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2
3 WHATCOM COUNTY COUNCIL
4 **Regular County Council**

5
6 February 23, 2010
7

8 **CALL TO ORDER**
9

10 Council Chair Sam Crawford called the meeting to order at 7:00 p.m. in the Council
11 Chambers, 311 Grand Avenue, Bellingham, Washington.
12

13
14 **ROLL CALL**
15

16 **Present:** Barbara Brenner, Sam Crawford, Kathy Kershner, Bill Knutzen, Ken
17 Mann, L. Ward Nelson and Carl Weimer

18 **Absent:** None
19

20
21 **FLAG SALUTE**
22

23
24 **ANNOUNCEMENTS**
25

26 Crawford reported for the Committee of the Whole and stated there was an **update**
27 **and discussion of Lummi Island ferry dock negotiations (AB2010-078)** in executive
28 session.
29

- 30 **1. CONSIDERATION OF APPEAL OF HEARING EXAMINER'S DECISION ON FILE**
31 **NO. APL2009-0011, FILED BY ROYCE BUCKINGHAM ON BEHALF OF**
32 **WHATCOM COUNTY, REGARDING THE APPLICANT'S (MARK AND TARA**
33 **WRIGHT) REQUEST TO APPEAL CERTAIN CONDITIONS IN A NOTICE OF**
34 **PRELIMINARY SHORT PLAT APPROVAL (AB2009-502)**
35

36 Crawford reported for the Committee of the Whole and stated this item was held in
37 executive session pursuant to RCW42.30.110 (1)(i).
38

39 ***Nelson moved*** to uphold the Hearing Examiner's decision.
40

41 The motion carried by the following vote:

42 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

43 **Nays:** None (0)
44

- 45 **2. CONSIDERATION OF APPEAL OF HEARING EXAMINER'S DECISION ON FILE**
46 **NO. APL2008-0037, FILED BY DANNON TRAXLER ON BEHALF OF PAUL VAN**
47 **DE VELDE, REGARDING THE ADMINISTRATIVE DETERMINATION SET FORTH**
48 **IN A NOTICE OF VIOLATION OF THE SHORELINE MANAGEMENT PROGRAM**
49 **(AB2009-397)**
50

51 Crawford reported for the Committee of the Whole and stated this item was held in
52 executive session pursuant to RCW42.30.110 (1)(i).
53

1 **Nelson moved** to uphold the Hearing Examiner's decision.
2

3 The motion to amend carried by the following vote:

4 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

5 **Nays:** None (0)
6
7

8 **OPEN SESSION**
9

10 The following people spoke:

- 11 • Meridith Murray, 2613 Park Street, Bellingham, spoke on an event hosted by
- 12 Transition Whatcom, a grassroots community organization.
- 13 • Bruce Diele, Bellingham, spoke on recent bills in the State of Washington
- 14 House of Representatives regarding committing mentally ill individuals.
- 15 • Cary Kaufman, 2065 Squalicum Mountain Road, spoke on wind turbines.
- 16 • Rebecca Boonstra, 8555 Juniper Place, Columbia Valley, spoke on the
- 17 Planning Commission vacancy.
- 18 • Patti Mullin, 2213 Squalicum Mountain Road, spoke on the wind turbines.
- 19 • Carol MacDonald, 8174 Mount Baker Highway, spoke on the Planning
- 20 Commission vacancy.
- 21 • Leslie Jacobson, 2065 Squalicum Mountain Road, submitted a handout (*on*
- 22 *file*) and spoke on wind turbines.
- 23 • Margaret Mawson, 3903 Isaacson Road, spoke on wind turbines.
- 24 • Paul Isaacson, Isaacson Road, spoke on wind turbines.
- 25 • Leonard Lindstrom, citizen, spoke on various social issues.
- 26 • Terrance Meyer, 2682 Donovan Avenue, Bellingham, spoke on wind turbines.
- 27 • Randy Elmore, 2185 Squalicum Mountain Road, spoke on wind turbines.
- 28 • Alan Smith, 3901 Isaacson Road, spoke on wind turbines.
- 29 • Richard Banel, 8525 Juniper Place, Columbia Valley, spoke on the Planning
- 30 Commission vacancy.
- 31 • Patrick Alesse, 4825 Alderson Road, spoke on people moving to rural areas.
- 32 • Fred Rinard, 3854 Cabrant Road, Everson, spoke on wind turbines.
33
34

35 **PUBLIC HEARINGS**
36

37 **1. ORDINANCE AMENDING WHATCOM COUNTY CODE 24.05, ON-SITE SEWAGE**
38 **SYSTEM (OSS) REGULATIONS, TO ALLOW FOR SELF EVALUATION OF OSS BY**
39 **HOMEOWNERS (INTRODUCED FEBRUARY 9 AND REVISED WITH MINOR**
40 **AMENDMENTS AT THE FEBRUARY 16 HEALTH COMMITTEE MEETING)**
41 **(AB2009-135A)**

42 (*Clerk's Note: Council acting as the Whatcom County Health Board.*)
43
44

45 Crawford reported for Health Committee regarding proposed amendments to the
46 ordinance. He described the proposed amendments. He opened the public hearing and the
47 following people spoke:
48

49 Chuck Westfall, 7052 Olsen Road, stated he is a licensed operations and
50 maintenance (O&M) inspector and installer. A homeowner should be able to do anything
51 professionals can do as long as they are properly trained. Begin the classes. Education is
52 key. Also, the fee schedule of the Health Department needs to be revised to allow for a
53 tank replacement. They don't need a designer to change that one component.

1
2 Greg Brown, 4363 Saddle Stone Drive, Bellingham, submitted and read from a
3 handout (*on file*) regarding the OSS issue. He believes in these changes, and he will take
4 the class when offered for his system, but a system expert doesn't have to inspect his
5 system. They are not that difficult to understand.
6

7 Pete Ruese, 6229 Aldrich Road, Ferndale, stated this proposal is an improvement
8 over an earlier proposal. Given all the unemployed contractors, the County has the fox
9 guarding the hen house. Inspection costs a lot of money. He asked why engineered
10 systems have to be inspected every year, when gravity systems have to be inspected every
11 three years. Allow the Health Department to inspect complaints and get them fixed with
12 the existing taxes.
13

14 Abe Jacobson, 2314 Samish Way, submitted and read from a handout (*on file*). He
15 asked the Council to amend the amendment. Have the County inspection every five years,
16 and have annual instruction done by homeowners who have taken the course, so the
17 County doesn't lose oversight. Some folks who are not law-abiding and self-policing won't
18 report the problems they find with their systems. In the community, less than one percent
19 of the population commits felonies, yet they have a police department. Therefore, they
20 should have an inspection of septic systems even though less than four or five percent are
21 failing. There are also wording problems that take away legal plausibility. He suggested
22 language changes in his handout.
23

24 Perry Eskridge, Whatcom Association of Realtors Urban Affairs Director, submitted a
25 handout (*on file*) and stated he is generally in favor of the ordinance. He asked what
26 happens at the time of sale or transfer. The time of transfer is different than the time a
27 property is offered for sale. Real estate Form 17 requires that questions be asked about
28 any sewage system. Accept language from the Washington Administrative Code (WAC) or
29 require that Form 17 be submitted to the Health Department.
30

31 Fred Rinard, 3854 Cabrant Road, Everson, submitted and read from his handout (*on*
32 *file*) regarding the Herald opinion. He likes home inspections, and hopes they are set up
33 with night and weekend courses for people who work.
34

