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WHATCOM COUNTY COUNCIL  
**Planning and Development Committee**

May 9, 2006

Committee Chair Seth Fleetwood called the meeting to order at 2:37 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner  
Dan McShane

Absent:

None

Also Present:

Carl Weimer  
Laurie Caskey-Schreiber

**COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL**

**1. ORDINANCE ADOPTING SHORT TERM PLANNING AREA ZONING OVERLAY DESIGNATION IN THE FERNDALE UGA SOUTH OF THORNTON ROAD (AB2006-186A)**

*(Clerk's Note: The audiotape recording of this meeting begins halfway through tape one, side A. Approximately the first half of tape one, side A is blank.)*

McShane stated he understands that this subdivision goes to the Hearing Examiner and includes the next item on the agenda. The other approval is going from a long-term to a short-term planning area. He asked why this was done this way.

Troy Holbrook, Planning and Development Services Department, stated the long- and short-term designations are in many urban growth areas (UGA's). The County can't approve a plat until it is in a short-term planning area.

McShane stated an application went in for the plat. There was a separate application for the change from long-term to short-term planning area. Approval is dependent upon the Hearing Examiner review and the Council change from long- to short-term planning area.

Doug Robertson, applicant representative, stated this issue goes back a while. In 2003, the owners filed a seven-lot subdivision. The applicant wants to do more than seven lots. He explained the history of this project. It's in the Ferndale UGA. The project obtained approval for annexation, but the area cannot annex until it is in the short-term planning area. At this point, they developed the method and project that would meet the requirements of the County Comprehensive Plan, Ferndale Comprehensive Plan, and then the change in law from the Viking case that eliminated the bright line rule of four units per acre. The Hearing Examiner adopted the plat and recommends that the Council approve the PUD with conditions. The Council must approve the plat and decide on the site-specific rezone.

If the project is approved, there is no longer a burden on County staff. The property is annexed and goes into the City. The project would make minor adjustments to accommodate the city's PUD ordinance.

1  
2 Fleetwood asked if the Council is approving both a long-plat and a planned unit  
3 development (PUD). Robertson stated the short-plat is an old gift exemption short-plat. It  
4 is vested. The developers don't want to exercise the vested short-plat. They hope the  
5 recommendation from the Hearing Examiner on the long-plat and the PUD is adopted by the  
6 Council, and the Council approves the recommendation to approve the site-specific rezone.  
7

8 Fleetwood asked if the Council has to approve the rezone before it can approve the  
9 plat and the PUD. Robertson stated the plat can be approved only with sewer and water.  
10 The developer's agreement says the City of Ferndale will provide water and sewer if it is  
11 annexed. The plat can be approved without the change from a long-term to a short-term  
12 planning area. However, the condition of the plat can't be fulfilled until it's annexed.  
13

14 Holbrook stated the County typically does the rezone first, then does the  
15 development application. Whatcom County has odd regulation about site-specific rezone  
16 that blurs the lines between rezones and project approval. It is difficult to administer, and  
17 causes some confusion.  
18

19 McShane stated that if the plat is approved, the project can't go forward unless it is  
20 rezoned. There isn't any water.  
21

22 Tom Black, City of Ferndale Planning and Building Director, submitted written  
23 testimony for this and the next item (*on file*). He read the letter. The City of Ferndale  
24 approves of annexation of this property. A more direct approach would be for the County  
25 Executive to rescind his letter dated April 21, 2006 to the Boundary Review Board, which  
26 kept the property from being automatically annexed on April 24. If that were done, the  
27 annexation would become final. This property should be in the short-term planning area,  
28 especially considering that 47 percent of the area within the short-term planning area is  
29 classified as not buildable. Approve the re-designation from long-term to short-term  
30 planning area.  
31

32 Brenner asked why the County Executive sent the letter to the Boundary Review  
33 Board. Holbrook stated that when a city brings an application to the Boundary Review  
34 Board for review, there is a 45-day period to act. If the County doesn't raise any issues,  
35 the Board automatically approves the annexation. The 45-day period already elapsed  
36 several weeks ago. This area has not yet been rezoned. According to the Comprehensive  
37 Plan and zoning code, it can't be annexed. According to interlocal agreement and the  
38 Comprehensive Plan, an interlocal agreement has to be signed before there is annexation.  
39 Neither of those things happened. The Executive requested they stop the 45-day period  
40 until the interlocal agreement is worked out.  
41

42 Brenner stated that the Council has had other project proposals where part of the  
43 property is in the long-term planning area and part is in the short-term planning area.  
44 Everything is ready for project approval in the short-term planning areas, including services.  
45 This is right next to the city boundary. She asked if the County just wanted to go through  
46 the exercise. Holbrook stated the staff is charged with implementing the Comprehensive  
47 Plan. They are getting better at it each time property is annexed. They are following the  
48 procedures in the Comprehensive Plan to make sure the goals and objectives are met and  
49 the interlocal agreement is signed before the Board finalizes the annexation.  
50

