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WHATCOM COUNTY COUNCIL  
**Special County Council**

March 20, 2007

Council Chair Carl Weimer called the meeting to order at 2:05 p.m. in the Whatcom County Civic Center Annex, Second Floor Meeting Room, 322 N. Commercial, Bellingham, Washington.

Present:

Barbara Brenner  
Dan McShane  
Seth Fleetwood  
Laurie Caskey-Schreiber

Absent:

L. Ward Nelson  
Sam Crawford

**1. TRANSFER OF DEVELOPMENT RIGHTS (TDR) PRESENTATION**

Veronica Wisniewski, Purchase of Development Rights Oversight Committee Vice-Chair, stated a goal of the purchase of development rights (PDR) program is to establish a voluntary program to acquire development rights from county farmers to protect agriculture. They have purchased 326 acres worth of development rights. They've extinguished 63 development rights. An additional 40 acres are under consideration. They have set a 100,000 acre threshold for maintaining agriculture in the county. Now, 80,000 acres are designated as agricultural land. Therefore, they have to protect an additional 20,000 acres. That would cost \$150 million.

Because that amount won't come from the pockets of the county taxpayers, they are considering the transfer of development rights (TDR) program to help protect that additional acreage. TDR's are used around Lake Whatcom. They haven't tried extending them to agricultural purposes.

Montgomery County, Virginia is the leading county in the country that has done this program successfully. Representatives from Snohomish County, who visited Montgomery County, are here today. She introduced the Snohomish County representatives.

Kraig Olason, Planning and Development Services Department, gave a presentation on a TDR overview (*on file*).

Brad Collins, City of Arlington Community Development Director, explained his background and the history of the City of Arlington's TDR implementation. It must be a partnership between the cities and counties. He gave a presentation (*on file*) on the Arlington TDR implementation. The percentage of farmland value that needs to be equal to the transfer of development rights needs to be about 60 percent of the farmland value from the developer's perspective, and 100 percent of the farmland value from the farmer's perspective. That is a gap on which they're working.

The City approved the process at some political risk, but the reward was saving the Stillaguamish Valley. Their elected officials understood that value. They weren't expanding the growth of the area. That additional population would still have come to the Arlington area, but would have sprawled around Arlington.

Their program requires a plan before the land use can go forward and a certificate before any building can go forward. The County manages the certificate in exchange for a

1 conservation easement. The County extinguishes the certificate. The County and City have  
2 met their obligations, and the partnership has been good.

3  
4 All the development in Arlington needed to take second place to the TDR program  
5 when sewer capacity issues arose. The TDR program actually became a way of getting  
6 sewer capacity over other annexations within the normal UGA areas. That provided a real  
7 incentive to go forward. Now, other properties want to join the TDR program, but they  
8 don't have a mechanism to do that.

9  
10 The County PDR program must pay the fair market value for development rights, but  
11 developers are free to negotiate a better deal. The County pays about three times what the  
12 developers expect to pay. Farmer's now expect to receive a higher price, now that there is  
13 an established market value. The developers are trying to deal with that. There wasn't a  
14 willing seller/willing buyer in that transaction. There was a public agency constrained by  
15 many requirements.

16  
17 One idea is related to the notion that if they must compensate property owners for  
18 downzones, they should be compensated for upzones provided to other property owners.  
19 Use those funds to help pay for these wipeouts.

20  
21 This is a process to balance property rights and their need to protect farmland and  
22 salmon. They must find solutions.

23  
24 Caskey-Schreiber stated they've struggled with getting the cities to be willing to  
25 allow the County to condition UGA expansion with the TDR program. She asked how a  
26 County elected official gets cooperation with the City. Collins stated there was a local  
27 benefit in his instance. The community was willing to eliminate their previous self-interest  
28 to save the valley. They need people from the cities who are willing to make it work. The  
29 State legislative action 1636 is a good way to start that process. The cities and counties  
30 have the same interests. What is good for building the cities is also what the counties need  
31 to do with their property owners. Cities need to accept that this development and growth  
32 benefits them, and they need to participate in this process to be respectful of private  
33 property rights. Initiative 933 is a wakeup call that they can't keep regulating and taxing  
34 the taxpayers. Initiative 933 failed because no one wanted to pay for the all the loss of  
35 property rights. PDR is a positive tool, and people from the cities must step up to the plate  
36 and argue that.

