushroom composting facility emissions. The
21 amendment is broader and sounds more severe than the existing language.
22

23 Fleetwood stated it's too broad. Currently, the impacts are specifically
24 delineated.
25

26 ***Motion failed 1-2 with Brenner in favor.***

27
28 McShane stated he suggests they hold this item in committee. He's gone
29 through the ordinance he received two weeks ago. He can't work through three
30 versions. He needs the time to go through the submitted versions. A lot has been
31 added since two weeks ago.
32

33 Fleetwood asked the harm in holding this item in committee for two weeks.
34 McKay stated there is no harm in holding the item in committee for two weeks.
35

36 Olason stated the Council will see yet another extension of the current
37 ordinance.
38

39 ***Brenner moved*** to hold the item in committee for two weeks.
40

41 ***Motion carried unanimously.***
42

43 McKay stated the association's suggested change are only based on
44 suggestions and comments from councilmembers, other superiors in government,
45 and Bob Carmichael.
46

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1 Greg Barlean, Hopewell Neighborhood Association, stated the association was
2 challenged with writing an ordinance to deal with an industry that has made a
3 career out of avoiding regulations. Any ordinance written had better be a good
4 one, or else the industry will get around it. The fact is that the association hasn't
5 been heard. The committee convened by Mr. Olason in 2003 did not hear the
6 concerns of the association. The concerns and information from the association
7 were never discussed. There was sufficient information to defend the Brenner
8 ordinance the way it was. Unfortunately, the loss of the solid waste regulations
9 killed the ordinance. The association never got to submit any information on
10 buffers. He had asked to bring in outside legal counsel. He got nowhere from the
11 County. Nothing was done. It was left to the association to deal with it. The
12 association members are laymen at this process. He's glad the item is tabled.
13 They will now have time to discuss it.

14
15 Ken Ryan, Goodwin Road, stated he understands the reason for tabling the
16 item. When this comes up, the association members hustle to put something
17 together, giving up time with their families. The committee is doing the right thing
18 by looking at the latest version the association put forth. He appreciates the
19 committee's willingness to look at it.

20
21 McKay submitted information for the file (*on file*).

22
23 McShane stated the reason this is held in committee is because it's the only
24 way the committee can take the association's concerns seriously. The committee
25 can't take those concerns seriously by making changes on the fly. There is
26 professional County staff that is good at complex, difficult issues. Mr. Olason is
27 extremely good at issues on which the County is on the edge of compliance. He
28 gives great deference to staff's ability to write legally sound, very good ordinances
29 that can survive court challenges. The committee has to balance that expertise
30 with taking the community's concerns seriously. The Council must be careful
31 melding original language with suggestions from the community. If there is some
32 particular item the association feels is very important, describe it specifically. He
33 doesn't want to get lost in the nuances of detail at the risk of losing site of
34 something important.

35
36 Olason explained a map showing different areas affected by the proposed
37 ordinance.

38
39 **1. APPROVAL OF REQUEST FOR A ONE-YEAR PLAT EXTENSION FILED BY**
40 **LOIS MEYERS (LONG PLAT - MEYERS' PLAT, LSS98-007) (AB2005-**
41 **128)**

42
43 (*Clerk's Note: Discussion continued from above.*)

44
45 Goodwin stated the location is 2633 E. Smith Road, just east of the Everson-
46 Goshen Road.

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1 ***Motion to recommend approval to the full Council carried***
2 ***unanimously.***
3

4 **3. RESOLUTION INITIATING COMPREHENSIVE PLAN AND ZONING**
5 **AMENDMENTS FOR 2005 (AB2005-084)**
6

7 Docket #2005-H: Chuckanut Area Rezone
8

9 Matt Aamot, Senior Planner, stated the proposal includes two areas, including
10 the Governor's Pointe area to the north and an area adjacent to the Skagit County
11 line to the south. On the northern site, there is marine shoreline to the north,
12 west, and south. There is residential properties and forestry areas to the east.
13 The southern site is adjacent to the State park and a wooded area. Zoning of the
14 northern site is predominantly rural residential, three units per acre (RR3). The
15 southern site is zoned rural residential, two units per acre (RR2). There is a
16 preliminary plat application from 1992 for Governor's Pointe for 141 lots on 126
17 acres. RR2 zoning is west of Governor's Pointe. Zoning around the southern site is
18 recreational open space for the State park.
19