51 Brenner asked if some red flags went up. Holbrook stated the red flags were that  
52 there was no interlocal agreement and it is in the long-term planning area.  
53

1 Brenner asked if there is any way to streamline this kind of process. If there are no  
2 red flags and the issue is just about process, she would like to clean up the process.  
3 Holbrook stated they've had a haphazard process over the years. The last few months,  
4 they've started to refine that process to come up with procedures to follow.  
5

6 Robertson stated there is a question of density. He understands the City's position.  
7 However, the shortest distance to success is to have the County approve it now. They've  
8 got the proposal. Staff did the work. Look at it.  
9

10 This is similar to the Friberg Comprehensive Plan amendment. This area of Ferndale  
11 has a need for additional land. All the services are there. All the factors and policy 2S-1  
12 have been met. The staff report from February identified an inaccurate density number that  
13 included government properties that shouldn't have been included. It also didn't take into  
14 account pending development applications. Theirs is a more expanded look. The density in  
15 the short-term planning area meets the Ferndale Comprehensive Plan. It may not meet the  
16 encouraged density standard of six to eight units per acre.  
17

18 The City Comprehensive Plan sets forth a specific goal of concentric circles of  
19 development, with higher density closer to the middle. That was adopted through the  
20 Whatcom County Comprehensive Plan policy 2W-2, which identifies an average of three  
21 units per acre in Ferndale. The difficulty is with the section that says the County will  
22 encourage a density of six to eight units per acre. The Growth Management Hearings Board  
23 says the minimum urban density is four units per acre. Meeting that urban level will meet  
24 urban requirements, which is consistent with policy 2P-3. Policy 2P-3 is to encourage infill  
25 that is harmonious with current development. Placing a very dense development on the  
26 edge of Ferndale would violate that policy.  
27

28 Between that time and now, laws and policies changed. He asked that the Council  
29 enforce the agreements that all parties entered into. As long as they achieve a density of  
30 four dwelling units per acre, the County staff supports it. There are significant  
31 environmental constraints in a certain area of the property. The site has gone through  
32 years of planning. It's surrounded by an urban level of development now. The location is  
33 appropriate because of nearby schools and other services. The demand is there. In the  
34 development process, a standard of four units per acre was set and met. This is a finely  
35 crafted development that meets the requirements given to the applicant. Approve the site-  
36 specific rezone.  
37

38 Fleetwood asked the location of the property. Robertson indicated the location of the  
39 area on the map.  
40

41 Fleetwood asked if 32 acres is open space, most of which is wetlands. A little bit less  
42 than half is open space. Robertson indicated the open space areas on the map.  
43

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

46 Fleetwood stated Mr. Robertson makes the case of demand in excess of supply, and  
47 references the fact that Pacific Highlands lots began being sold for \$60,000 per acre and  
48 concluded by being sold for \$110,000 acre. Mr. Robertson indicated that there are price  
49 increases only when there is demand in excess of supply. The Council has heard that it is  
50 not just about supply and demand. It is about in-migration and 70 percent of the  
51 newcomers coming in from other places. Some would say it's less about supply and  
52 demand and more about capacity to pay. Robertson stated all four phases of the Pacific  
53 Highland plat are complete. The last lots are going for over \$130,000. They are selling as

1 quickly as the developer wants them released. That demand has continued. In excess of  
2 70 percent of the Pacific Highlands buyers were from Whatcom County, the majority from  
3 Ferndale. SAS Consulting looked at the address on the excise tax affidavits. There are a  
4 number of economic reasons why that is happening. The urban core of Bellingham is  
5 increasing in price even faster. People who might want to live here are being displaced to a  
6 more economically acceptable environment.  
7

8 Also, demand is not one of ethnocentricity. They can't say the demand will only be  
9 for Whatcom County people. They don't get to control where the buyers come from. These  
10 are single family residences with homeowners dues and in a neighborhood. These are the  
11 people who will live and work in Whatcom County.  
12

13 Fleetwood stated he was suggesting that it's because there are more people here  
14 with the ability to pay a higher price, rather than it being purely a supply and demand issue.  
15 Robertson stated the demand is shown. Price usually only increases when demand exceeds  
16 supply.  
17