37  
38 Tom Niemann, Snohomish County Planning and Development Services, stated that  
39 from Snohomish County's perspective, it was a success because the County chose to work  
40 with one city, not all cities countywide. City officials got together and decided to work with  
41 the County and make sure the receiving area came into the UGA. The population allocation  
42 countywide includes a TDR reserve, which opens up an opportunity to bring land into the  
43 UGA, if someone can show it will meet TDR receiving area purposes that aren't there  
44 otherwise.

45  
46 McShane asked if the population projection for the unincorporated and non-UGA  
47 areas was fairly large. Niemann stated it was.

48  
49 McShane stated the County chose a very low population projection for its  
50 unincorporated and non-UGA areas. It doesn't come close to fitting what the land is zoned  
51 for, with the intention of instigating this sort of program. He advocated that the cities go  
52 for high population projections with the idea that they would become receiving areas. He  
53 asked about their separate population projection, which is almost like an accounting.  
54 Niemann stated it is. They had a large rural population allocation initially, so they had some  
55 flexibility to shift some of that population to the UGA.

1  
2 McShane asked what the receiving area looks like, and if the nexus is simply  
3 protecting the farmland and providing a payment mechanism. Collins stated Arlington  
4 developed a large, new community of 1,100 homes. It was well-received once it was built  
5 out. It was on an upland area overlooking a floodplain and airport area. The model was  
6 there for people to visualize. It's expensive housing. Another reason was that the City was  
7 very interested in protecting their long heritage of being a resource community. The City  
8 Council was willing to grow slowly to save the valley, particularly when the planner pointed  
9 out that the growth would happen around them, even if they don't put it in this nice,  
10 compact urban neighborhood. A third reason is that people in Arlington feel they have more  
11 opportunity to control the destiny of their community. The City and County officials were  
12 willing to work hard together.  
13

14 Chuck Antholt, citizen, asked if this program has been legally challenged and  
15 successfully defended. He asked about the 40 percent between what the developers are  
16 willing to pay and the farmers are willing to sell for. Collins stated there were political  
17 challenges at the beginning. One related challenge was at the Growth Management  
18 Hearings Board level, but not regarding the TDR program itself. The most critical challenge  
19 was with those people in the community who didn't understand the expensive sewage  
20 treatment upgrade plan or why they wanted to grow faster. The Mayor answered both  
21 questions by saying that this growth would happen anyway, and it's a question of how they  
22 handle it. They are not adding new people to the services. People began to understand  
23 that. Also, they had to upgrade the sewage treatment plant regardless, and it would be a  
24 lot less expensive if they had new development to help pay for it.  
25

26 Regarding the price difference, there is always a difference between a willing buyer  
27 and a willing seller. The 40 percent gap will probably shortened for two reasons. First, if  
28 the program doesn't go anywhere, there won't be developers, land sales, and ways for  
29 farmers to get money from their property. If the farmers are waiting for the County to  
30 purchase their development rights, it will be a long wait. If farmers can no longer make  
31 money on the farms, they must either sell the farms or sell the development rights.  
32

33 Brenner asked the acreage and number of dwelling units in the model development.  
34 Collins stated half has a density of four units per acre. The overall density is six units per  
35 acre, which is their low density acres. There are 330 acres, for a total of 1,800 dwelling  
36 units.  
37

38 Brenner asked how they can say they will develop faster and not slower. Nothing in  
39 Growth Management says that they can reach a point when they are done growing. If they  
40 develop faster, there will be a need for more development sooner. Collins stated that is  
41 correct. If they develop everything in five years, the urban growth area will transition from  
42 extra large to zero. They won't have an urban growth area in five years. If the City doesn't  
43 want to grow after that, they have to wait another 20 years for more urban growth area, if  
44 they can get away with that.  
45

46 Brenner stated that just puts the problem on the next people. Collins stated the City  
47 has taken more than its share of growth. The City didn't put it on the next people, it took  
48 that growth on itself.  
49

50 Caskey-Schreiber asked how the City denies more growth to anyone. Collins stated  
51 they won't say no. They will save the rest of the 3,000 acres and continue to expand. If  
52 successful, there will be an interest in doing this again. They won't want to wait ten years  
53 to expand the program if they can sell 1,000 acres of TDR's. Success will make it more  
54 desirable for them to continue this program. They will still be required to plan for  
55 additional growth. They may be able to successfully argue that, because they opted for

1 growth very fast, they ought to wait some time before they are given another lion's share of  
2 that growth. He doesn't know yet how that will play out.