20 *(Clerk's Note: End of tape one, side A.)*
21

22 Aamot continued to state there are fish and wildlife habitat conservation
23 areas. A portion of the southern site is within an aquifer recharge area and wetland
24 area. There are steep slopes. There are no major pipelines in the area.
25

26 Fleetwood asked if one can build on a slope of 15 to 35 percent. Aamot
27 stated one could. Mitigation may be required.
28

29 Bob Tull, of Governor's Pointe owner representative, submitted information
30 *(on file)*. There is a stipulated judgment and lawsuit from several years ago
31 involving the Department of Ecology, Whatcom County, and Governor's Pointe. The
32 Bellingham city limits are close to the area. Parcelization has taken place from the
33 city limits all the way south to the State park. Road rights-of-way were constructed
34 in the 1970's. Originally, the preliminary plat was approved by the County for over
35 300 lots. After many years, the project began again and was amended for 141 lots.
36

37 The City of Bellingham extended water to the area in the 1950's. There are
38 several existing homes on the southern end of Governor's Pointe. From Bellingham
39 city limits to the State park, all lots have been built out. Fire trucks that would
40 serve Governor's Pointe already go past the area to serve existing homes. There
41 would be no change in or extension of fire services. The development will include
42 it's own onsite wastewater treatment facility that won't impact neighbors.
43

44 The Growth Management Act (GMA) is clear that, if the County is obligated to
45 review the suburban enclaves, then this is an area that is clearly a type one limited
46 area of more intense rural development (LAMIRD), at least to the State park. This
47 area has a logical outer boundary and is also defined by the built environment.

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1 Houses are built on either side of the affected property, which counts toward the
2 built environment. City water is in the ground. This area satisfies LAMIRD
3 requirements. He asked that the proposal be amended to not include Governor's
4 Pointe. The County may still receive litigation regarding this, but he's comfortable
5 defending this logical outer boundary. The area is confined, and can't mushroom
6 out beyond the logical outer boundary.

7
8 The settlement agreement is relevant. There is a vested long-plat
9 application in this matter. The settlement agreement is a result of a challenge he
10 brought to the County and State, changing parts of the shoreline designation. The
11 settlement kept in place the shoreline regulations that apply, and also imposed
12 carefully constructed setbacks that are more rigorous than would otherwise be
13 required. It imposes tree retention controls and limits docks. Send the
14 amendment forward on a more limited basis.

15
16 Fleetwood asked the effect of this change, given the fact that his client is
17 vested. Tull stated the client would have to complete the project on a timetable
18 that may not be economically beneficial, and the rights could be in jeopardy if he
19 wants to change the project at all. They would resist the downzone. They would
20 much rather focus resources to do the plat on a pace that makes sense.

21
22 Brenner stated she thought this property hadn't been platted. Tull stated it
23 has a vested plat application. It will eventually be platted.

24
25 Fleetwood asked the definition of vesting at the time the application was
26 submitted. Tull stated the court determined that a complete application was filed.

27
28 Fleetwood asked the effect of the settlement agreement on this proposal. He
29 asked if the County would be bound by the settlement agreement. Tull stated the
30 County is bound by the settlement agreement. The County is a party to the
31 agreement. The shoreline management program is an element of the
32 Comprehensive Plan. The settlement agreement set forth certain things that would
33 take place. It would be inconsistent with the Comprehensive Plan if they change
34 the zoning. The shoreline management program, according to the settlement
35 agreement, won't change. According to GMA, shoreline programs and regulations
36 are development regulations under the GMA. The overall consistency requirement
37 of a compliant plan with development regulations comes into play. He doesn't
38 know how that would reconcile if the County goes into a different direction. The
39 Comprehensive Plan would be inconsistent with the settlement and the shoreline
40 regulations.