35 Wendy Harris, Bellingham, stated she is strongly opposed to the ordinance. She is
36 opposed to this attempt by County Council to reduce the current health and safety
37 standards reflected in the County Health Code. The OSS ordinance reduces existing
38 protection in the Health Code. It's not an environmental regulation. It contradicts the
39 fundamental purpose of the County Council to initiate an action that exposes the public to
40 greater health risks. Professional O&M inspectors have a level of training and experience
41 that allows a greater ability to detect OSS system failures. This ordinance will result in an
42 increased level of water contamination. If homeowner certification classes were comparable
43 to professional training, then homeowners should be certified as O&M professionals after
44 they take the class.
45

46 She's against public subsidies of private development. The cost of restoring
47 increased degradation of water quality must be paid for by someone. If standards for septic
48 systems are reduced, the true cost of private septic system ownership will be passed to the
49 public. She resents this public subsidy and being forced to pay while her health is
50 endangered.
51

52 Sue Brown, Bellingham, stated the four percent fail rate only shows systems that
53 have failed completely. The rate of systems failing inspection is 30 percent. One out of

1 three systems need repair. The stated reason for the changes to the ordinance is financial
2 hardship. This ordinance makes it easier for noncompliant systems to remain undiscovered
3 until the property is sold. Don't allow this pollution to continue indefinitely. A homeowner
4 would be sure to find enough money to come up with the money to repair a leaking roof.
5 It's not okay for homeowners to knowingly or unknowingly damage the water supply, and
6 say they can't afford to fix it. Any homeowner knows there is an expected life for all things
7 regarding their property. Repainting and re-roofing aren't unplanned expenses. No matter
8 how good an OSS system was when installed, the life span is 20 to 30 years. The owners
9 should have been putting money away for normal maintenance and expected repairs.
10 Water quality is not improving, and human sewage is detected in water sources in several
11 parts of the county. She asked where it comes from, if not from failing OSS systems.
12 Homeowner inspections aren't sufficient. The classes aren't enough to provide the
13 knowledge of a professional installer with actual experience. Even spot audits won't identify
14 all these deficient systems. This legislation is a disservice to citizens who do maintain their
15 homes.

16
17 Stan Streubel, 6567 Lunde Road, stated he signed up for the homeowner inspection.
18 He has to get a \$300 inspection before he can take the class. He has been unemployed
19 since June. He asked if they are supposed to not eat so they can pay for the inspection.
20 They paid \$18,000 for a perfectly good designed system, and now they have to pay out
21 more money. It doesn't make sense to pay money for something engineered, and then
22 have to start doing this.

23
24 Patrick Alesse, 4825 Alderson Road, stated that if people want to take care of the
25 environment and their tax dollars, they should move to town. A friend had a professional
26 sewer inspection that resulted in a failure. The same person who did the inspection was
27 going to fix the system for \$20,000. He supports people getting training to inspect their
28 own septic system. The more an owner knows about their system, the more they will know
29 when things become a problem. Things should be fair.

30
31 Roger Almskaar, South State Street, stated he has become the Whatcom County
32 Chapter of the Citizens Alliance for Property Rights Education Chairperson, and their mission
33 is to advocate for property rights as a fundamental civil right and for environmental quality
34 and quality of life. He speaks for himself, and supports the ordinance as revised. It doesn't
35 go to far from environmental protection. The ordinance balances big government and
36 citizen involvement. The previous ordinance requires inspections every three years on
37 gravity systems, whether or not there were any signs of problems. He submitted handouts
38 about real estate forms (*on file*). He suggested amending the language about inspections
39 at time of sale or transfer.

40
41 Adam Prince, Ferndale, stated he is a licensed septic system designer. From a State
42 standpoint, most counties require professional inspections. They are more concerned about
43 water quality and the effectiveness that homeowners can do on their own systems. If a
44 system is looked at every third year, a homeowner has a hard time remembering what they
45 need to do and how they need to do it. System replacement costs \$10,000 to \$20,000.
46 Paying someone to do an inspection annually or every third year is minimal to protect the
47 system. He's always been a property rights advocate, but it's ludicrous to not pay someone
48 to make sure a system works correctly over time. Regarding failure rates, many inspectors
49 tend to fix minor problems without reporting them to the County. Therefore, some
50 maintenance-needed issues that would make a system fail in three to five years aren't in
51 the statistics. The reason for the inspection frequency is because pump systems are
52 generally in more sensitive areas. If something goes wrong with a pump system, the pump

1 will pump effluent into the ground and contaminate the groundwater more quickly. That's
2 why it should be inspected more frequently.
3

4 Bob Wiesen, 3314 Douglas Road, Ferndale, stated he supports the proposed
5 changes. The staff's willingness to be truly helpful is what will make the County successful
6 in approving septic issues. Make every effort to allow repair and enhancement of existing
7 systems. A whole new system should be a new system. He agrees with Mr. Westfall's
8 comments about the fees. Revisit the fee structure. Make it easy to do the things they
9 want done, not harder.
10

11 Hearing no one else, Crawford closed the public hearing.
12

13 **Brenner moved** to adopt the ordinance. Before an ordinance was adopted three
14 years ago, nothing was in place. The Health Department provides an excellent
15 homeowner's class. She has a gravity system. She took the class for the pressure mound
16 system, which is fairly more complicated. She was very impressed. Once they take the
17 class, many people will decide they want to hire someone, because it's extremely dirty
18 work. It's extremely insulting to the majority of people out there to say that people aren't
19 smart enough to do their own septic evaluations. The class taught her that people get
20 scared straight in that class. If people don't take care of their systems, it will cost much
21 more to replace the systems. It will come to that if someone doesn't take care of their
22 system. She supposes there will be cheaters and liars out there. However, she believes in
23 the honesty of most of the people in Whatcom County. Given education, most people will
24 want to do the right thing. There is no evidence that current septic systems are causing
25 any worsening to the water. They know all kinds of things cause problems, including
26 people's sewer systems, who live in the cities. That's another issue. She's not an expert,
27 but well-maintained septic systems all over the county are so much better for the
28 environment than any sewer system that exists. A sewer system is something they need to
29 have when people are in close proximity. Some of the septic systems need maintenance,
30 which is why the class is so important. She would rather that someone take their hard-
31 earned money and pay for repairs on their system than pay an inspector to tell them what
32 they would already know if they took the class. Give people the option. People have
33 opinions about whether or not to trust people. She trusts people. They don't have enough
34 septic police or other police or anybody in this county to go after everybody, if they think
35 everybody is a liar or cheat. She doesn't believe that. When they trust people, they lift the
36 people up, and the people want to work with them. When people are distrusted, they don't
37 want to work together. They don't want to do the right thing. The best opportunity they
38 have for the most improvement on septic systems is to honor the people who have them,
39 and offer them the education.
40

41 **Kershner moved** to amend 24.05.160(A)(12), "Ensure that a current report of
42 system status by a licensed O&M specialist is on file with the WCHD when a residence
43 property is offered for sale." Make it consistent with the rest of the ordinance.
44

45 Brenner stated lots of property with nothing on it is sold or transferred. She asked
46 the effect if an owner would still be required to fill out a report of system status (ROSS) if
47 there are no dwellings.
48

49 John Wolpers, Health Department, stated there would be no reason to fill out a ROSS
50 if there is no onsite sewage system (OSS). It makes sense to keep the language the same.
51 Subsection 24.05.160(A)(13) is almost verbatim from the Washington Administrative Code
52 (WAC).
53

1 Mann asked how to define the phrase "offered for sale."
2

3 Brenner stated the language is vague. She's always told people that a ROSS has to
4 be done at property transfer, or someone has to agree to provide it right away, after
5 receiving a property, so it doesn't hold up a sale.
6

7 Regina Delahunt, Health Department Director, stated she recalled that the Council
8 wanted the ROSS available at the Health Department when a piece of property is offered for
9 sale and there is a potential buyer. At that point, the Council wanted the buyer to be able
10 to come to the Health Department and look at the ROSS. That is the reason for subsection
11 (12). Subsection (13) says that the property seller has to physically give the ROSS to the
12 new buyer. It's difficult to define when something is offered for sale. It was a help for
13 potential buyers.
14

