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WHATCOM COUNTY COUNCIL  
**Special County Council**

November 14, 2006

Council Chair Laurie Caskey-Schreiber called the meeting to order at 10:05 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner  
Dan McShane  
Sam Crawford  
Seth Fleetwood  
Carl Weimer  
L. Ward Nelson

Absent:

None

**1. DISCUSSION REGARDING CONCURRENCY (AB2006-060A)**

Hal Hart, Planning and Development Services Director, stated the County Executive has made concurrency a significant priority. They are moving ahead on the 60-day timeframe that started October 5, 2006. His goal is to bring forward a complete package of interim concurrency ordinances.

The first piece of today's presentation will cover transportation concurrency. There are more than 17,000 new people in Whatcom County over the past six years. The staff are working with special districts such as school, fire, sewer and water, and park districts.

Concurrency is one very specific tool that has been used well in Western Washington in the last 15 years. An advantage of doing this now is to learn from what others have done. However, Whatcom County is playing catch-up. He anticipates that a couple of different ordinances will be before the Council by December. They are complex ordinances that require administrative coordination between several County divisions, special districts, and county municipalities. It's an immense program because of the coordination and data management requirements.

Nelson asked the population growth. Hart stated census statistics say they've added 17,000 people to the county in approximately six years.

Nelson stated concurrency is only for Whatcom County. Hart stated that's true, but they have to think about all impacts of population growth. People don't necessarily live where they work, for example.

Caskey-Schreiber stated that from 1990 to 2005, the county population grew at a rate of 2.23 percent, which means the population will double in 35 years.

Fleetwood asked Mr. Hart to describe what an interim transportation concurrency ordinance will require. Hart stated the interim ordinance will require the Council to review two ordinances, which are coordination with the special districts, and transportation. It is linked to Comprehensive Plan goals and objectives that have already been adopted. They have set levels of service. They are linking the commitment of resources to the network of transportation. These would be linked through the six year capital facilities program and

1 level of service (LOS). If LOS is lowered, concurrency will say how they will fix those  
2 problems over time.

3  
4 Fleetwood asked if the ordinance will either stop development for some period of  
5 time, or be the basis for requiring development to mitigate the impact so the L doesn't go  
6 below the LOS standard. Hart stated there are choices for both. If the development  
7 impacts the roads, the County can put out a moratorium if it can show how the  
8 development impacts those roads and that no one can deploy the resources to fix the  
9 problem. A moratorium on that development is a choice. There are other choices as well.  
10 The ordinance will define those choices for the community. Reassessing the land use  
11 element is one option.

12  
13 Crawford stated the population growth rate has been more like 1.8 percent.

14  
15 Caskey-Schreiber stated her statistic is a 15-year average.

16  
17 Brenner asked if concurrency requires coordination with the other districts and cities  
18 and all other law-making bodies. Hart stated they already do that according to Growth  
19 Management Act (GMA), but this will strengthen that relationship. They have interlocal  
20 agreements already.

21  
22 John Everett, Planning and Development Services Department, described today's  
23 presentation.

24  
25 McShane asked what chapter they would amend. Everett stated they would add  
26 chapter 20.78.

27  
28 Larry Toedtli, Transpo Group Principal, submitted a handout of his presentation (*on*  
29 *file*). He discussed his background. Understand what concurrency is and is not. They need  
30 to understand how it fits into the overall development review process, such as with State  
31 Environmental Policy Act (SEPA) and others. There will be a range of policy issues on which  
32 staff will need direction to set the framework for methodology and objectives.

33  
34 Brenner asked if the Council is going to adopt an interim concurrency ordinance in  
35 December. She asked if that is only the beginning. Toedtli stated that is correct. The  
36 interim ordinance adopts what is already in the Comprehensive Plan. He will identify what  
37 will happen to develop the final program, and talk about how the interim ordinance fits into  
38 that.

39  
40 Toedtli read the presentation on the development review elements. He would  
41 identify the highlights of each element.

42  
43 The first element is development regulations, which include street standards. It's a  
44 requirement through subdivision ordinances and plat requirements. Development  
45 regulations deal with project infrastructure. It goes through engineering review to make  
46 sure the development complies with street standards.

47  
48 He read the presentation on development regulations, development review elements,  
49 and SEPA. Through SEPA, the County has authority to condition developments to mitigate  
50 impacts. In the worst case, the County can deny the SEPA application if significant impacts  
51 can't be mitigated.