41
42 Fleetwood stated the issue of the built environment is confused because the
43 area is platted. He's sympathetic to the application, given that definition. The
44 Growth Management Act does not define what a built environment actually means.
45 He interprets the property as not being built, so it doesn't constitute the logical
46 outer boundary. Tull stated it says that the LAMIRD, which is the overall area,
47 must be predominantly defined as a built environment. There is development from

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1 the State park to the city limits, except for his client's property. The LAMIRD
2 boundary is the State park to the city limits. It's almost completely developed.
3 This property has simply been more patient than others in the area. The built
4 environment also includes a partially completed subdivision. The definition includes
5 both the entirety of the LAMIRD and also the facts and circumstances that apply
6 here. It would be illogical for anyone to ignore the totality. The boundaries are to
7 be identifiable and logical. In this LAMIRD, the outer boundary is the shoreline,
8 State Park, city limits, and State highway. Those boundaries are not going to
9 change.

10
11 Fleetwood stated there is no building on Governor's Pointe. Tull stated there
12 is a residence in the middle and four residences at the southern boundary. The
13 area was logged in the 1950's. In the 1970's, the road was cleared, consistent with
14 the plat. Since then, the road and waterlines have been maintained. The statute
15 and cases clearly allow for infill within the identifiable area.

16
17 McShane stated part of the reason he brought this forward was because
18 there are problems with some of the county's LAMIRDS. The County has already
19 dealt with some of its suburban enclaves, such as Lake Samish and Lake Whatcom.
20 The Lake Whatcom downzone was a LAMIRD downzone, and had little to do with
21 water quality. An organization called Futurewise made some effort to look at a
22 variety of locations that it believes are rather egregious. He thought it would be
23 worthwhile to look at as many LAMIRD's as he could. He did that. Some of them
24 are very complicated. He couldn't understand why they would make any changes
25 at all, based on his review. One LAMIRD in particular, in the Toad Lake area, was
26 glaringly bad. He's looked at both sides of the issue on this proposal. There could
27 be some downsides to including it, such as rushing to build out there. In the end,
28 there might not be a good result.

29
30 He looked at the entire Chuckanut area. The southern area is completely out
31 of compliance with the LAMIRD definition. Areas to the north, up to the city limit, is
32 not necessary to change. Mr. Tull's information can be useful for the County's
33 record. There is an existing plat with an agreement that doesn't create much
34 flexibility unless the owner abandons the plat, which probably won't happen.
35 **McShane moved** to recommend docketing this item, without Governor's Pointe.
36 The information from the attorney representing the property owner would become
37 part of the record to explain the reason for removing Governor's Pointe.

38
39 ***Motion carried unanimously.***

40
41 Docket #2005-K: Toad Lake Area, R5A to RR2

42
43 Goodwin stated this and the next item are related. The area is north and
44 west of the area currently platted into lots. The area is almost exclusively occupied
45 by trees. There are houses to the south. It is close to the Bellingham urban
46 growth area (UGA) at Britton Road. The area is resource lands and has agricultural
47 protection overlay (APO) soil.

1
2 One criterion for initiating a Comprehensive Plan amendment is whether the
3 site is within or modifies a city UGA. This area is close to the Bellingham UGA and
4 is within the five-year review area. If the area is added to the UGA, it will be added
5 at a density much higher than RR2.
6

7 There are APO soils in part of the area, but the area is forested. The
8 proposal doesn't affect resource designated lands in the county. There are no
9 wetlands, floodplains, wildlife conservation areas, or aquifer recharge areas on the
10 site. Quite a bit of the area are designated as landslide hazard areas. There are
11 slopes of 15 to 35 percent.
12

13 The County will look at this area as part of the Bellingham urban fringe plan.
14 Even if the County doesn't expand the city UGA, the County must look at all of
15 those RR2 lands to decide if they meet the criteria for LAMIRD's. If the areas meet
16 the LAMIRD criteria, they can keep RR2 according to a logical outer boundary. If
17 the area doesn't meet the LAMIRD criteria, the County must downzone them to a
18 rural density. That is scheduled to be done later this fall.
19