15 **Crawford suggested a friendly amendment** to amend 24.05.160(A)(12), "Ensure
16 that a current report of system status by a licensed O&M specialist is on file with the WCHD
17 when a residence **property with an OSS** is offered for sale."
18

19 **Kershner accepted** the friendly amendment.
20

21 Knutzen stated that any time there is a transfer of ownership, the owner has to
22 prove a professional inspection. That would alleviate some of the citizen concerns about
23 getting around the regulation. Delahunt stated that is correct. It doesn't have to be a
24 property sale. It specifies a property transfer.
25

26 Weimer stated he supports the amendment. When they originally talked about the
27 regulations, the Council wanted subsection (12) to be about an offer for sale, to provide for
28 a buyer who is doing due diligence on a property. The Council had heard that the time of
29 transfer, a buyer is sitting in a title company office trying to sign things as quickly as
30 possible, and the ROSS may go unnoticed.
31

32 Nelson stated he is fine with the amendment. There is a difference between an
33 option to buy and an offer for sale.
34

35 Brenner suggested amending (12) and (13), "~~...offered for sale~~ **prior to transfer of**
36 **property containing an OSS.**" That would reflect the intent.
37

38 Weimer stated the language in (13) reflects their intent. If they change it in
39 subsection (12), it takes away a person's ability to do due diligence on a property they're
40 thinking of buying.
41

42 The motion to amend carried by the following vote:

43 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

44 **Nays:** None (0)
45

46 Nelson stated he's concerned that certain people considered progressive are so
47 opposed to public education. Many people moving to a rural area don't understand the
48 ramification of owning a septic system. He asked for a definition of failure. Wolpers stated
49 a failure is defined in WCC 24.05, and is the same as the WAC. He read the definition.
50

51 Nelson stated some people are saying that 30 percent of the septic systems are
52 failing, which is inaccurate. Make sure the information is accurate. He asked if cracked or
53 broken lid is not a failure. Wolpers stated it is not.

1
2 Nelson asked the correct failure rate. Wolpers stated it can be up to five percent,
3 depending on the area.
4

5 Nelson asked where failures have impacted water. Wolpers stated they've found
6 human fecal hits in certain water bodies, through studies done in Drayton Harbor about one
7 to two years ago.
8

9 Nelson asked if that was due to septic systems. Wolpers stated it was not.
10

11 Nelson stated Blaine has spent a tremendous amount of money fixing its sewer
12 system. He asked where they have had large septic or sewage problems, and if a problem
13 area included Lake Whatcom during a stormwater overflow. Wolpers stated they receive
14 that information from the water and sewer district, such as when a pump station fails.
15

16 Nelson asked if that is more likely to cause damage than a septic system. Wolpers
17 stated it's raw sewage, not just effluent.
18

19 Nelson stated they've had to close Bloedel-Donovan Park. The source of fecal
20 coliform was never determined. It is surrounded by a sewer system. Wolpers stated that's
21 correct.
22

23 Nelson stated everyone is responsible for taking care of their own system. People
24 are tired of paying for damage done by people who aren't being responsible. Add a fee to
25 the municipal sewer systems for the damages they are causing to waterways. The form
26 does not comply with State regulations and requirements for recording. When the form
27 doesn't comply, recording costs an extra \$51. Make the form more compliant. Wolpers
28 stated they created their form and checked it with the Auditor's Office, which said the form
29 complies.
30

31 Nelson asked that they shrink the form a bit to be more compliant. Wolpers stated
32 they can.
33

34 Brenner stated houseboats have been allowed on Drayton Harbor. In the Drayton
35 Harbor watershed, there could be problems other than OSS. Drayton Harbor is an
36 important watershed, and she also wants it clean.
37

38 Mann asked who is paying for the classes and the status of the attempt to provide
39 low-interest loans to people who need extensive repairs. Wolpers stated the classes are
40 funded from the general fund and are offered at no charge. The Health Department has
41 applied for grants for a loan program. Over a hundred people have taken the class so far.
42 More classes are scheduled in March and April.
43

44 Brenner stated the County also offers all kinds of stewardship classes for many areas
45 in the county.
46

47 Nelson asked about fees for tank replacement and a designer. Wolpers stated the
48 \$950 fee regarding tank replacement is accurate. A person may or may not need a
49 designer, depending on the planned design for a tank replacement.
50

51 Weimer stated this version is a huge improvement over the previous draft ordinance.
52 Most people will choose to have a professional inspection, because they don't want to take
53 the class or do a dirty inspection. However, he will vote against the ordinance because he

1 feels it is a step backward from where they are at already. He supports homeowner
2 inspections and education. He does trust people. Most people will do the right thing. As a
3 representative of the shellfish protection districts and the marine resource committee, they
4 know that marine waters and surface waters have problems. It's proven that a problem is
5 human bacteria. Councilmembers Nelson and Brenner are trying to say the problem is
6 more from municipal systems or boats. However, the report from the study in the Drayton
7 Harbor watershed indicated that human identified bacteria was up in both California and
8 Dakota Creeks. Human bacteria doesn't swim upstream from the boats or municipal
9 system. It's clear there are some problems with septic systems in the water. It's clear that
10 even a small percentage of failing systems can impact the water. In two or three years, he
11 fears they will still be doing tests on the water, and they will find more human bacteria.
12 Then they will have to reconsider the issue of professional inspections or spend much more
13 taxpayer money tracking each individual creek and trying to find each failing septic system.
14 An initial professional inspection would tell them where all the systems are located now, and
15 they would have a good base of information to work from. From his work with different
16 marine and surface water committees, he knows that's the way to go. He won't support the
17 ordinance.

18
19 Brenner stated she did see the report from Drayton Harbor. She never said that
20 there is no problem with septic systems. They are not a significant problem. One of the
21 biggest problems in the Drayton Harbor watershed has been those other things, including
22 old septic systems that have since been changed to a sewer system. The County works
23 with people all the time.

24
25 The motion to adopt the ordinance as amended carried by the following vote:

26 **Ayes:** Nelson, Crawford, Brenner, Knutzen, and Kershner (5)

27 **Nays:** Weimer and Mann (2)

28
29 **2. ORDINANCE REPEALING ORDINANCE #2004-049 AND AMENDING THE**
30 **OFFICIAL WHATCOM COUNTY ZONING MAP FOR AN AREA OF BIRCH BAY**
31 **(AB2010-102)**

32
33 Crawford opened the public hearing and the following person spoke:

34
35 Bob Wiesen, 3314 Douglas Road, Ferndale, stated he supports the proposal. Certain
36 things are causing poorer planning, and don't give people a chance to do things needed
37 over time. Even though they are in a down time, they should still look ahead.

38
39 Hearing no one else, Crawford closed the public hearing.

40
41 ***Brenner moved*** to adopt the ordinance.

42
43 Crawford stated this is a good step toward implementing the Birch Bay Community
44 Plan. Many folks in the community wanted this to happen.