18 Fleetwood asked the evidence that the County encouraged Ferndale to have higher  
19 densities. Holbrook stated there were a number of rezones before the Council that were  
20 around Ferndale. This is different. This project came in as a site-specific rezone, which has  
21 a project attached to it. The zoning now is urban residential, three units per acre (UR-3),  
22 which was not compliant with GMA according to the Hearings Board. This was a vested  
23 application. The County worked with the applicant to get density to over four units per  
24 acre. Density could have been three units per acre or less. The applicant was vested at the  
25 existing zoning at that time.  
26

27 Brenner stated this started before the County Council adopted those numbers. This  
28 project was caught in the process.  
29

30 McShane stated the Hearing Examiner discusses Goal 2P of the current  
31 Comprehensive Plan. He addressed this because the County staff raised the need for  
32 compliance with the Comprehensive Plan before approval. He asked if the Hearing  
33 Examiner is reviewing this in light of what the Comprehensive would say at the time the  
34 application came forward. Holbrook stated the site-specific rezone is an unusual  
35 mechanism. Typically, they do the rezone before the application. These came in together,  
36 and seem to compete. The plat is vested under the older rules. The rezone is reviewed  
37 under the current policies. There is still the existing zoning of the UR-3. The County needs  
38 to go back to the Comprehensive Plan and do some work.  
39

40 McShane stated the property is vested at that zoning. The property must get  
41 annexed and put in the short-term planning area. The County has an interlocal agreement  
42 with Ferndale regarding that. He asked about Hearing Examiner's discussion of goal 2P.  
43 The Hearing Examiner says that lower density of this can be balanced by higher density in  
44 other areas of UGA. He continued to read from the Hearing Examiner that meeting the  
45 goals of the County Comprehensive Plan will require an average residential density for  
46 future annexations that are significantly higher than the density proposed here. There isn't  
47 a record that the City of Ferndale is doing that. The Ferndale Comprehensive Plan sounds  
48 like it is contrary to the County Comprehensive Plan.  
49

50 A second issue is about how property values are really getting high. There are many  
51 expensive lots. Demand is there. It sounds like they need more lots. He asked why they  
52 would create fewer large lots when there is an opportunity to create more lots of a smaller  
53 size. He asked the advantage of creating fewer lots. They may not sell for as much

1 because they are smaller, but the lots sizes proposed are big enough for even two houses.  
2 There are plenty of neighborhoods in urban cores that have much smaller lots.  
3

4 Fleetwood asked why the City opposes a density of six units per acre. Black stated  
5 goal 2P is not new language. When the County staff updated the Comprehensive Plan, all  
6 the planning directors from the cities spent a year working on the language. For this  
7 specific goal, the directors approved "encourage" and "net density." The small city directors  
8 went along with the language because the word "encourage" would be retained, and not  
9 change to "required." In terms of the density, all the cities agreed with the numbers  
10 because they translated in lower densities per gross acre, which conformed more to city  
11 zoning. The problem is how they look at net density, at the beginning or the end of the  
12 process. Zoning can yield four to five units per gross acre, which equals five to seven units  
13 per net acre. They were not thinking about establishing minimum densities within the  
14 cities. They were thinking about how zoning classifications matched with the designation of  
15 six to eight net units per acre.  
16

17 Since that came out, the City has adopted a PUD ordinance and revised it a couple of  
18 times. It is a vehicle for people to achieve higher densities. About 60 percent of the  
19 projects gone through the City have gone through the PUD ordinance. Most of the projects  
20 were approved at a much higher density. The City is concerned about achieving density.  
21 There needs to be flexibility in terms of where the density will be established. The City  
22 agrees with policy 2P. The City supports the property being annexed and the project going  
23 forward, by whatever vehicle they use to make it happen.  
24

25 Brenner stated Mr. Robertson talked about the fact that Ferndale's character plan  
26 shows the most density at the urban core. To some degree, the County must work with the  
27 cities on their character plans. She recalled that the six to eight density only applies to  
28 Ferndale. The other small cities have a density of four units per acre. Black stated there is  
29 a range of densities for the small cities. The City of Lynden asked for their density to be  
30 lowered, and it was.  
31

32 Brenner stated most of the small cities have a densities of four units per acre. The  
33 demand is for single family residents. It's a bigger demand than the condos.  
34

35 McShane stated the zoning would be 10,500 square feet. Black stated that is  
36 correct. It is 4.2 units per gross and six units per net acre.  
37

38 McShane asked the size of the lots. Black stated 4,000 square feet is the smallest  
39 size lot allowed by the PUD ordinance. If there isn't a PUD, the development is done as a  
40 straight plat, with a 10,500-square foot minimum lot size. The developer found there were  
41 more critical areas than they thought. Going with a PUD allowed them to achieve roughly  
42 the same number of units.  
43