20 Mark Weinberg, 1803 Sleepy Hollow Lane, thanked the Planning Department
21 staff for their help in this process. He was advised that a rezone to RR2 might not
22 be as possible as zoning the area R5A.
23

24 He's owned the property for 25 years. There are 14 contiguous parcels on
25 27 acres. In a nearby area, amassed a similar amount of property, did a number of
26 boundary line adjustments, which were challenged and appealed to Superior Court.
27 He was told that the best way to accomplish the boundary line adjustment was to
28 do a rezone. There is split zoning in the total area. In the past, the County allowed
29 boundary line adjustments crossing zone boundaries, but there has been a policy
30 change that no longer allows cross-zone adjustments.
31

32 There are about 400 total lots in the Emerald Lake area. He indicated the
33 property on a map. The lots were originally not platted in the best way. The
34 highest and best use of this land is to the rearrange the 14 parcels in a way to
35 remove building sites from wet areas, gullies, steeper slopes, wildlife habitat, and
36 neighboring homes. He wants to move the building sites to an area that is high,
37 dry, and more suitable for septic systems.
38

39 When the property was zoned RR2, the boundary bisected a 17 acre parcel,
40 without following a logical boundary. The boundary should have followed a
41 topographical line. The logical outer boundary should be topographical. His goal is
42 to achieve the highest and best use of land. It doesn't make sense to crowd houses
43 together, develop in a gully, have poor septic systems and access, and to leave
44 really nice ground the way it is. There are going to be houses in this area. He's not
45 talking about putting something where nothing would otherwise be built.
46

1 Fleetwood asked if the area is vested under the old rules, before it was
2 designated R5A.

3
4 Brenner stated it is not.

5
6 Fleetwood asked if they are using LAMIRD criteria. Goodwin stated that if
7 docketed, a clear Comprehensive Plan policy requires the LAMIRD criteria to be
8 applied to any expansion of the suburban enclave.

9
10 Fleetwood stated he doesn't see a logical outer boundary. It's not there.
11 The logical outer boundary of the development is where the development currently
12 exists, which is at a density not within the rural designations. It may be prudent to
13 wait and take the new density from the urban designation if included in the UGA. If
14 not approved, the area remains rural. The question would be whether the area
15 meets the LAMIRD criteria, which it doesn't. He is not inclined to docket this
16 proposal.

17
18 Brenner stated she agrees. The County is so out of line having RR2 and RR1
19 zoning, but it's allowed because it's historical. Existing areas are allowed to in-fill,
20 but this isn't in-filling. It's on an edge that expands a LAMIRD, out of sync with
21 what the GMA wants the County to do. If the City of Bellingham decides to make
22 the area part of the UGA, and the area is already built out at a density of RR2, it
23 will be difficult to do infill. They can do infill easier with R5A. She will never
24 support downzoning RR2 or RR1, but she won't extend it beyond the logical outer
25 boundary that is already there.

26
27 Weinberg asked if the topographical feature qualifies as a logical outer
28 boundary.

29
30 Brenner stated it does not. The boundary is determined by the built
31 environment.

32
33 Weinberg stated this is the best of the two applications he made.

34
35 Fleetwood asked if this is in an area subject to review. Goodwin stated it is.
36 The City and County will look at this area this year to possibly expand the UGA.
37 The preliminary study isn't favorable to making this area a UGA because it will be
38 more expensive to put utilities and roads out in that steep area.

39
40 ***Fleetwood moved*** to recommend that the Council docket this item, but he
41 is opposed to the motion.

42
43 McShane stated the roads and utilities may be expensive, but it is an
44 attractive growing area due to its close proximity to town, arterials, and lack of
45 environmentally sensitive areas. He can understand the argument, but it would not
46 be a good idea to docket a proposal that would end up failing. It would be better

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1 for the Council to not approve the request at this time, so the proponent doesn't
2 spend more money on it.