45
46 Weimer stated he is against the ordinance. It makes sense for the zoning in that
47 area to move the commercial areas and higher density residential away from the bay. Keep
48 the traffic away from the bay and reduces impacts to the water. When this was brought
49 forward last fall, a number of them had concerns that still haven't been addressed. This is a
50 big opportunity to implement transfers of development rights in this area, which is part of
51 the provisional zoning. That hasn't been addressed yet. The developer is interested in
52 doing affordable housing, which is a great thing, but they haven't defined affordable

1 housing, so they don't know how that will work. He is still concerned about those things, so
2 he will vote against the ordinance.
3

4 Brenner stated the problem with this is that they are treating one part of it different
5 from the rest. If they don't make it all provisional, they should make it all the same. There
6 will be other standards for development. It's not fair that someone can't move ahead with a
7 project because the County is waiting to make certain changes. They are held to a different
8 standard from anyone else. She asked if this went through the Birch Bay Community Plan.
9

10 Kathy Berg, 7585 Sterling Avenue, Birch Bay, stated it's in the community plan, but
11 it was never voted on by the community. It was added later, after it went through the
12 Planning Commission. The community did not consider the provisional portion.
13

14 Crawford stated the community considered the zoning, but not the provisional layer.
15 Berg stated that's correct. They wanted commercial nodes, not one central business area.
16

17 Brenner stated that if the Council adopts this ordinance, it will be what was passed
18 by the Birch Bay Community Steering Committee.
19

20 The motion to adopt carried by the following vote:

21 **Ayes:** Nelson, Crawford, Brenner, Knutzen, Mann and Kershner (7)

22 **Nays:** Weimer (1)
23

24 **3. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE OF**
25 **NEW APPLICATION FOR DIVISIONS OF LAND RESULTING IN LOTS SMALLER**
26 **THAN FIVE ACRES WITHIN THE LAKE WHATCOM WATERSHED (AB2009-101)**
27

28 Crawford opened the public hearing and the following people spoke:
29

30 Sue Brown, Bellingham, stated the Council has said it's concerned about cleaning up
31 Lake Whatcom. It's been shown that development is the cause of much of the problem with
32 Lake Whatcom. The total maximum daily load (TMDL) study in effect says that they have to
33 reverse the effects of 90 percent of the existing development to make the lake healthy
34 again. Anything that allows continued development in the watershed should not happen.
35 She is in favor of the moratorium.
36

37 Wendy Harris, Bellingham, stated she is in favor of the moratorium. Lake Whatcom
38 is officially critical, impaired, and a shoreline of statewide significance. Laws require the
39 County to protect and restore the lake's ecological health and water quality. It's a fact that
40 approving this moratorium is the most effective action the Council can take according to
41 numerous studies using the best available science. Development within the watershed is
42 the primary cause of present and ongoing deterioration of the ecological health of the lake.
43 Development creates stormwater runoff, which increases phosphorus and decreases
44 oxygen, which increases the volume of harmful chemicals that must be used to treat Lake
45 Whatcom's water for the purpose of drinking supply. Watersheds with 10 percent
46 impervious area or one-third of the forest cover removed have demonstrative degradation,
47 some of which is irreversible. Continue the moratorium until the Comprehensive Plan
48 amendments are complete.
49

50 Marion Beddill, 2700 Old Fairhaven Parkway, Bellingham, stated she is in favor of the
51 moratorium. She submitted and read from a handout (*on file*). One of the things that
52 protects the lake is not building more houses and increasing urbanization.
53

1 Stan Snapp, 2620 Shephardson Street, Bellingham, stated he thanks the Council for
2 its work to protect the lake. He supports the moratorium. Also, draft a permanent
3 ordinance. It reduces the watershed impact by 100 houses, which has a potential huge
4 impact on water quality. He agrees with the previous speakers.
5

6 Shane Roth, Bellingham, stated keep the moratorium in place until the rural element
7 of the County Comprehensive Plan is updated. Bellingham recently lifted its development
8 moratorium after setting high standards for new development in the watershed. The
9 County should do the same. This isn't about protecting the watershed versus protecting
10 property rights. With good timing, the Council can do both.
11

12 Paul Isaacson, 3940 Isaacson Road, stated he owns many sub-dividable lots in the
13 watershed within the County and the City. Five-acre zoning is appropriate in the
14 watershed. He will lose substantial amounts of money by continuing this moratorium, but
15 he supports the moratorium. His property should be zoned five acres, which would be a
16 downzone. They need to protect the watershed. He has two-acre zoning on the boundary
17 of and outside the watershed, which should remain. Create balance.
18

19 Bob Wiesen, 3314 Douglas Road, Ferndale, stated endless moratoria are not a good
20 way to do business. Get to the issue. Don't keep putting it off. Allowing 100 more houses
21 with higher development standards probably wouldn't do much damage. Bellingham could
22 do more stormwater treatment. That would provide more success in cleaning up the lake.
23

24 Hearing no one else, Crawford closed the public hearing.
25

26 **Nelson** stated he will support this ordinance because there is an end date in the
27 ordinance. It allows time to complete the work on limited areas of more intense rural
28 development (LAMIRDs) and other things. He holds this Council responsible for finishing
29 that work before this moratorium expires. He **moved** to adopt the ordinance.
30

31 Knutzen stated he thanked Mr. Isaacson for speaking. He would like to know when
32 the TMDL study will be submitted.
33

34 Brenner stated she appreciated Marion Beddill's comments and handout. They apply
35 all over the county. Development is virtually the whole cause of pollution in the watershed.
36 She supports the moratorium, but is tired of a permanent ordinance not getting done.
37 Recently, the City of Bellingham staff distributed phosphorus-laden fertilizer at Bloedel-
38 Donovan Park. There are still improvements they can all do. Snapp stated the fertilizer
39 was the Lake Whatcom blend, which does have a small amount of phosphorus in that blend,
40 which showed up in testing. It wasn't a large amount.
41

42 Crawford stated he is against the ordinance. He's never supported it. He
43 understands the community's passion for protecting Lake Whatcom. They all share it. This
44 affects only ten or 11 property owners. Undeveloped parcels don't cause a problem with
45 Lake Whatcom. If these lots were developed, the required mitigation could improve and
46 enhance stormwater quality. They've studied the issue of ten percent impervious surface
47 issue carefully. If all developable parcels in the watershed were developed will full
48 impervious coverage, only two percent of the watershed would be covered. They have to
49 look at Lake Whatcom as three different basins and lakes. Basin one is approaching ten
50 percent of the impervious surface. The parcels subject to this moratorium are mostly or all
51 in basin three. They're not anywhere close to a threshold of ten percent in basin three. He
52 doesn't think they will complete LAMIRD review in the next six months. The issue is when
53 the County will prepare its response to the TMDL. They are finding problems with that

1 model. They have different ideas for how to protect Lake Whatcom. He will vote against
2 the ordinance.

3
4 Mann stated he thanks Mr. Isaacson for his comments.

5
6 The motion to amend carried by the following vote:

7 **Ayes:** Nelson, Brenner, Weimer, Knutzen, Mann and Kershner (6)

8 **Nays:** Crawford (1)

9
10 **4. ORDINANCE CLARIFYING AND REVISING THE DEFINITION AND STANDARDS**
11 **OF ACCESSORY APARTMENTS AND SECOND COOKING FACILITIES WITHIN**
12 **WHATCOM COUNTY'S ZONING CODE, TITLE 20 (AB2010-048)**

13
14 Crawford opened the public hearing and the following people spoke:

15
16 Gary Honcoop, 770 E. Wiser Lake Road, stated this ordinance is an improvement
17 from what was originally proposed. He thanked the staff and Council Planning Committee
18 for working on it. As proposed, it is a good balance for families who desire to take care of
19 extended or disabled family members. He approves of the change to a four and a half acre
20 minimum lot size for areas outside the urban growth area (UGA). The definition of cooking
21 facility includes a list of items that are in a cooking facility. Just an extra microwave oven
22 could be considered a second kitchen. Many people have small fridges for a wet bar or an
23 extra freezer. It's not intended to be a secondary kitchen.

24
25 Perry Eskridge, Whatcom County Association of Realtors Government Affairs
26 Director, stated the Countywide Housing Affordability Taskforce (CHAT) report was listed on
27 the program for the Planning Department this year. Part of the affordable housing program
28 includes the use of accessory dwelling units to meet affordable housing standards
29 countywide. Do anything they can to help those standards. He fears that report has been
30 buried. Allow single-family residences to have two kitchens to maintain family harmony and
31 take care of the older generation.