44 McShane stated the PUD has to be reviewed by the County, but is under the City's  
45 jurisdiction as well, with some caveats. Ultimately, the City will be completely in charge of  
46 it. Black stated it probably needs to meet a couple of modifications to meet the City's  
47 requirements.  
48

49 *(Clerk's Note: Changed tapes at 3:25 p.m., halfway through tape one, side B. The*  
50 *last half of tape two, side B is blank. Begin tape two, side A.)*  
51

52 Weimer asked about gross versus net acreage.  
53

1 McShane stated it has to do with a lot of wetlands. They're not taking that out.  
2

3 Black stated the way the Comprehensive Plan and zoning designations were written,  
4 which is the way most cities' were written, is to establish minimum lot size and maximum  
5 density.  
6

7 Robertson stated Councilmember McShane asked why they don't build more lots if  
8 the demand is there. They are constrained by the County and City comprehensive plans.  
9 He read County Comprehensive Plan goal 2W-2. One policy says the County will encourage  
10 a density of six to eight units. Policy 2W-2 specifies three units. The City of Ferndale  
11 Comprehensive Plan says they want this to be low density. The County Comprehensive Plan  
12 goal 2P-3 says development will be harmonious. The developer could sell a bunch of 5,000  
13 square foot lots out there, but it wouldn't be harmonious with the surrounding area. It  
14 would be relatively inefficient. They want to reduce the number of trips at \$3 per gallon of  
15 gas. There isn't much commercial development in this area. They would want high density  
16 in the core so people can walk to services. They don't want high density development on  
17 the urban fringe because it requires more services. That's why planning is historically done  
18 in concentric circles. To make it all fit together, it must conform with all the policies.  
19

20 The other thing is how the County is encouraging this. The County Planning staff has  
21 been encouraging it vigorously, started with Sylvia Goodwin, who said that the cities must  
22 meet this level of density, or it will never be adopted. County staff is encouraging this most  
23 vigorously. That's why they've reached the results here.  
24

25 Paul Leavitt, Leavitt Companies, stated he represents the developer. They have  
26 been working with the City and County for three years to meet everyone's' jurisdictional  
27 requirements. This plan has gone through many iterations. Everyone has been cooperative  
28 and supportive. Regarding density, the property is vested with a seven-lot short-plat, but  
29 he has no desire to develop it. That density doesn't meet anyone's Comprehensive Plan  
30 goals. It is right next to schools. He intends to build a nice neighborhood. Regarding the  
31 ability to create more lots, there are many constraints in the area in addition to the central  
32 wetland area. The bigger lots may not be able to divide into two smaller lots because of  
33 those constraints. They've used the property the best way they could find. He thanked the  
34 City and County staff for their help along the way. Approve the staff and Hearing  
35 Examiner's recommendations.  
36

37 **Brenner moved** to recommend approval to the full Council.  
38

39 Caskey-Schreiber stated this reminds her of the Birch Bay area conversion from  
40 long-term to short-term planning. She asked why development is leaking into long-term  
41 planning areas. She asked if the County is mandated to use the short-term areas before  
42 using the long-term areas. She asked why there is a differentiation between the short- and  
43 long-term planning areas. Holbrook stated the short- and long-term planning areas  
44 resulted because the Hearings Board determined that the UGA's were too large. As a  
45 compromise, instead of shrinking the UGA's, the County came up with the short- and long-  
46 term planning areas. There are several policies in the Comprehensive Plan that describe the  
47 policies for converting from a long-term to a short-term planning area. To convert, there  
48 must be demand and available urban services. Ninety percent of a UGA must be in the  
49 short-term planning area, but they aren't.  
50

51 In 2007, the County must look at all its urban growth areas. The staff has already  
52 started that work. The County is working with the cities as well. The policies will be fine-  
53 tuned and more consistent, through that process.

1  
2 Caskey-Schreiber stated they are constantly dealing with the loss of farmland. Some  
3 programs are in place to address the loss. When the County converts from long-term to  
4 short-term planning areas, it is not allowed to have any mitigation measures in place.  
5 Holbrook stated staff is working on that question. A major issue is the conversion of UGA's  
6 and how to mitigate for loss of resource lands. The Council and Planning Commission will  
7 discuss those issues in the next few weeks.  
8

9 Brenner stated this development is divided between the long- and short-term  
10 planning areas. It is right on the city limits. Services are available. In the past, the  
11 Council approved conversions to even up the lines on the map, which divided properties.  
12 Since then, two new schools have been built in that area. Situations have changed.  
13