3
4 Weinberg stated one idea is to trade areas zoned RR2 with an area zoned
5 R5A that is more appropriate for development. The trade wouldn't change the
6 amount of RR2 in total. It would improve the home sites in the area.

7
8 McShane stated that since this is in the five-year review area, Mr. Weinberg
9 should participate in this review process as much as possible. The substantial
10 infrastructure costs would have to be borne by the developer. If the infrastructure
11 cost is very high, the only way to afford it may be from a higher density.

12
13 *(Clerk's Note: End of tape one, side B.)*

14
15 ***Motion failed unanimously.***

16
17 Docket #2005-L: Toad Lake Area, RR2 to R5A

18
19 Goodwin stated this is a downzone of 2.8 acres that has one house. The rest
20 of the lot has trees. The lot is platted into small lots. The slope is fairly steep, and
21 there is not adequate access to the lots, which are un-developable. It would be
22 expensive to put roads in to serve all of the back lots. There are no roads or rights-
23 of-way. There are no agricultural soils, wetlands, and the area is not designated as
24 agriculture or forestry. The area is not in a 100-year flood plain, aquifer recharge
25 area, or wildlife conservation area. There are a few slopes. This area is within the
26 City of Bellingham's five year review area. Mr. Weinberg also owns parcels to the
27 north. If the zoning is R5A, Mr. Weinberg could do boundary line adjustments,
28 stretch out the boundary lines, and have larger, more developable lands. That's
29 what he's seeking to do with this amendment.

30
31 Brenner asked why the Council would not approve this. Goodwin stated it is
32 a downzone, but it's also a downzone of an area with small platted lots. The
33 proposal doesn't decrease the density, just stretches out the lots over a bigger
34 area. The downzone makes an irregular R5A boundary in an RR2 zone. It would
35 expand the LAMIRD in reality. The lots would go out farther into a rural area. The
36 proposal takes land that is now forested and putting it into one- or two-acre lots. If
37 the Council does not approve the proposal, the developer must develop the lots
38 where they are.

39
40 Fleetwood asked staff's recommendation. Goodwin stated she recommends
41 that the County wait to see what happens with the Bellingham urban fringe. If they
42 are going to make this into an urban area, it doesn't make sense to stretch those
43 lots into one-acre lots that can't be further developed. Five-acre zoning in areas
44 with half-acre lots would be irregular.

45
46 Mark Weinberg, Applicant, stated he has road access to every lot. If the
47 Council approves the downzone of this property, he is not likely to do anything with

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1 it until he goes through the City process to see if the property can be put into an
2 urban growth area (UGA). If put into the UGA, he has no reason to proceed with
3 the 14 lots in the event that the density will increase. Benefits of a change to the
4 R5A zone outweigh the bit of boundary irregularity. The RR2 zone boundaries are
5 already irregular. The lots are already nonconforming lots.
6

7 Anything that can be done to increase the size of the nonconforming lots
8 would be a benefit. If forced to, he can build on the lots as they're configured now.
9 It would be better to allow boundary line adjustments and increase the size of the
10 building sites. It would benefit the neighbors. The trees will be cut anyway. With
11 the current lot configuration, he will cut more trees than if the lots were bigger.
12

13 Access could be improved if he could do a boundary line adjustment. The
14 current access road is substandard. There is potential for building a better road.
15

16 He's willing to do a contract rezone to prohibit manufactured homes and
17 businesses from locating in the development. He is willing to covenant the area
18 with the County as a signatory. There will be a lawsuit filed by Thousand Friends of
19 Washington that would rezone the area back to R5A in any event.
20

21 He doesn't want to get caught up in the City process, and then have to come
22 back to the Council in a year and ask for another rezone. If the City puts the area
23 in the UGA, he will wait to develop. If the City does not put the area in the UGA, he
24 will be ready to do a boundary line adjustment.
25

26 His goal is the highest and best use of the land. There would be onsite septic
27 systems. The house sites would be about one acre each. There would be a better
28 road network and better utilities. Approve this proposal. The lots are currently
29 very irregular. There is a better way to divide up the lots.
30