32
33 Bob Wiesen, 3314 Douglas Road, Ferndale, stated he and Councilmember Brenner
34 have worked on accessory housing for years. It appears that staff does not agree with
35 accessory housing. That's frustrating. Staff keeps building glitches that prevent them from
36 allowing accessory housing. It's a strategy for affordable housing. He supports the
37 proposal. The four and a half acre threshold is good. Many properties in the county have
38 been subdivided and have just less than five acres. This solves that problem.

39
40 Hearing no one else, Crawford closed the public hearing.

41
42 **Brenner moved** to adopt the ordinance. The ordinance in the Council packet is not
43 the correct version.

44
45 David Stalheim, Planning and Development Services Director, stated that after
46 Planning and Development Committee last week they prepared an amended version. That
47 version is not in the packet.

48
49 Karen Frakes, Prosecutor's Office, stated she believes another public hearing needs
50 to be scheduled.

51
52 **Nelson moved** to hold this in Council to March 9, 2010 for a public hearing on the
53 revised ordinance.

1
2 Mann ***moved*** to amend Council packet page 482, section 20.97.003, "...accessory
3 apartment. A covered or enclosed breezeway does not constitute an approved access. ~~It is~~
4 ~~substantially contained within the structure of a single-family dwelling unit and there is~~
5 ~~internal access between units."~~

6
7 ***Nelson withdrew his motion*** to hold in Council.

8
9 The motion to amend carried by the following vote:

10 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

11 **Nays:** None (0)

12
13 ***Mann moved*** to amend Council packet page 482, section 20.97.003, "...accessory
14 apartment. **For structures further than ten feet apart, a** A covered or enclosed breezeway
15 does not constitute an approved access. ~~It is substantially contained within the structure of~~
16 ~~a single-family dwelling unit and there is internal access between units."~~

17
18 The motion to amend carried by the following vote:

19 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

20 **Nays:** None (0)

21
22 Mann stated correct punctuation on Council packet page 482, section 20.97.003,
23 "...between the units; provided, however, that a detached..."

24
25 ***Brenner moved*** to amend to remove language in section 20.97.087, "...and cooking
26 of food. ~~A cooking facility contains any of the following: a kitchen-type sink, refrigerator,~~
27 ~~range, freezer, microwave or any other customarily used appliance or fixture for the~~
28 ~~preparation and sanitation of food.~~ A second cooking facility will be allowed within a
29 permitted single family residence if a covenant or agreement document is signed, notarized,
30 and recorded with the Whatcom County Auditor acknowledging that there shall be only one
31 dwelling unit on the property. The County may draft the covenant or agreement upon
32 whatever terms the County in its discretion deems proper."

33
34 *(Clerk's Note: The Council did not vote on this motion.)*

35
36 Nelson stated he's concerned about the definition of a cooking facility. It could
37 include something like a wet bar or an outside barbeque area. He asked if that is the
38 intent.

39
40 Stalheim stated the intent is to allow a second cooking facility, but not allow creation
41 of second dwelling unit that could be rented out.

42
43 ***Kershner moved*** to amend to remove language in section 20.97.087, "...and
44 cooking of food. A cooking facility contains any of the following: a kitchen-type sink,
45 refrigerator, range, freezer, microwave or any other customarily used appliance or fixture
46 for the preparation and sanitation of food. ~~A second cooking facility will be allowed within a~~
47 ~~permitted single family residence if a covenant or agreement document is signed, notarized,~~
48 ~~and recorded with the Whatcom County Auditor acknowledging that there shall be only one~~
49 ~~dwelling unit on the property.~~ The County may draft the covenant or agreement upon
50 whatever terms the County in its discretion deems proper."

51
52 Crawford stated the intent is to allow flexibility without allowing people to turn their
53 homes into second dwelling units.

1
2 Kershner stated people should be able to install a second kitchen without having a
3 signed, notarized, and recorded agreement with the County Auditor.
4

5 Nelson stated homes are built with septic systems to handle a certain number of
6 occupants. He asked if too many occupants is a health issue. He asked what the kitchen
7 issue has to do with protecting against more than one family in the domicile. Stalheim
8 stated some zoning districts allow only single-family dwellings, which means one family.
9 The kitchen has always defined the dwelling. A separate apartment has separate rules in
10 the code. In the past, they haven't allowed a second kitchen for entertaining or other
11 similar reasons, because a kitchen is the defining characteristic, according to building codes.
12 This ordinance is more permissive, and allows a second kitchen in a single-family dwelling.
13 It would be more onerous to require that a second kitchen be recorded.
14

15 Crawford stated health codes for septic tanks are based on the number of bedrooms,
16 not people. This ordinance has no impact on the number of bedrooms.
17

18 Brenner stated a second dwelling unit built around a second kitchen is a violation of
19 the law. If someone is going to violate the law, a covenant isn't going to make a difference.
20

21 Kershner asked if a single-family residence currently cannot have a second kitchen.
22 Stalheim stated that is correct.
23

24 Kershner asked if this sentence is meant to allow people to have a second kitchen.
25 Stalheim stated that's correct.
26

27 **Kershner withdrew her motion** to amend. She will think about language that
28 doesn't make it so onerous. She's satisfied that this ordinance helps people, and doesn't
29 make them jump through unnecessary hoops.
30

31 **Brenner** stated it's already the law to allow only one dwelling on a single-family
32 residential lot. She **moved** to amend language in section 20.97.087, "...and cooking of
33 food. A cooking facility contains any of the following: a kitchen-type sink, refrigerator,
34 range, freezer, microwave or any other customarily used appliance or fixture for the
35 preparation and sanitation of food. A second cooking facility will be allowed within a
36 permitted single family residence **and shall only be one dwelling unit on the property** if a
37 ~~covenant or agreement document is signed, notarized, and recorded with the Whatcom~~
38 ~~County Auditor acknowledging that there shall be only one dwelling unit on the property.~~
39 The County may draft the covenant or agreement upon whatever terms the County in its
40 discretion deems proper."
41

42 Nelson stated they can craft clearer language in committee or before the next
43 meeting day.
44

45 **Brenner withdrew her motion.**

46
47 **Nelson moved** to hold in the Planning and Development Committee.
48

49 Mann stated he is against the motion. The ordinance is fine the way it came out of
50 committee. It serves a good purpose that staff explained, and the committee agreed with.
51 The ordinance is more permissive, not more restrictive. It prevents people from claiming
52 ignorance if the County does happen to find that they've turned a big single-family
53 residence into a multi-family rental that doesn't belong.