14 McShane stated the comments today were helpful. He appreciates Mr. Black's  
15 continued civility on this issue. Unfortunately, the only way to encourage the density is to  
16 continue to be a pain in the neck to Ferndale. It's tempting to want to continue that.  
17 However, given the circumstances of this particular project, he will vote for approval.  
18 However, he still feels strongly about it. He disagrees with the idea of having more dense  
19 urban cores and less density farther from the core. In all the communities he's seen around  
20 the country, that is the approach that has been taken, and that is what causes sprawl.  
21 Snohomish County is having to knock down houses built in 1985 to redevelop the sprawl.  
22 At the time, the developments fit the community, but they didn't provide enough housing  
23 for those communities. The lot prices are very high because the lots were big in the 1980's.  
24 Now, the homes are put in much more tightly. Now, affordable neighborhoods are being  
25 built in Bothell and Mill Creek. They are not large, single-family lots. He hopes that the  
26 County planners will carry that forward. He appreciates the effort they put into it. He  
27 hopes the small cities consider this carefully. Ferndale is not the only city with which the  
28 County had this issue. The City of Sumas is exceeding its density requirements. It can be  
29 done. The City of Everson is putting effort into smaller lots and greater density. They are  
30 going to run out of affordable single-family housing if all they develop is large lots,  
31 particularly if the lots are constrained by wetlands. Those planned unit developments  
32 should be given every break to create as many buildable lots as possible, or else the lands  
33 shouldn't be urban growth areas.  
34

35 Fleetwood stated he agreed with Councilmember McShane.  
36

37 ***Motion carried unanimously.***  
38

39 **1A. CONSIDERATION OF THE HEARING EXAMINER'S RECOMMENDED APPROVAL**  
40 **OF A PROPOSED PRELIMINARY LONG SUBDIVISION, PLANNED UNIT**  
41 **DEVELOPMENT [AND SITE SPECIFIC REZONE] FOR "BLOMQUIST HEIGHTS,"**  
42 **FILED BY DONALD LEAVITT (AB2006-186)**  
43

44 ***McShane moved*** to recommend approval to the full Council.  
45

46 ***Motion carried unanimously.***  
47

48 *(Clerk's Note: The Committee took a five-minute break.)*  
49  
50

51 **COMMITTEE DISCUSSION**  
52

1 **1. DISCUSSION REGARDING THE FOLLOWING DRAFT PROPOSAL: WHENEVER**  
2 **A SIGNIFICANT NUMBER OF DEVELOPMENT RIGHTS (MINIMUM 75% OF**  
3 **AVAILABLE RIGHTS) ARE REMOVED FROM WITHIN THE LAKE WHATCOM**  
4 **WATERSHED, AND A PROPOSED SUBDIVISION WILL BE SERVICED BY**  
5 **PUBLIC SEWER, WATER, AND STORMWATER, AND A DEVELOPER ENTERS**  
6 **INTO A DEVELOPMENT AGREEMENT WITH WHATCOM COUNTY, THE**  
7 **DEVELOPMENT SHALL BE EXEMPT FROM SUBDIVISION MORATORIUMS**  
8 **(AB2006-172A)**  
9

10 Fleetwood stated this is in response to re-approval of another six-month moratorium  
11 on subdivisions in the Lake Whatcom watershed.  
12

13 Caskey-Schreiber stated they can't continue the subdivision moratorium forever.  
14 There must be some kind of plan of action. Figure out what they are trying to accomplish,  
15 and get it done. She's learned that urbanization of a watershed is not a good thing. She  
16 would like to build an incentive to remove some of the development rights in the watershed  
17 and if there is a way to allow development to occur in the least invasive way possible. She  
18 doesn't know if the 75 percent transfer out is the right thing to do. They must figure out  
19 the threshold of what the watershed can bear to allow a subdivision to occur. If they don't  
20 want subdivisions, they must make changes to the zoning. They can't keep waiting for the  
21 Department of Ecology to finish the total maximum daily load (TMDL) study.  
22

23 Brenner asked if they could amend the language, "Be It Further Ordained that  
24 whenever a significant number of some development rights (minimum 75% of available  
25 rights) are removed or transferred from within the watershed, and the proposed..." What  
26 they are saying is that the proposals would have public water, sewer, and stormwater.  
27 Also, have a development agreement with the County. She can't imagine the County is  
28 going to buy all the properties in the watershed.  
29

30 McShane stated the subdivision moratorium wouldn't apply to forest areas, unless  
31 the development were to cluster. The County isn't required to move forward because of the  
32 moratorium. However, it's worth talking about a way to deal with the rural, one unit per  
33 five acre (R5A) zone separately, although the moratorium would interfere if they are doing a  
34 smaller lot creation in the R5A zone. Spend some time dealing with the R5A zone and see if  
35 there is a way to develop cluster standards and agreements that would improve upon the  
36 risks caused by a full build-out of the R5A zone.  
37