1 Brenner asked if SEPA mitigation can only be on a certain percentage of the impact.  
2 However, the impact is a build up of everything that's happened. Toedtli stated that is the  
3 issue with SEPA. Impacts accumulate until one development breaks the level of service,  
4 and is stopped unless it or the County does the improvement. The County can schedule a  
5 program where development pays a share. Traffic impact fees can alleviate some of the  
6 accumulation issues, through SEPA.  
7

8 Caskey-Schreiber asked if they are not going to have traffic impact fees in place  
9 when the Council adopts the concurrency ordinance. She asked the use of it if that's the  
10 case. Toedtli stated the purpose is to develop a transportation impact fee ordinance and  
11 concurrency management program over the next ten to 12 months. The interim  
12 concurrency ordinance is a program based on the current Comprehensive Plan, to get the  
13 ball rolling.  
14

15 Caskey-Schreiber asked if they will be able to charge traffic impact fees (TIF) without  
16 a TIF ordinance. Toedtli stated no fees would be collected during that time. They may be  
17 able to get developers to fund concurrency. Traffic impact fees will be developed over the  
18 next ten months.  
19

20 SEPA covers roadway capacity, safety, non-motorized connectivity, and other travel  
21 modes. According to SEPA, money for a certain upgrade much go to that upgrade. Under a  
22 transportation impact fee ordinance, money can go to one of many different projects.  
23

24 Toedtli read the slide on the Development review elements for transportation and  
25 traffic impact fees. They are focused on system improvements, not project improvements.  
26 That includes collectors and the arterial system, not the neighborhood system.  
27

28 Brenner asked what happens if a development is right at an arterial. Then it would  
29 be both a neighborhood and arterial system. Toedtli stated that's correct. They could use  
30 both development regulations and frontage improvements for the arterial.  
31

32 Caskey-Schreiber stated they've talked about pooling funds. She thought they could  
33 only collect on what that future development will contribute to the local impacts. She asked  
34 if they can pool all the money to address the countywide system.  
35

36 Toedtli stated that if there are ten projects that need to be done in the Birch Bay  
37 Subarea, and a project affects all ten of those projects, then the developer's contribution  
38 can go to the highest priority project rather than all projects proportionally. The fees have  
39 to be reasonably related to the use for which they were charged.  
40

41 Caskey-Schreiber asked how wide a geographic area the County can go. Toedtli  
42 stated Kitsap County is divided into three districts. Over the next year, they will look at the  
43 appropriate districts.  
44

45 Brenner asked if the County can have the developers meet concurrency over the  
46 next ten or 12 months. They won't know what concurrency is during that time. Toedtli  
47 stated that for now, have an interim to implement what is in the Comprehensive Plan. This  
48 project evaluates different approaches for the long-term concurrency program and the TIF  
49 ordinance that work together to implement the transportation plan to support development.  
50 The interim program is to provide a system during this interim time period.  
51

52 Brenner stated they will still use SEPA in the meantime. Toedtli stated there will be  
53 a new ordinance that will look and feel a lot like SEPA. Someone will have to show whether

1 or not a development meets the County standards. However, concurrency is a true on-off  
2 switch. The County either approves it or not. Mitigation must be shown to meet County  
3 standards.  
4

5 Caskey-Schreiber asked how they have accountability on whether the funds are  
6 spent in six years. Toedtli stated the ordinance identifies an annual report on where the  
7 monies were collected and spent. All other communities he's worked with have spent their  
8 monies within six years. The money can be used for design, right-of-way acquisition, and  
9 other things, not just construction.  
10

11 McShane asked when it's most likely that the transportation impact fee TIF ordinance  
12 would be challenged during the development process. Toedtli stated the fee could be  
13 challenged at the time the fee is calculated, by claiming the trip factors are incorrect.  
14

15 Toedtli continued to read the presentation on development review elements for  
16 concurrency and transportation concurrency. Traffic impact fees is a GMA option.  
17 Concurrency is a requirement. GMA language says concurrency is having adequate facilities  
18 and/or services in place within six years. The interim is to make sure they don't approve a  
19 development that doesn't meet the current level of service standards.  
20

21 Weimer asked if the County has the ability to set the length of time when someone  
22 has to meet concurrency. Toedtli stated that is correct. What is acceptable to Whatcom  
23 County is decided by Whatcom County, not the State.  
24