1
2 Knutzen stated he agrees with Councilmember Mann. He's fine with the language as
3 amended already. He is against the motion.
4

5 Crawford stated he is against the motion. He understands the concerns with the
6 covenant, but this has been in place since 2005. It gives the Planning Department guidance
7 for folks who are trying to do the right thing.
8

9 The motion to hold failed by the following vote:

10 **Ayes:** Nelson and Kershner (2)

11 **Nays:** Crawford, Brenner, Weimer, Knutzen and Mann (5)
12

13 ***Knutzen moved*** to hold a public hearing.
14

15 The motion carried by the following vote:

16 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

17 **Nays:** None (0)
18

19 **5. ORDINANCE CLARIFYING THE APPLICABILITY OF AGRICULTURAL**
20 **PROTECTION OVERLAY (APO) BY INCLUDING THE AREA OF ADJOINING**
21 **ROAD RIGHTS-OF-WAY IN THE CALCULATIONS OF PARCEL ACREAGE FOR**
22 **APO ZONE (AB2010-049)**
23

24 Crawford opened the public hearing, and the following person spoke:
25

26 Bob Wiesen, 3314 Douglas Road, Ferndale, stated this issue doesn't need to change.
27 The bigger issue is the classification of agricultural protection overlay (APO) lands. People
28 who cluster can't have an accessory dwelling unit (ADU). That's a negative. If they apply
29 this to prime farmland, it's okay. There are too many marginal lands considered APO. That
30 gives the landowner a problem.
31

32 Hearing no one else, Crawford closed the public hearing.
33

34 ***Mann moved*** to adopt the ordinance.
35

36 Crawford stated he is in favor of the ordinance. They agreed to address Mr. Vaca's
37 situation by saying that an applicant would not be subject to the provisions of this if the
38 applicant can demonstrate that land hasn't been used for agriculture since 1975. He likes
39 the fact they can calculate the parcel size including the center of the road right-of-way.
40 There is still protection for agricultural parcels.
41

42 Brenner stated she was going to support the ordinance until she heard Mr. Wiesen's
43 comments. If they don't force people to cluster, they have enough acreage for an
44 accessory dwelling unit. The County is telling people they have to cluster, which takes away
45 their right to an accessory dwelling unit. She is a firm believer in accessory dwelling units.
46 They are affordable housing and keep families together. She won't support the ordinance
47 unless there is a provision that allows an exception for accessory dwelling units.
48

49 Knutzen asked if accessory dwelling units can go on cluster parcels.
50

51 Crawford stated an ADU can't be put on a parcel smaller than five acres. He asked if
52 they can go on clustered parcels smaller than five acres, if it doesn't exceed the density of
53 the five acres. Clusters only affect parcels over 20 acres.

1
2 David Stalheim, Planning and Development Services Department Director, stated
3 they are prohibited on the reserve tract.
4

5 Crawford stated a homeowner will probably not be allowed an ADU on a cluster.
6 Because people will be forced to cluster, they will probably be denied ADU on the clustered
7 lots. Stalheim stated he prefers to provide a more definitive answer. ADUs may be
8 allowable because they are transferring the allowable density, including accessory dwelling
9 units, to the developable portion of the parcel, so they aren't on the reserve tract. It's
10 probably allowable as long as they meet the road standards, which trips up some of the
11 accessory apartments.
12

13 Brenner stated that if something isn't clearly allowed in the code, it isn't allowed at
14 all. She would like the code to clearly allow the ADUs. Without that, she won't support the
15 ordinance.
16

17 Crawford stated look at the rules on clustering. If they don't allow ADUs, start
18 talking about minimum lot sizes for ADUs, so clustered lots are allowed to have ADUs.
19

20 Brenner stated she wants a friendly amendment to adopt the ordinance with the
21 stipulation that language come back showing an exception for ADUs.
22

23 Crawford stated they are not going to amend an ordinance with a condition.
24

25 Brenner asked if new language clarifying the intent has to go through the full
26 process.
27

28 Karen Frakes, Prosecutor's Office, stated this discussion of allowing ADUs goes well
29 beyond what was before the Planning Commission.
30

31 Crawford stated Mr. Wiesen brought up a good point to consider.
32

33 The motion to adopt carried by the following vote:

34 **Ayes:** Nelson, Crawford, Weimer, Knutzen, Mann and Kershner (6)

35 **Nays:** Brenner (1)
36
37

38 **CONSENT AGENDA**

39

40 **Mann** reported for Finance and Administrative Services Committee and **moved** to
41 approve Consent Agenda items one through nine.
42

43 The motion carried by the following vote:

44 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

45 **Nays:** None (0)
46

- 47 **1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
48 **CONTRACT AMENDMENT BETWEEN WHATCOM COUNTY AND SMR**
49 **CONSULTING FOR ASSISTANCE TO HEALTH DEPARTMENT STAFF IN**
50 **MONITORING THE DEPARTMENT'S HUMAN SERVICES CONTRACTS IN THE**
51 **AMOUNT OF \$10,000 (AB2010-104)**
52

- 1 2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A
2 CONTRACT BETWEEN WHATCOM COUNTY AND SEAMAR COMMUNITY
3 HEALTH CENTERS FOR PROVISION OF OUTPATIENT MENTAL HEALTH
4 TREATMENT SERVICES TO COUNTY RESIDENTS (AB2010-105)
5
- 6 3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A
7 CONTRACT BETWEEN WHATCOM COUNTY AND THE MERIDIAN SCHOOL
8 DISTRICT FOR PROVISION OF BEHAVIORAL HEALTH SERVICES WITHIN
9 MERIDIAN SCHOOL DISTRICT IN THE AMOUNT OF \$82,500 (AB2010-106)
10
- 11 4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A
12 CONTRACT BETWEEN WHATCOM COUNTY AND THE BLAINE SCHOOL
13 DISTRICT FOR PROVISION OF BEHAVIORAL HEALTH SERVICES WITHIN
14 BLAINE SCHOOL DISTRICT IN THE AMOUNT OF \$82,500 (AB2010-107)
15
- 16 5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A
17 CONTRACT BETWEEN WHATCOM COUNTY AND THE NOOKSACK SCHOOL
18 DISTRICT FOR PROVISION OF BEHAVIORAL HEALTH SERVICES WITHIN
19 NOOKSACK SCHOOL DISTRICT IN THE AMOUNT OF \$82,500 (AB2010-108)
20
- 21 6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A LEASE
22 RENEWAL BETWEEN WHATCOM COUNTY AND NORTHWEST WILDLIFE
23 REHABILITATION CENTER FOR THE PURPOSE OF LEASING AND OPERATING
24 A PUBLIC WILDLIFE REHABILITATION FACILITY AT THE COUNTY'S
25 NUGENT'S CORNER RIVER ACCESS SITE IN THE AMOUNT OF \$83.46 PER
26 MONTH (AB2010-109)
27
- 28 7. RESOLUTION AMENDING CRP NO. 905017 AND AUTHORIZING ADDITIONAL
29 FUNDS FOR THE AWARD OF A CONTRACT FOR CLEARBROOK ROAD JOHNSON
30 CREEK BRIDGE NO. 32 REPLACEMENT TO TIGER CONSTRUCTION, LTD. AS
31 LOW BIDDER IN THE AMOUNT OF \$391,067.87 (AB2010-110)
32
- 33 8. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN
34 INTERLOCAL AGREEMENT BETWEEN WHATCOM COUNTY AND WHATCOM
35 COUNTY HOUSING AUTHORITY FOR THE PURPOSE OF FUNDING A RECORDS
36 CLERK POSITION TO ASSIST IN COLLECTING, ORGANIZING AND
37 PREPARING DATA AND REPORTS RELEVANT TO HOUSING AUTHORITY
38 PROPERTIES AND TENANTS IN THE AMOUNT OF \$54,820 (AB2010-111)
39
- 40 9. SUMMARY AND REQUEST FOR SUPPORT OF 2011 CONGRESSIONAL
41 APPROPRIATION REQUESTS (AB2010-112)
42
43

44 OTHER ITEMS

- 46 1. ORDINANCE AMENDING THE WHATCOM COUNTY 2010 PROJECT BUDGET,
47 FIRST REQUEST, IN THE AMOUNT OF \$1,464,253 (AB2010-096)
48

49 *Mann* reported for Finance and Administrative Services Committee and *moved* to
50 adopt the ordinance. However, the funds for construction of a maintenance shed for the
51 Parks Department seems like a luxury given budget constraints.
52

1 **Brenner moved** to amend to remove \$489,479 for the parks maintenance facility at
2 Hovander Park.

3
4 Pete Kremen, County Executive, stated they are facing tough economic challenges
5 right now. The benefits derived by the County by employing more jobs in the community,
6 including electrical and concrete contractors, will be a positive to the community. The
7 money comes from funds that aren't available for general fund purposes. Consider the
8 facility as more than an asset to the County, but also as a jobs program.