38 Caskey-Schreiber stated there are 124 R5A parcels in the watershed that can be  
39 developed. The fundamental question is whether it's better to facilitate sewer, stormwater,  
40 clustering, and an agreement on conservation land or to just allow them to build out. She  
41 doesn't know the answer. The biggest threat to that lake now is phosphorus. Clearing and  
42 road building can be just as damaging as a cluster development with sewer and water. She  
43 asked if they want to take action on one to eliminate the problem from the other, or if they  
44 think it's okay to have 124 individual R5A lots built out.  
45

46 Brenner stated she's interested in addressing all the areas in the watershed, not just  
47 areas zoned R5A. If they go through a developer agreement, the County could have more  
48 open areas of forestry. That could be very beneficial. Deal with all the zones in the  
49 watershed.  
50

51 McShane stated a Comprehensive Plan amendment proposal was for cluster division  
52 rules for forestry land, from John Belisle. They have docketed that process already. If the  
53 Council approves something for the rural forestry lands, cluster development would be

1 encouraged and allowed in the rural forestry land, even with the moratorium. Holbrook  
2 stated the developer agreement would come in handy. They can come up with the land to  
3 tailor a development.  
4

5 Crawford stated they need to make some decisions regarding Lake Whatcom. There  
6 are very good things about Iverson's proposal, but a lot of other people are waiting. The  
7 Council should provide predictability. He is concerned about adapting the moratorium,  
8 which is supposed to be temporary, as time goes on. Provide people with predictability. If  
9 this Council wants to do rezones based on environmental considerations for Lake Whatcom,  
10 then discuss it. There are not a lot of other kinds of zones besides R5A and rural forestry  
11 left in the watershed. From a zoning perspective, there aren't other things to do. It sounds  
12 like this developer has a reasonable proposal that the County should work with. The  
13 extension of water and sewer, to keep that stuff out of Lake Whatcom, is a smart thing to  
14 do. The developer may not be able to give up 75 percent of his density, but he is willing to  
15 forego some of his density, and the County should work with him. Overall, he is concerned  
16 about continuing the moratorium. Amending moratoria gets into the realm of zoning.  
17 Instead, just talk about zoning.  
18

19 Caskey-Schreiber stated she started working on this in response to the proposal  
20 from Mr. Sygitowicz and Mr. Iverson. However, it became a concept to her. Whatever they  
21 do should apply to the entire watershed. That's why she's trying to figure out if they should  
22 begin to encourage clustering or figure out correct zoning. She doesn't think the density  
23 can go lower than R5A and rural forestry without dealing with a takings issue. That's not  
24 where this Council want to go. Address the development of all these remaining parcels in a  
25 way that they will enhance the watershed.  
26

27 Brenner stated that when they first did the moratorium, the Council talked about  
28 whittling their way down to the biggest problems. The Council is working on it. The more  
29 they can reduce what they're dealing with, the clearer they will know what needs to be done  
30 in the end. In the end, the Council may decide there are more critical areas in the  
31 watershed that are the most problematic. If they can identify those most problematic  
32 areas, the County may decide to buy those development rights instead of trying to deal with  
33 the problem. That's why she likes the idea of whittling down the problem. They are  
34 supposed to be working their way toward a resolution. They're getting there. It won't be  
35 much longer.  
36

37 She likes this concept. If they specify 75 percent, few people will take advantage of  
38 it. However, the concept is good. Don't specify an amount of development rights.  
39

40 Fleetwood stated they are trying to get the most protection they can for the  
41 remaining developable acres in the watershed. This moratorium was in place until the  
42 Council could take final steps that would justify lifting it. It would be good if the Council re-  
43 clarified the process by which the moratorium would be lifted. The Council needs to decide  
44 what expertise it needs to make these decisions on how to encourage environmentally-  
45 friendly development.  
46

47 McShane stated the issue with the moratorium is that there is at least one group that  
48 is thinking of doing something different on an area zoned in a way that doesn't preclude the  
49 group from subdividing. There are two maps showing the Council two approaches. The  
50 moratorium would allow the group to subdivide and create the lots. The moratorium isn't  
51 stopping them from subdividing and creating lots.  
52

1 He talked to people about the watershed some time ago when he proposed a  
2 significant zoning change. A majority of the Council ultimately agreed to the change. He  
3 was asked why the Council doesn't just make it rural or commercial forestry, and have a  
4 complete downzone. He is uncomfortable with that. It starts to push the envelope of  
5 fairness and what's right. He's not comfortable going with density less than R5A, or in this  
6 case 20-acre zoning. The idea of clustering in forestland is advantageous to development.  
7 It's a lot less expensive.