25 Brenner stated she assumes that the County will get challenged on whatever it does.  
26 She asked if it can still have something in place while there is a challenge. Toedtli stated  
27 it's likely there will be challenges. The County must define what is acceptable and how to  
28 measure it.  
29

30 Brenner stated it may be years, not ten months, if the challenges delay things. She  
31 asked what happens if the ordinance is challenged when it's adopted.  
32

33 Royce Buckingham, Prosecutor's Office, stated they are presumed valid unless it's  
34 decided otherwise.  
35

36 Toedtli continued to read the presentation on what transportation concurrency is.  
37 That's the framework for concurrency in GMA. Nothing tells them what's acceptable or what  
38 standards must be set.  
39

40 Weimer asked if they can change the date concurrency has to happen from six years  
41 to three years. He asked if changing the length of time someone must comply would also  
42 change the length of time the County has to spend the money. Toedtli stated it does not.  
43 TIF and concurrency are different. However, if they condition a development to build a turn  
44 lane or something to be concurrent, and the development gives the County the money for  
45 it, then the County must spend the money on that project. Impact fees are global, but  
46 SEPA, concurrency, and development regulations are very specific.  
47

48 Fleetwood asked if GMA identifies when the counties will have a concurrency  
49 program, and if this makes Whatcom County compliant. Toedtli stated it does make  
50 Whatcom County compliant.  
51

52 Brenner asked why they would do traffic impact fees instead of SEPA. Toedtli stated  
53 use transportation impact fees instead of SEPA when there are impacts, but the impacts

1 don't yet affect the standard. TIF's put the burden of growth on all, not just the last person  
2 in. The traffic impact fees don't guarantee when the project will be in place. The County  
3 will have to choose how to spend those monies.

4  
5 Toedtli read the presentation on the consultant team's primary work program.

6  
7 Brenner asked if the timeframe for implementation can be changed and adjusted.  
8 Toedtli stated it may be possible. It is a policy discussion they will have over the next  
9 several months. He read the presentation on the project schedule for transportation  
10 concurrency. As they work on concurrency, they will also be working on the other elements  
11 of the scope that feed into each other. A steering committee will be set up to consider  
12 different ideas and have a broad vision of impact fees and a concurrency program. The  
13 committee will include the community.

14  
15 Fleetwood asked if they already have adopted level of service standards and if they  
16 are going to reconsider them. Toedtli stated they do have the standards, and they will  
17 reconsider them. He read the presentation on the concurrency program development.

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

20  
21 Toedtli continued to read the presentation on concurrency program development on  
22 Task 4B. He described the difference between the King County and City of Seattle  
23 concurrency programs. Many communities use concurrency to identify the problems and  
24 direct funding toward improvements where growth is taking place. If there is a lot of  
25 growth in a certain area, make sure they accommodate the growth that occurs. Other  
26 communities do the opposite.

27  
28 Nelson stated concurrency can be a positive or a negative, depending on the policies.  
29 Toedtli stated it can stop, help shape, accommodate, or promote growth, depending on how  
30 it's set up. He described the programs of other jurisdictions.

31  
32 Brenner stated support more transit use. The developers don't have any connection  
33 to the Whatcom Transportation Authority (WTA). Toedtli stated they have to let people  
34 know that the cities don't control the transit system. They can only take advantage of what  
35 is already out there or what is in the plan.

36  
37 Hart stated they work closely with the WTA and City of Bellingham during the urban  
38 growth area (UGA) process to be strategically consistent. They've set a few rapid transit  
39 lines to serve more people, and they want the land use to follow on those transit lines.  
40 There will be coordination occurring with concurrency and with urban growth area planning.

41  
42 Nelson asked if that allows the Whatcom Transportation Authority to subvert  
43 planning if planning is the responsibility of the County in conjunction with the cities. Hart  
44 stated it is not subversive. It's a coordination of transportation elements so policies are  
45 consistent. Land use is done first, then the transportation system is to serve the land use  
46 pattern, according to GMA. The City and County have to agree on the land use element,  
47 then the service component, such as transit, is secondary. That hierarchy will direct  
48 coordination.

49  
50 Toedtli continued to read the concurrency program development on Task 4C.