9
10 Brenner stated installing stormwater facilities would also provide jobs to the private
11 sector.

12
13 Nelson stated they are moving most of the Parks Department management out to
14 Hovander Park, which this Council agreed to do to reduce costs and protect the use of
15 Roeder Home. He will support the motion. He understands the concern, but the Council
16 intent was to reduce costs to the taxpayers and to achieve greater coordination in the Parks
17 Department. He asked what will happen to the Parks Department facility on the Mount
18 Baker Highway.

19
20 Dewey Desler, Deputy Administrator, stated the County owns that facility. The
21 County pays for parks with general fund money and fees. This particular fund source is the
22 real estate excise tax (REET) II. The administration plans to consolidate operations and
23 make them more efficient to not spend as much money from the general fund in the future.
24 Ultimately, the objective is to move management staff into existing buildings in Bellingham
25 and move and consolidate the Parks Department maintenance staff into the facility at
26 Hovander Park. When that is all done, the administration will propose to surplus the Mount
27 Baker Highway facility.

28
29 Knutzen asked the assessed value of that property on the Mount Baker Highway.
30 Desler stated it's probably worth a lot more than the \$490,000. It's value is close to \$1
31 million.

32
33 Brenner stated the Parks Department staff will do just fine. Times are bad. It is not
34 an essential service. She's happy to get rid of the property on the Mount Baker Highway.
35 This is an important piece of the Parks plan, but it doesn't need to happen now. They can
36 get rid of the property without building a maintenance facility at Hovander Park. They can
37 get by without it.

38
39 The motion to amend failed by the following vote:

40 **Ayes:** Brenner and Mann (2)

41 **Nays:** Nelson, Crawford, Weimer, Knutzen and Kershner (5)

42
43 **Mann moved** to amend to remove the Hovander Tenant Lake playground day use
44 project funding in the amount of \$150,000. Refurbishing the park seems like a luxury right
45 now.

46
47 Mike McFarland, Parks and Recreation Department Director, stated this funding
48 would make the trails and paths Americans with Disabilities Act (ADA) accessible. This was
49 approved in the budget. The playground is one of the most heavily used parks, and the
50 surface needs to be replaced regardless. This request is to maintain existing infrastructure.
51 It's not a luxury. It needs to be done.

1 **Brenner** stated she would support the improvements to make the park ADA
2 accessible only. A lot less can be done to make it ADA accessible. It's important to
3 question every expense they can. She **suggested a friendly amendment** to allow
4 funding to only make the park ADA complaint.
5

6 **Mann did not accept** the friendly amendment.
7

8 The motion to amend failed by the following vote:

9 **Ayes:** Knutzen and Mann (2)

10 **Nays:** Nelson, Crawford, Weimer, Brenner and Kershner (5)
11

12 **Brenner moved** to amend to eliminate any funding that is not absolutely necessary
13 for ADA compliance.
14

15 Nelson asked if the playground equipment is safe. Liability may cost a lot more than
16 this. He's assuming they're replacing it for safety issues.
17

18 Mann stated that as long as they are going to do a project, finish the job and move
19 on.
20

21 The motion to amend failed by the following vote:

22 **Ayes:** Brenner (1)

23 **Nays:** Nelson, Crawford, Weimer, Knutzen, Mann and Kershner (6)
24

25 The motion to adopt the ordinance as presented carried by the following vote:

26 **Ayes:** Nelson, Crawford, Weimer, Knutzen and Kershner (5)

27 **Nays:** Brenner and Mann (2)
28

29 **2. ORDINANCE AMENDING THE 2010 WHATCOM COUNTY BUDGET, SEVENTH**
30 **REQUEST, IN THE AMOUNT OF \$1,985,140 (AB2010-097)**
31

32 **Mann** reported for Finance and Administrative Services Committee and **moved** to
33 adopt the substitute version.
34

35 **Brenner moved** to remove all funding for the one full-time equivalent (FTE)
36 accountant position in the Health Department. The department said staff is doing this the
37 best it can. Other departments can come forward with the same statement to get new
38 positions.
39

40 Mann stated they have a hiring freeze, and they don't have a lot of money. They'll
41 have less next year. Do anything they can to tighten their belts and be more efficient.
42

43 Kershner stated she knows about managing social service contracts. Their contract
44 load has increased by \$4 million in the last year. These contracts require a lot of
45 monitoring and extensive work with the contractors, to make sure the contractors are
46 providing the work, the County is receiving the reports, and the County is reporting to the
47 funding source. Health Department program managers are doing this work now at much
48 higher salaries than this position would receive. It is the most cost-effective way to get the
49 work done. She is against the motion.
50

51 Brenner stated hiring another position on top of the positions they already have
52 doesn't save money. They are getting things done as best they can. She's sure that they

1 can hire more front line staff that are less expensive staff, but the Council must draw the
2 line. This should happen in a budget discussion, not through a budget amendment.
3

4 Crawford stated the Health Department has already cut back its budget by about 20
5 percent. The amount of time the staff spend managing contracts is unbelievable. They've
6 proven the cost savings. Another benefit is the message to other departments that the
7 Council will support efficiencies in order to make the most severe cuts.
8

9 Pete Kremen, County Executive, stated the County must reduce its level of spending.
10 There is a lot of red tape to go through to obtain almost all of this funding the Health
11 Department is getting. It puts an extra burden on the department so the County doesn't
12 receive findings from the State Auditor. Since most of this is federal money, the County
13 doesn't have a choice. It is faced with certain scrutiny on much of this funding. They need
14 this extra focus and attention. He applauds the Council's desire to keep costs down. In this
15 particular case, it is the prudent thing to do.
16

17 Weimer stated he is also against the amendment. He agrees with Councilmember
18 Kershner. The State and federal government are requiring more and more reports. The
19 managers have to spend so much time accounting to the State and federal government.
20 This position, which will cost less than the managers, will relieve that stress and ensure the
21 County provides good services.
22

23 Dewey Desler, Deputy Administrator, stated weeks were spent trying to find a way
24 to do more with less money. This is the most effective way to provide the necessary
25 services. He explained the source of the funding for the position. None of it comes from
26 the general fund.
27

28 Brenner stated the money from the mental health tax was only supposed to be for
29 new or expanded programs. County administration gave its word about that. Every time
30 they talk about overhead, which includes auditing, they talk about small percentages.
31 These things increase the overhead costs. She would like to know the overhead costs on
32 each of these programs. They are only a few months away from doing the budget. She
33 asked why they wouldn't make this part of the regular budget discussion.
34

35 The motion to amend failed by the following vote:

36 **Ayes:** Brenner (1)

37 **Nays:** Nelson, Crawford, Weimer, Knutzen, Mann and Kershner (6)
38

39 Knutzen stated he is disappointed in how much they had to pay in tort allocations.
40 It's shocking how much the County has to pay.
41

42 Crawford stated it's appropriate to discuss that with the Sheriff.
43

44 Knutzen stated he's disappointed in the people who sued the County.
45

46 Brenner stated the legal staff work with the County on what the County does legally,
47 not the Sheriff. It's not the Sheriff's fault.
48

49 The motion to adopt the substitute ordinance carried by the following vote:

50 **Ayes:** Nelson, Crawford, Weimer, Knutzen, Mann and Kershner (6)

51 **Nays:** Brenner (1)
52

1 3. **NOMINATIONS AND APPOINTMENT TO FILL A WHATCOM COUNTY**
2 **PLANNING COMMISSION DISTRICT 2 VACANCY (PARTIAL TERM ENDING**
3 **12/31/2012) –APPLICANTS, AS OF FEBRUARY 17, 2010, ARE: RICHARD**
4 **BANEL, DONALD KNUTZEN, MARY KAY ROBINSON, MARY BETH TEIGROB,**
5 **SCOTT THOMPSON (AB2010-053)**
6

7 *Crawford moved* to suspend the rules and nominate and appoint this evening.