3  
4 (Clerk's Note: End of tape one, side A.)  
5

6 Niemann discussed the history of the Snohomish County TDR program. Staff from  
7 Snohomish County went to three counties in the Washington D.C. area, including  
8 Montgomery County, Calvert County, and Charles County, to see what made their programs  
9 successful. He gave a presentation (*on file*) on the Snohomish County pathways to success.  
10 A reason for the program is to help farmers conserve the land base and farming. They are  
11 doing a countywide mapping project to identify all important agricultural lands. They are  
12 promoting agricultural processing facilities to promote economic development. The process  
13 they use is to shift development that could have occurred on farmland to an urban area in  
14 an orderly manner. He read the presentation on policy.

15  
16 Scott Camp, Snohomish County Finance Department, submitted and read from a  
17 summary comparing the agricultural acreage of the three Maryland counties (*on file*). The  
18 first two acronyms on the summary indicate local programs. The last three acronyms  
19 indicate state conservation easement programs. He read the presentation on finance in  
20 Montgomery County. The value is really determined by the balance of receiving areas to  
21 sending areas. With too few receiving areas, the developers don't have a market for the  
22 TDR's. With too many sending areas, the value for the farmers goes down.

23  
24 Shawn Aronow, Snohomish County Deputy Prosecuting Attorney, read the  
25 presentation on legal issues in Montgomery County. Washington State law is silent on TDR  
26 programs. The Growth Management Act (GMA) implies that local governments have the  
27 authority to adopt legislation and implement programs. The State of Washington doesn't  
28 have the same state legislation that Maryland has to provide that overarching support for  
29 localized programs. Montgomery County has seven different preservation programs. A  
30 farmer can take advantage of one or all of these programs.

31  
32 Camp continued the presentation on marketing in Montgomery County. Montgomery  
33 County downzoned everything 20 years ago. They went through extensive marketing and  
34 public outreach to bring the farmers and developers on board.

35  
36 Aronow continued the presentation on support in Montgomery County. There must  
37 be a variety of programs to be successful.

38  
39 Neimann continued the presentation on the keys to success in Snohomish County.

40  
41 Camp stated Montgomery County initially set up a bank of public dollars if things  
42 didn't work in the private market place. They never used it, and disbanded it after five  
43 years.

44  
45 Niemann stated Snohomish County first bought development rights from land under  
46 immediate threat of conversion in the TDR sending area to hold them and sell them when  
47 the market is up and running. If they set up the program well, with balanced sending and  
48 receiving areas, they won't need to do that. Snohomish County used its bank very quickly.

49  
50 Brenner asked what techniques have worked in Montgomery County to promote  
51 affordable housing. Aronow stated Montgomery County includes incentives in the code for  
52 affordable housing. They've allowed density bonuses and other development standard  
53 departures for affordable housing. It's not necessarily tied to their TDR or PDR programs.

1 Brenner stated Whatcom County has offered density bonuses, but developers don't  
2 want them. Developments with higher density are in demand from the market. Aronow  
3 stated Montgomery County exerted more control over the type of development they wanted  
4 to see.

5  
6 Collins stated the City of Olympia has a TDR program. There, people have to buy  
7 development rights to have lower density and larger lots. Different cities have different  
8 issues. There is a difference between affordable housing and housing affordability.  
9 Affordable housing is defined by a percentage of the median income. Housing affordability  
10 is what the real estate and development community is worried about when they can't build  
11 their houses as cheaply as they want.

12  
13 Antholt stated Montgomery County is the fifteenth richest county in the State. The  
14 median income per family is about \$80,000. He asked if farmers in Montgomery County can  
15 participate in more than one program. Aronow stated they can. Their goal is to preserve  
16 70,000 acres. They have reached 64,998 acres so far. They are trying to get the  
17 remainder by developing a new program. A particular property may not qualify for all the  
18 programs. Some of the programs are competitive.

19  
20 Antholt asked the precondition that makes development cost lower to the developer  
21 with a TDR. Aronow stated that when the cost of land reaches a certain point, and the  
22 density is limited by the underlying zoning, it's cheaper to go buy a TDR than buy more  
23 land.

24  
25 Craig MacConnell, Cooperative Extension, stated the establishment of a specific ratio  
26 seems to preclude some of the market forces. He asked why they would choose a specific  
27 ratio. Collins stated a higher ratio would not constrain the market so much. There must be  
28 some upper limit. Err on the side of making the program a better deal for the farmers and  
29 developers. Affordability and marketing of the housing will dictate the ratio more than  
30 anything else.