31 Brenner asked if the lots can be consolidated to make them bigger.
32 Weinberg stated he does not want to reduce the number of building sites he is
33 allowed. Five of the 14 parcels have acreage already. There are three houses on
34 three of the smaller lots. The remaining lots are very small. It's difficult to do
35 anything with the parcels like that. Economically, he would be concerned that the
36 aggregate value of one larger building site would not equal five smaller building
37 sites.
38

39 Goodwin stated that if the Council wants to docket this item, it can be
40 combined with the analysis of the urban fringe area and not be considered until the
41 urban fringe plan is considered.
42

43 Brenner stated there is less potential for development if they don't approve
44 the proposal. There is a need to consolidate some of the lots if the Council doesn't
45 approve the proposal, which means less development in an area where they need
46 to keep the boundaries shrunk as much as possible.
47

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1 Weinberg stated he wants to use the parcels to their highest and best use,
2 which is not the current configuration. Don't leave the lots in a less valuable,
3 useful, and desirable configuration. He liked Ms. Goodwin's idea to run this item
4 concurrent with the urban fringe plan.
5

6 **Fleetwood** stated what is highest and best use of an area is subjective.
7 Their object is compliance with the Growth Management Act and preservation of
8 rural character. There is a question of the best process for achieving those goals.
9 Docketing this item does not approve the proposal. He will consider docketing the
10 item as Ms. Goodwin proposed. He **moved** to recommend approval of docketing,
11 with the condition to docket the proposal and then combine processing of this
12 application with completion of the Bellingham Urban Fringe Subarea Plan.
13

14 McShane stated do not docket this item now. The Council could revisit the
15 application after the plan comes out.
16

17 **Motion failed 1-2 with Fleetwood in favor.**

18
19 *(Clerk's Note: The committee took a break at 4:55 p.m.)*
20

21 Docket #2005-M: Point Roberts Rural to Commercial
22

23 Aamot indicated the location on a map. In the area there is vacant land,
24 residential use, and businesses. Areas to the south and east are also zoned rural.
25 The areas zoned to the north and west are zoned small town commercial, which is
26 the zone the applicant wants for the subject site. There are no wetlands on the
27 site. Road access is an issue. There is a ten-foot County right-of-way abutting the
28 western property boundary. The Engineering Division indicated a minimum width
29 for a single family residence is 12 feet and is 24 feet for a commercial use. The
30 applicant thinks there is an easement through property to the north. He submitted
31 an email from the applicant (*on file*). That would be a concern. The Engineering
32 Division says that if there is no other access, the applicant might be able to get a
33 variance from 12 to 10 feet for a single family residence, but not for a commercial
34 use.
35

36 Fleetwood asked the staff's recommendation. Aamot stated the staff is
37 concerned about access. The applicant may be able to produce an easement. Also,
38 this is a limited area of more intense rural development (LAMIRD), which must
39 have a logical outer boundary. There is other vacant land in the small town
40 commercial zone that could be in-filled before adding to the zone.
41

42 Fleetwood asked the change in circumstance and public benefit.
43

44 **McShane** stated he sees no change in circumstance or public benefit. He
45 **moved** to recommend approval to the full Council, even though he is against the
46 motion.
47

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1 ***Motion failed unanimously.***
2

3 Docket #2005-N: Point Roberts Resort/Recreation Subdivision to Small Town
4

5 Goodwin stated the applicant and the Planning and Development Services
6 Department would like to withdraw this item from consideration.
7

8 Docket #2005-T: Hazardous Material Policies
9

10 Aamot stated the applicant is present to speak. The applicant asks for
11 Comprehensive Plan policies that require an operating permit or reporting program
12 for facilities that need a risk management plan under federal regulations. The
13 proposal requires these facilities to consider using less hazardous materials.
14

15 Staff asked Neil Clement, Emergency Management Division Manager, to
16 address the proposal. Mr. Clement was not persuaded this proposal would increase
17 safety or environmental protection. Mr. Clement had a concern that it would create
18 another layer of unnecessary government regulation. That letter from Mr. Clement
19 is in the file.
20