8
9 The motion to suspend the rules failed by the following vote due to a lack of a two-
10 thirds majority:

11 **Ayes:** Nelson, Crawford, Knutzen and Kershner (4)

12 **Nays:** Brenner, Mann and Weimer (3)

13
14 *Knutzen moved* to nominate all the applicants.

15
16 The motion carried by the following vote:

17 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

18 **Nays:** None (0)

19
20 Crawford stated the Council will make an appointments in three weeks.

21
22 4. **NOMINATION AND APPOINTMENT TO FILL VACANCY ON OPEN SPACE**
23 **ADVISORY BOARD – APPLICANT: RYAN MCKEE (AB2010-103)**
24

25 *Mann moved* to suspend the rules and nominate and appoint this evening.

26
27 The motion to suspend the rules carried by the following vote:

28 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

29 **Nays:** None (0)

30
31 *Mann moved* to appoint Ryan McKee by acclamation.

32
33 The motion carried by the following vote:

34 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

35 **Nays:** None (0)

36
37 5. **REQUEST CONFIRMATION OF THE COUNTY EXECUTIVE’S APPOINTMENT OF**
38 **KEATS GARMIN TO THE MARINE RESOURCE ADVISORY COMMITTEE**
39 **(AB2010-115)**
40

41 *Brenner moved* to confirm the appointment.

42
43 The motion carried by the following vote:

44 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

45 **Nays:** None (0)

46
47
48
49 **OTHER BUSINESS**

50
51 **EMERGENCY ORDINANCE IMPOSING A MORATORIUM ON THE ACCEPTANCE OF**
52 **NEW APPLICATIONS FOR WIND ENERGY SYSTEMS (WES) GREATER THAN 500**

1 **KILOWATTS, OR MULTIPLE WES PER PARCEL WITH A CUMULATIVE RATED OUTPUT**
2 **ABOVE 200 KILOWATTS, AND DECLARING AN EMERGENCY (AB2010-116)**
3

4 Crawford read the proposed ordinance.
5

6 ***Brenner moved*** to adopt the ordinance with one amendment to the fourth whereas
7 statement, "Whereas, the requirements for locating a proposed WES greater than 500
8 Kilowatts, or multiple WES per parcel with a cumulative rated output above 100 Kilowatts,
9 did not specifically address the impacts of a proposed system constructed ~~on properties~~
10 ~~adjacent to properties in a different zone~~ **in allowed zoning where the specific property**
11 **abuts properties of a more dense residential zoning;** and"
12

13 The motion to amend carried by the following vote:

14 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)

15 **Nays:** None (0)
16

17 Brenner stated the focus was on residential wind generators. The last thing she
18 wants to do is lose a really good ordinance because things need to be tweaked. The person
19 interested in doing the project doesn't know when he is doing an application. Put the
20 brakes on it to get it right and avoid problems in the future.
21

22 Mann asked if the 60-day moratorium would cause a problem for Mr. Mayer.
23

24 Terry Mayer, 2682 Donovan Avenue, stated it will not affect him materially. The
25 project is dead until the neighbors agree they want it.
26

27 Crawford stated this ordinance would expire in 60 days. It's likely they will end up
28 with an interim moratorium for at least six months. The challenge now to add another item
29 to the staff's workload. It will possibly be a complex issue.
30

31 Weimer asked if this needed to be docketed.
32

33 David Stalheim, Planning and Development Services Department Director, stated
34 interim and emergency ordinances don't need to be docketed.
35

36 Brenner stated do the tweaks they need to do, and get this in place. Her original
37 focus has been on residential wind generators. It will allow wind generators. All it does is
38 increase setbacks for something this big.
39

40 Crawford stated an emergency ordinance must have five votes in favor to be
41 adopted. If it does not pass, an interim ordinance is ready to be introduced tonight.
42

43 Mann stated he is against the emergency moratorium. This is the logical conclusion
44 when they allow suburbia and residential neighborhoods to encroach upon resource lands.
45 Conflicts are inevitable. When this ordinance passed, they intentionally put the windmills in
46 commercial, forestry, heavy industrial, and the rural forestry zone. This is a place that
47 happens to have a higher density of residential use. If there was a logging operation next
48 door, they wouldn't consider an emergency moratorium. He doesn't know why they would
49 consider an emergency moratorium for windmills. This isn't about renewable energy. They
50 all support renewable energy. Predictability and consistency are important for a business
51 enterprise. This is the first project proposed under the new ordinance, and people come out
52 of the woodwork to complain about it. That's why Bellingham and Whatcom County have a
53 reputation for being anti-business. It's hard to be predictable. As soon as someone has a

1 good idea for a business, they enact an emergency moratorium opposing the business.
2 He's very sympathetic to the neighbors. On principle, he won't vote for the emergency.
3

4 Nelson stated he's said before this would be a problem because there is no way to
5 judge the size of these windmills. The windmills in Eastern Washington are a blight. They
6 may not be that large in this area, but they wouldn't be prevented. He agrees with the
7 ordinance. Achieve energy efficiency at the home level without changing the community
8 and creating a blight. He's in favor of renewable energy if done appropriately. As a rural
9 residence, he doesn't want to see or hear it. It won't provide him with enough renewable
10 energy to justify it. He will end up with a tower that leaks oil all over the watershed.
11

12 Brenner stated her original concern was for residential wind generators. When there
13 is a difference in zoning, people who live in denser residential zoning should have certain
14 expectations about things being farther away. They are dealing with an issue they've never
15 dealt with before. It's not about stopping business. It's about making sure they have this
16 issue right, so the ordinance is effective.
17

18 Crawford stated he agrees. It's not an issue of suburbia encroaching on rural lands.
19 It's about adjacency to residential zones. The Code says rural forestry is to serve as a
20 buffer to commercial forestry. He doesn't recall a discussion at the Council about significant
21 impact from a 300 foot tall structure adjacent to a residential zone. It's not the first project
22 proposed. It's the second project. The first project on Slater Road is not adjacent to a
23 residential zone. So far, there seems to be some interest and community support for that.
24 He appreciates Mr. Mayer's input and willingness to work on this. They will have a positive
25 outcome. He's not optimistic this will be solved quickly.
26

27 Nelson stated the forestry in that area is rural, not commercial. Rural forest lands
28 are next to rural areas and residential areas. He tried to bring up the issue of residential
29 adjacency originally.
30

31 Mann asked if these properties are adjacent to rural forestry, not commercial
32 forestry.
33

34 Nelson stated that's correct. The density is one house per twenty acres.
35

36 Crawford stated there are great places for this in Whatcom County. When this came
37 forward several years ago, they had the best intentions. They have a snafu regarding
38 adjacency. He hopes they can resolve it.
39

40 The motion to adopt as amended carried by the following vote:

41 **Ayes:** Nelson, Crawford, Brenner, Weimer, Knutzen and Kershner (6)

42 **Nays:** Mann (1)
43
44

45 **REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS**

46

47 Crawford stated Councilmember Mann will get in touch with Eric Johnson from
48 Washington State Association of Counties (WSAC) to discuss when WSAC can make a
49 presentation to the Finance Committee. They can discuss the merits and benefits of WSAC.
50
51
52
53

1 **ADJOURN**

2

3

The meeting adjourned at 11:12 p.m.

4

5

6

Please contact the Council Office to obtain an
official, signed copy:
360-676-6690 or council@co.whatcom.wa.us

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17

Dana Brown-Davis, Council Clerk

Sam Crawford, Council Chair