31  
32 Wisniewski stated that the PDR program created an obstacle to farmers and  
33 developers trading rights.

34  
35 *(Clerk's Note: End of tape one, side B.)*

36  
37 Aronow stated they will sell the development rights that the TDR program creates for  
38 that parcel. They would acknowledge the previous zoning to determine how many rights  
39 exist. Farmers would get cash for the TDR's at the going rate. Another option is to forego  
40 the PDR and do a conservation easement. She described the different programs available in  
41 Montgomery County. It's important to start with the TDR program, which is how the rights  
42 on the property are established.

43  
44 Wisniewski asked if the issue is getting the program off the ground so TDR's gain  
45 value. Collins stated that if they allow the TDR program to go forward and the market rate  
46 is established, then they could use a PDR program to take care of properties that aren't  
47 selling. Snohomish County jumped the gun because the particular farm in question was  
48 under development. His concern is that the PDR program is not market-driven, so it  
49 changes the economics and can potentially destroy the TDR program. If the price isn't high  
50 enough, the farmers won't sell. If the price is too high, the developers won't buy.

51  
52 Wisniewski stated the question is what they have to do to make the TDR program  
53 work in concert with the existing PDR program. Aronow stated it's possible to make those  
54 programs more complementary.

1 Niemann stated Montgomery County allows multiple programs to work on one  
2 property. In Snohomish County, the PDR easement removes the development ability on the  
3 land. Montgomery doesn't work that way. They use tiers.  
4

5 Niemann gave a presentation on a TDR model program in Snohomish County (*on*  
6 *file*). They received a \$100,000 grant from the State. He read the presentation.  
7

8 Collins stated that if it wasn't for the sewer capacity issue, the non-TDR area would  
9 have developed more rapidly than the TDR area. The sewer capacity problem gave them an  
10 opportunity to make the TDR and non-TDR areas more equitable. Expansions of UGA's in  
11 the future ought to be tied to TDR programs so they don't have that equity problem. It's a  
12 big policy question.  
13

14 Niemann continued the presentation on key issues, opportunities, and the timeline.  
15

16 Weimer asked the Snohomish County staff commitment to the TDR and PDR  
17 programs. Niemann stated one-third of his time works on these issues. In addition, two  
18 planners spend 50 percent and 70 percent of their time on these issues.  
19

20 Antholt asked if something in the Maryland legislation produces a degree of  
21 compulsion in terms of receiving areas. He asked why the cities would benefit from having  
22 receiving areas. Aronow stated it was a soul-searching effort on the part of the state and  
23 local citizens. They wanted to do something to preserve agriculture in their communities  
24 because it was part of their culture and heritage. They saw it slipping away. These  
25 programs came about primarily because farmers had a desire to do so. They wanted help.  
26 They were the rallying effort that got this going. The farmers got the ear of the legislature  
27 and local authorities. They got the support of the local communities. The communities  
28 around there that didn't have any agricultural activities also supported the effort because  
29 they wanted to be able to drive into the countryside and enjoy farming communities. There  
30 wasn't a bureaucrat pounding on the table to impose this on the farmers or local  
31 communities.  
32

33 Wisniewski thanked the Council for hosting this meeting and the folks from  
34 Snohomish County who attended.  
35

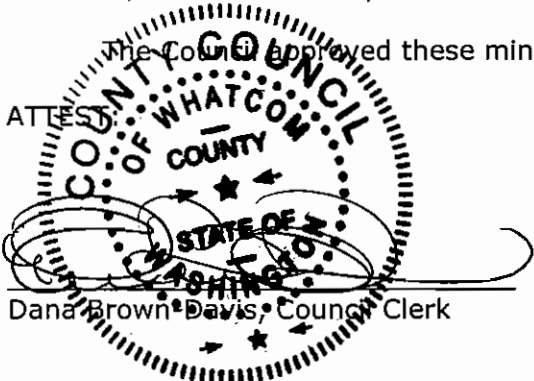
36  
37 **ADJOURN**

38  
39 The meeting adjourned at 4:15 p.m.  
40

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42 \_\_\_\_\_  
43 Jill Nixon, Minutes Transcription  
44

45 The Council approved these minutes on May 8, 2007.  
46

47 ATTEN:



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53 Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
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Carl Weimer, Council Chair