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

10  
11 McShane continued to state that Councilmember Caskey-Schreiber's concept points  
12 out that there may be another way to build out or divide these areas that could be more  
13 environmentally sound for watershed protection. He is very receptive to this idea. The R5A  
14 or rural forestry zoning, and their associated roads, could be very detrimental to the  
15 watershed. Roads are more detrimental than the houses. This is an opportunity to provide  
16 greater protection to the lake. Under the current rules, it couldn't go forward. There would  
17 have to be agreements for sewer and water.

18  
19 Caskey-Schreiber stated public sewer, public water, stormwater, and developer  
20 agreement all work to protect the watershed. They work better than roads blanketing a  
21 property zoned R5A. It's difficult to determine and justify a number of development rights  
22 to be transferred. She would be comfortable if a proportion of the development rights were  
23 removed and there if there were a developer's agreement. It may be better to have the  
24 remaining developable lands serviced by public sewer and water. It will have less impact  
25 overall if the County can motivate people. To get public sewer and water, developers will  
26 have to be aggressive about getting development rights. It won't be worth it for just four or  
27 five units in a cluster. Property owners and developers will have to partner to put  
28 something large enough together. That's what Mr. Sygitowicz has done. They are willing to  
29 work together to make something happen. Water District 10 is committed to not offering  
30 water unless developers agree to hook up to sewer. She is willing to drop out the  
31 quantitative number of development rights, as long as there is incentive for a proportion of  
32 the development rights to be transferred out of the watershed or conserved.

33  
34 Fleetwood stated everyone is saying there is a better scheme by which the County  
35 can encourage development that is better for the lake. He asked what the Council needs to  
36 take a formal step and approve something. He asked if they want to bring people forward  
37 and put some expertise on the record.

38  
39 Joan Beardsley, Bellingham City Council, asked if its possible to have a joint  
40 discussion with the Lake Whatcom Management Committee. No one on the City Council is  
41 tuned in to what the County Council is talking about. Their transfer of development rights  
42 (TDR) program isn't working. They've just finished rezoning the urban growth area (UGA).  
43 That rezone is their first and best opportunity to get TDR's working again. There is  
44 opportunity for developers to upzone if they buy TDR's. They just floated a bond for \$4  
45 million for an unincorporated property in the watershed. Have a joint discussion with the  
46 City Council.

47  
48 Caskey-Schreiber stated she has approached City Council Member Ryan. At the next  
49 Joint Lake Management Committee meeting, there will be a stormwater expert to speak.  
50 That will add to the discussion. The County Council has long been concerned about the  
51 City's area of Lake Whatcom being in the urban growth area. The County waited patiently  
52 for action on that, but it hasn't happened. Beardsley stated it may be time for the City and

1 County councils to talk more directly instead of getting messages from others. This is such  
2 an important issue, they should talk about their plans so they coincide.

3  
4 Brenner stated she agrees. This proposal is a plus for everyone. There isn't a  
5 problem doing this as an interim. The Council needs to make progress on the moratorium.  
6 This proposal looks very good.

7  
8 Caskey-Schreiber stated that whatever they do, it will apply to everyone in the  
9 watershed, not just one property owner. It would hopefully motivate others to think about  
10 joining other property owners to do this kind of thing. She wants this to be done on all the  
11 remaining 124 five-acre parcels and 28 rural forestry parcels.

12  
13 Brenner stated she doesn't want to force everyone to do this. It will set up different  
14 classes of people. Incentives are great.

15  
16 Caskey-Schreiber stated this is an incentive.

17  
18 McShane stated he would like input on other ideas besides this.

19  
20 Mary Dickinson, Building Industry Association (BIA) Governmental Affairs Director,  
21 stated get legal involved as soon as possible. They are talking about an interim  
22 moratorium, which is supposed to be a time-out that is supposed to apply to everyone.  
23 Make sure they do it procedurally correct.

24  
25 Council Member Beardsley is correct that the TDR program is not working. Have the  
26 Joint Management Committee create a task force to work on it.

27  
28 Crawford stated they've taken extreme measures to force the TDR program to work.  
29 They haven't seen the outcome of those measures yet. To subdivide in the Bellingham  
30 urban growth area, developers must subdivide to the maximum density that the acquisition  
31 of TDR's will allow. His clients cannot get water unless they develop with the maximum  
32 number of development rights, through TDR's.

33  
34 Holbrook stated that is the City's adopted policy. The developer has to develop to  
35 the maximum reasonable for the property.

36  
37 Crawford stated the City has taken draconian measures to force TDR's.

38  
39 Dickinson stated don't set a number of development rights without getting legal  
40 counsel involved. If it gets to be too high, there could be legal action.

41  
42 McShane stated the moratorium does not apply specifically to the R5A and twenty-  
43 acre zones.