51  
52 Brenner asked if there is an example of where a big private company, such as  
53 Microsoft, has its own transit system. Toedtli stated Microsoft has an aggressive

1 transportation management program that works to set up carpools and give incentives for  
2 people to not drive. It's targeted to specific people.  
3

4 Everett stated the Council of Governments is working on a commute trip reduction  
5 plan in the coming year. It will focus on the major Whatcom County employers to reduce  
6 the amount of trips that the employers cause. Options include van pools and ride sharing.  
7

8 Toedtli stated people who reduce trip generation (*inaudible*).  
9

10 Fleetwood asked if the levels of service are set by a Comprehensive Plan  
11 amendment. Toedtli stated that is correct.  
12

13 Fleetwood asked task 4C would not affect the interim ordinance, and would just  
14 inform future work. Toedtli stated that's correct. If they want to change roadway capacity,  
15 include it in an annual update. Once that's done, then the Council could modify the  
16 ordinance to reflect the new LOS standards. The interim ordinance just references the LOS  
17 standards in the Comprehensive Plan. Changing the Comprehensive Plan automatically  
18 changes the interim ordinance.  
19

20 He continued to read the presentation on concurrency program development, task  
21 4C. it is the most technical part on which his company will assist. Objectives will help them  
22 understand the differences. Once they have the objectives, identify methodologies to get to  
23 those objectives. If they can't, there are tradeoffs to consider. One objective is to keep it  
24 simple for staff. Another objective is to do a full multi-model concurrency program. those  
25 objectives may not match. They will have to develop those objectives throughout the  
26 process.  
27

28 Different communities use different level of service measures. Some communities  
29 use time periods, such as daily or peak hour standards.  
30

31 (*Clerk's Note: The Council took a eight-minute break at 11:07 a.m.*)  
32

33 Toedtli continued to read the presentation on community program development, task  
34 4C, assessing level of service standards and methods. Measurement is a matter of  
35 identifying when they deny a development. They do that now, but there will be a different  
36 contexts and different measurements. The standards now may not be appropriate,  
37 according to the Comprehensive Plan. The concurrency program, the transportation  
38 system, the funding package, and the land use all have to be compatible and consistent.  
39

40 Fleetwood asked if local government has latitude on what is acceptable, and if the  
41 GMA provides direction on what is acceptable. Toedtli stated local government has latitude,  
42 and there isn't guidance from the GMA.  
43

44 Toedtli continued to read the presentation on concurrency program development,  
45 ask 4C. There may be different standards for the different types of roads, such as rural  
46 collectors, urban arterials, and regional connectors.  
47

48 Nelson stated that a community set up to attract business, tourism, or other  
49 features must consider the standards. Toedtli stated he agrees. The community must  
50 define what is acceptable. Different areas may need different standards. Define the  
51 function of the road and how they want to treat it. Concurrency can't be applied to  
52 highways of statewide significance. There are three in Whatcom County, which are  
53 Interstate 5, Highway 546 and Highway 539. The GMA is silent on whether concurrency can

1 be applied to other state highways. They can apply it to the Mt. Baker Highway if they  
2 want. Many of these policy questions will come up.  
3

4 He continued to read the presentation on concurrency program development, task  
5 4D. To identify what they will really want, they will take a snapshot of the possible results  
6 based on objectives, methodologies, and standards to see what would happen if it went into  
7 effect today. If the result isn't what people expect, they may want to make adjustments  
8 and changes to the standards and methodologies.  
9

10 Weimer asked if they can divide the county into different districts for the purpose of  
11 concurrency timelines. Toedtli stated it's possible, but he doesn't know of anyone whose  
12 done it. They can explore it.  
13

14 Toedtli read the presentation on concurrency program development, task 4E, which  
15 is to make the process efficient, effective, and work for the public and staff. Areas may  
16 begin to be out of compliance with concurrency, and that's where growth is slated.  
17 Therefore, impact fees may need to be spent on critical improvements to resolve the  
18 problem. They have to preserve and maintain the system. Concurrency may help them get  
19 there, depending on how they define what is acceptable.  
20

21 Nelson stated concurrency can't be used to meet past problems. Toedtli stated  
22 concurrency can. If development is having an impact on an area already out of compliance,  
23 a development should not be approved until there is a plan for the problems. Traffic impact  
24 fees, however, can't fix existing deficiencies. They can allow developments to pay impact  
25 fees, but they can't charge the development for the part of the improvement that resolves  
26 the existing deficiency.  
27

28 Caskey-Schreiber asked if a County government would have jurisdiction over a  
29 city's land use decision regarding development. Toedtli stated it wouldn't, unless there are  
30 interlocal agreements between jurisdictions. In other locations, jurisdictions have appealed  
31 some decisions through the Hearing Examiner process. They ended up negotiating the  
32 standards.  
33