21 Fleetwood asked if Mr. Steele has filed applications like this in the past.
22

23 Gerald Steele, Attorney, stated he has. He submitted a letter (*on file*).
24 Attachment one is the same as the proposal he put forward last year. The
25 alternative attachment one is different. Last year, this committee wanted to docket
26 the item, but was concerned about whether there would be a conflict with the
27 Energy Facility Site Evaluation Council (EFSEC) jurisdiction. The committee didn't
28 want to hold up the other docketed items to wait for an answer from EFSEC.
29

30 Brenner stated she would have preferred to receive Mr. Steele's letter earlier
31 so she could read it before the meeting. The committee had no documentation on
32 this item. Steele stated the committee should talk to staff about that issue instead
33 of him. He submitted all of these papers, and more, in December.
34

35 Fleetwood asked Mr. Steele to describe the amendment. Steele stated he
36 represents the Washington State Association of Plumbers and Steam Fitters, in
37 addition to himself. Today, there is a federal law that requires the most hazardous
38 businesses to file risk management plans. There are seven such industries in
39 unincorporated Whatcom County. The federal law requires identification of
40 hazards, potential accidents, and safeguards used in the plan. The law does not
41 require review and consideration of implementation of alternative methods or
42 materials that could achieve the objectives with less hazard. This amendment
43 works with the federal risk management plan to require the business to consider
44 alternative methods and materials to reduce risk. The business prepares a report
45 that shows it considered this reduction, and turns in the report to the County.
46 That's all that's required.
47

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1 Fleetwood asked if the proposal to amend the Comprehensive Plan is a
2 minimal change to the language. Steele stated it is.
3

4 Brenner asked who would be responsible for submitting a report to the
5 County. Steele stated approximately seven industries in the county that have to
6 file federal risk management plans would concurrently file a report to the County
7 that shows they considered risk reduction.
8

9 Brenner asked if any other counties have that requirement. Steele stated it
10 is on the docket for Skagit County and the docket for the City of Anacortes.
11

12 Fleetwood asked the effect of the language. Steele stated the effect is to say
13 that the County will develop a reporting program that is supposed to reduce risk
14 and require review of alternate methods of materials. After adopted, they will work
15 on development regulations that will specific how that reporting program happens.
16 It's only a reporting program that only asks the businesses to consider these things
17 in the normal process and provide a report saying it tried to reduce risk. It's likely
18 that just having the reporting requirement will achieve the objective, which is to get
19 these industries to look at alternative methods and materials to reduce risk. In ten
20 years or so, they can look at all the reports to see if the program is working. It's
21 the first step to encourage risk reduction, not just risk management.
22

23 Brenner stated the proposal is positive. She asked how much extra work this
24 will cause the County.
25

26 McShane referenced the letter from Mr. Clement. The proposal asks the
27 County to review the reports. Steele stated alternative attachment one, which he
28 prefers, doesn't actually require the County to review the report. It just has to
29 collect the report and put it on file. There is no advantage to reviewing the reports
30 right away. Look at all the reports they get after a certain period of time to see if
31 the program results in risk reductions.
32

33 Brenner stated this doesn't require the County to review the reports. If on
34 file, any lay person can see that businesses are using the least hazardous materials
35 possible. She supports docketing the idea to get more information.
36

37 McShane asked how many companies in Whatcom County qualify. Steele
38 stated there are approximately seven companies in unincorporated Whatcom
39 County that would be subject to the regulation.
40

41 There is an advantage to looking for safer solutions. Industry doesn't do that
42 as a matter of course. His clients have an interest because they are the ones
43 working in the risk industry. They're the ones who get killed if something fails.
44 There were a couple of deaths in Anacortes a few years ago. The idea is to begin
45 getting more consciousness on this. They picked the federal risk management
46 companies to work on because they're the most hazardous companies. This is a
47 long-term program to have these companies consider one more thing. It's not a

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1 big burden. Only a small number of companies will be required, but that small
2 number will establish a pattern of what could be accomplished.