44  
45 Brenner asked if the County is a party to the City's policy. Holbrook stated it is not.  
46 The County determines the density through the zoning code and development regulations.  
47 The City extends sewer and water only if built to the maximum density possible.

48  
49 Brenner asked if the County is working with the City on the TDR's. Holbrook stated  
50 the utility extension policy was adopted almost two years ago. It's only a policy, and is not  
51 codified. The City will revise the policy once the Bellingham subarea plan is adopted. They  
52 can address TDR's and development transfers through the subarea plan process and  
53 interlocal agreement.

1  
2 Crawford stated the water portion of the City's policy was adopted in March. He  
3 would like to know if there are exceptions for site constraints.  
4

5 McShane stated it seems there is interest in docketing an item that deals with  
6 clustering in the rural forestry zone. They've already begun that process. They may want it  
7 to apply anyone in the rural forestry zone. He asked if the Council would have to change  
8 the zoning rules if they change the clustering provisions and talk about reducing density as  
9 part of the clustering, with water and sewer agreements. Holbrook stated they would make  
10 sure Title 20, zoning, and Title 21, subdivisions, are consistent. During the docket process,  
11 staff can do the associated zoning text amendment.  
12

13 McShane stated anyone interested in clustering, which would be to their advantage,  
14 will have challenges in getting water, and it may be expensive to build the roads. They  
15 don't need to be in a big rush to get anything done quickly. A developer can still subdivide  
16 right now. He would encourage them to look at alternative approaches that are a win for  
17 watershed protection. They wouldn't be in any hurry. The developer wouldn't be able to do  
18 this anyway, even under current rules, because of the water and sewer extension.  
19

20 Caskey-Schreiber stated the water and sewer are from Water District 10. The  
21 district is applying for an expansion to serve this proposed development.  
22

23 McShane stated the County Council ultimately approves that extension. It will take  
24 some time to get it right.  
25

26 Brenner stated the Council shouldn't work on this to the point where people develop  
27 the way it is. With the slightest tweak to the cluster development ordinance, there could be  
28 a win for everyone in the near future. The one major problem with clustering is the one big  
29 housing lot that is allowed in the middle of the remainder parcel.  
30

31 Crawford stated this is going to be complex. Continue on working with the zoning  
32 and get rid of the moratorium. This particular developer could work on that complex  
33 process with staff to formulate a step-by-step plan of action. Continue to work on this.  
34 Don't change the moratorium, even though he is not in favor of it. Use this proposal as an  
35 example of what can be done in the watershed. This Council is willing to work with the  
36 developer. It sees the potential for watershed protection.  
37

38 Caskey-Schreiber stated the entire goal today is to figure out the long-term goals for  
39 the moratorium. The moratorium is the County's hammer for participation in transferring  
40 development rights out of the watershed. She is in favor of putting this amendment  
41 through during the moratorium to see how much voluntary participation they get. Take the  
42 time they need to figure out the language to amend this.  
43

44 Fleetwood stated there were a number of legal, process, and other questions raised  
45 that the committee needs answers to. At the next committee meeting or the one after,  
46 unveil the process and get to work.  
47

48 Brenner stated the best thing to do may be to vote to send the concept forward to  
49 the Planning Department, so they can propose a process and timeframe. The Council's legal  
50 counsel needs to be consulted. Holbrook stated this is related to the Council's discussion on  
51 resource lands at its special meeting next Tuesday.  
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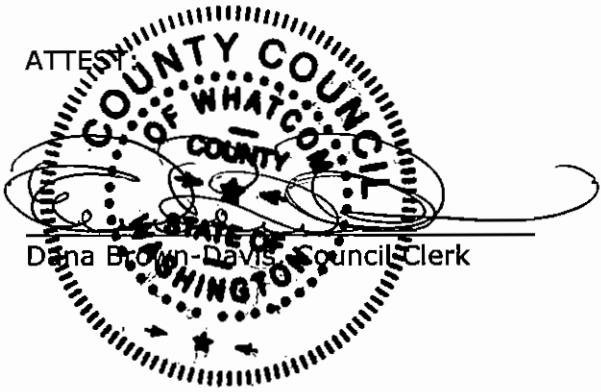
**OTHER BUSINESS**

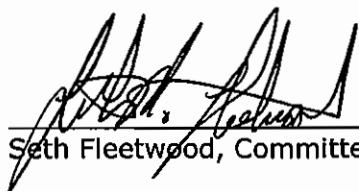
There was no other business.

**ADJOURN**

The meeting adjourned at approximately 4:30 p.m.

  
\_\_\_\_\_  
Jill Nixon, Minutes Transcription

ATTEST  
  
\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON  
  
\_\_\_\_\_  
Seth Fleetwood, Committee Chair