34 Caskey-Schreiber asked what happens if the City of Ferndale approves a large mall  
35 or superstore. There would be impacts to County roads. Toedtli stated the best way to deal  
36 with it is through an interlocal agreement. The County does have an opportunity through  
37 SEPA to say that impacts haven't been adequately mitigated. SEPA is much easier than  
38 concurrency to deal with.  
39

40 Hart stated they will discuss this further at this afternoon's meeting. There is a  
41 broad interlocal agreement to operate the urban growth area. They make amendments to  
42 that interlocal agreement every time a city annexes land. Those amendments will continue  
43 to influence the development that occurs within the city.  
44

45 Brenner asked if they go back to whatever was in place at the time they were  
46 vested when the zoning gets changed. Hart stated they look at the agreement that existed  
47 at the time they were annexed.  
48

49 Brenner asked if they won't affect new amendments. Hart stated look at the  
50 interlocal agreement, which would spell out how the process should move forward.  
51

52 Brenner stated SEPA and concurrency still sound alike. Toedtli stated they are  
53 similar. He described the differences.

1  
2 Brenner asked if there is a huge adverse impact created by another jurisdiction, and  
3 the County would have to appeal what the jurisdiction is doing. Toedtli stated that would go  
4 through the SEPA process, unless there is an interlocal agreement in place. Both sides  
5 would know what is expected.  
6

7 Toedtli continued to read the presentation on the concurrency program, task 4A.  
8 Build off the existing Comprehensive Plan standards to get administrative processes in  
9 place, learn the process, and gather good data.  
10

11 Toedtli read the presentation regarding the summary. Impact fees will help fund  
12 improvements. Concurrency is about timing. Through concurrency, the County either  
13 approves or doesn't approve projects. Balance with the Comprehensive Plan. Land use,  
14 level of service standards, and funding have to balance.  
15

16 Brenner asked how much oversight the County is required to provide, according to  
17 State law, if the funding is available and contractors are ready to do a project. She asked if  
18 staff has to oversee each project. Toedtli stated the County is issuing permits to do work in  
19 the County right-of-way. The County has a role, which may be inspection, document  
20 review, or something else.  
21

22 Fleetwood asked if they will have an ordinance ready by August 2007. Toedtli  
23 stated he is confident they will if they can work through all the issues. It's easy to get  
24 bogged down by one topic. Their challenge is to keep things moving forward. Setting those  
25 objectives up front will be a key to understanding the options.  
26

27 Brenner asked who will be on the steering committee. Toedtli stated it will include  
28 staff and some external people.  
29

30 Caskey-Schreiber thanked Mr. Toedtli for his presentation.  
31

32 Everett handed out a presentation on how concurrency works with special districts  
33 (*on file*). They are all aware of recent issues regarding fire protection services. There was a  
34 recent SEPA appeal hearing. This research is partly in response to these issues. It's more  
35 complex than they had hoped. It is a unique situation with the two stand-alone urban  
36 growth areas. The interesting challenge is the rural special districts that must provide both  
37 rural and urban levels of service. They've started to work with these special districts to get  
38 a sense of what the issues are and see how other jurisdictions have handled the same  
39 issues.  
40

41 The recent increased growth pressures have been a challenge in ensuring whether  
42 they can provide adequate services and facilities as these areas grow. They expect that  
43 growth and those challenges to continue.  
44

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

47 Everett read the presentation on concurrency. They will have to come up with a  
48 plan for those costs. If they have a hard time meeting level of service standards and  
49 coming up with financing to achieve the standards, they may have to reconsider land use  
50 policies.  
51

52 Brenner asked if they will have the numbers they need from the fire and school  
53 districts when they are ready to implement concurrency. Everett stated the first challenge

1 was to figure out how to quantify those needs. They decided to look at their capital facilities  
2 plans, which would be the analysis tools to project their needs, how much they would cost,  
3 and how they'd be paid for.  
4

5 Caskey-Schreiber stated she's meeting with all school districts through their  
6 superintendents. They are aware of what's needed.  
7

8 Hart stated they are making presentations to the fire districts. In the next few  
9 weeks, he will send a letter to every special district in the county about this process.  
10

11 Caskey-Schreiber stated the Council will have to adopt those special district plans  
12 into the Comprehensive Plan.  
13