3
4 Fleetwood asked if this is a step that would increase safety for Mr. Steele's
5 membership. Steele stated it would increase safety for his membership, and also
6 for the public at large.

7
8 Fleetwood asked if that is the motivation for the proposal. Steele stated it is.

9
10 McShane stated this federal law, more than anything else, lead to the closure
11 of Georgia-Pacific in Bellingham. It's not a pleasant process. Steele stated this
12 program doesn't set any levels or standards. It only says the business must look at
13 alternatives that are cost-effective. They're not trying to adversely impact the
14 industry. They're only trying to get the industry look at something it otherwise
15 wouldn't look at.

16
17 Brenner stated that if the Council docket the item, they'll find out. It's a
18 good idea to look at.

19
20 Fleetwood asked staff's opinion.

21
22 McShane stated one staff person wrote a letter already.

23
24 Goodwin stated staff is concerned about docketing something that requires
25 staff to develop regulations where no one is required to review a plan. That seems
26 vague. When they did the Custer Provisional Urban Growth Area, there were no
27 standards for a master plan. She has to devote staff time to figure out what would
28 be involved in a master plan and the review process. If they docket something like
29 that, she would like to see potential regulations. They can't require someone to
30 submit a plan without saying what will be in the plan or establishing the criteria for
31 the plan. Develop detail, or wait to see what Skagit County and the City of
32 Anacortes does.

33
34 Steele stated the Comprehensive Plan amendment doesn't require the
35 industry to do something. It will require staff to develop regulations to implement
36 the program. That's where the staff commitment is. He can submit proposed
37 development regulations. The standards are in the Comprehensive Plan. One
38 would have to look at methods and materials that substantially reduce hazards.

39
40 Brenner stated she appreciates staff's concern. She asked which staff will
41 have to put together a program. Steele stated the County will have to develop
42 development regulations. If the County agrees to a reporting program, he will work
43 on specifics later. Doing this says they will develop a reporting program that will
44 seek to reduce hazard.

45
46 *(Clerk's Note: End of tape two, side A.)*

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1 Steele continued to state the federal government requires a risk
2 management plan once every five years. A report will also be required when there
3 are major process changes to the plan.
4

5 ***Brenner moved*** to recommend that the Council docket this item. If they
6 can do this program without causing staff a lot of extra work and without causing
7 companies to go under, it would be a win-win. Docketing will provide that
8 information.
9

10 McShane stated he is against the motion. Mr. Steele's heart is in the right
11 place, but this is complicated. Given the limited number of sites in the county,
12 they're only creating a paper trail. It will be complicated to develop a program for
13 this small amount of data. It won't be useful to the county as a whole. It may be
14 interesting information for Labor & Industries and Clean Air Act agencies. The
15 larger federal government will have good data on this as it is. There is no benefit
16 to the County for getting involved.
17

18 Brenner stated this might make things better. The Council could always say
19 no at the final vote.
20

21 Fleetwood asked if there is a scenario where this could be processed this
22 year that wouldn't involve a great amount of staff time. Goodwin stated anything
23 docketed requires staff to write a staff report, have a public hearing, post notice,
24 and prepare an ordinance. There will be 100 to 200 hours of staff time even for the
25 small items. That's not a reason to not do it, but costs are involved.
26

27 ***Motion carried 2-1 with McShane opposed.***
28

29
30 **OTHER BUSINESS**
31

32 Sylvia Goodwin, Planning Division Manager, submitted a map of the short-
33 term and long-term planning areas in Drayton Harbor. All of the areas east of the
34 City of Blaine will not receive water and sewer from the City until annexed. Those
35 areas are held to a density of rural, one unit per five acres (R5A) until annexed.
36
37

38 **ADJOURN**
39

40 The meeting adjourned at approximately 5:30 p.m.
41
42
43

44 _____
45 Jill Nixon, Minutes Transcription
46

47 ATTEST:

WHATCOM COUNTY COUNCIL

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WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Seth Fleetwood, Committee Chair