14 Everett continued to read the presentation on the special district strategy.  
15

16 Nelson asked if there must be a uniform level of service or different levels of service  
17 depending on the district. Everett stated each district can establish it's own standards. The  
18 County must incorporate those plans into the Comprehensive Plan.  
19

20 Brenner stated she thought they weren't allowed to have impact fees. Everett  
21 stated the Revised Code of Washington (RCW) excludes fire districts in a county, but does  
22 allow school districts.  
23

24 Everett continued to read the presentation on the capital facility plan basics and  
25 conceptual approach.  
26

27 Nelson stated that each project requires time and an administrative cost to each  
28 district. That's the districts' frustration. He asked if the standards would be accepted  
29 countywide, or district-by-district. He asked if the districts will review the County's  
30 decisions. Everett stated it would make the districts' jobs easier by automatically  
31 incorporating their capital facility plan issues into the County review process. They can  
32 submit additional information through the SEPA process. If something isn't anticipated, the  
33 County would automatically know there is an issue. If the County establishes these things  
34 in-house, it will make the districts' jobs easier. They won't have to comment on every  
35 single SEPA application.  
36

37 Everett continued to read the presentation on the step in the right direction and  
38 roadmap to success.  
39

40 Brenner asked about the technical review committee. She thought they already  
41 have one established. Hart stated this is different. In this case, they are dealing with  
42 planning goals and objectives of the Comprehensive Plan and financing of infrastructure.  
43 The Public Works Department and Planning Department have to coordinate, with additional  
44 staff, to determine if they are coordinating with the special districts in a way that is  
45 consistent with policy. He is just talking about a committee of internal County staff.  
46

47 Everett stated King County established a small committee familiar with the issues to  
48 evaluate the capital facilities plans based on things they wanted to consider.  
49

50 Hart stated the committee would ask questions of the districts' technical people. If  
51 there is an engineering question outside the expertise of the small committee, the  
52 committee could go to the County's Technical Advisory Committee.  
53

1 Brenner asked how they avoid getting into a position where the special districts could  
2 control whether or not development happens. The districts may simply not want more  
3 personnel or development in an area. Everett stated a criterion for the technical review  
4 committee to consider is how well the district is using its existing ability to generate  
5 revenue. If the district fails to generate the money, then the committee will have to look at  
6 how the level of service is set or at phasing the area to catch up to the standard. Hopefully  
7 the committee won't run into that kind of thing. If level of service standards are set by the  
8 community that is being served, then the community would hope to generate the revenue  
9 necessary to achieve that standard. If that doesn't happen, then something is off, and they  
10 need to look at it.

11  
12 The Council will receive the interim transportation concurrency ordinance next week.  
13 There is skeletal version of the special district ordinance. He hopes that will be before the  
14 Council for introduction in December.

15  
16  
17 **OTHER BUSINESS**

18  
19 There was no other business.

20  
21  
22 **ADJOURN**

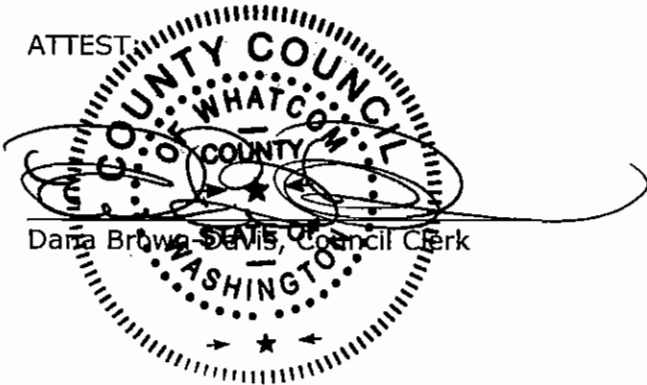
23  
24 The meeting adjourned at 12:15 p.m.

25  
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27 \_\_\_\_\_  
28 Jill Nixon, Minutes Transcription

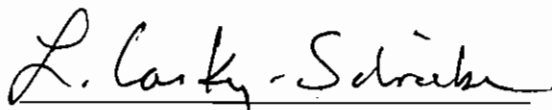
29  
30 The Council approved these minutes on January 30, 2007.

31  
32 ATTEST:

33 WHATCOM COUNTY COUNCIL  
34 WHATCOM COUNTY, WASHINGTON



Dana Brown-Davis, Council Clerk

  
Laurie Caskey-Schreiber, Council Chair