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WHATCOM COUNTY COUNCIL
Regular County Council

March 16, 2010

CALL TO ORDER

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

ROLL CALL

Present: Barbara Brenner, Sam Crawford, Kathy Kershner, Bill Knutzen, Ken Mann, L. Ward Nelson and Carl Weimer
Absent: None

FLAG SALUTE

ANNOUNCEMENTS

Crawford announced that the Committee of the Whole discussed the following items in executive session:

1. **CONSIDERATION OF MOTION TO DISMISS FILED BY WHATCOM COUNTY REGARDING ADMINISTRATIVE APPEAL OF HEARING EXAMINER DECISION ON APL 2009-0023, FILED BY WESLEY MUSSIO (AB2010-052) [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW42.30.110(1)(i)]**

Mann moved to deny the motion to dismiss given the efforts that were made to have it delivered.

The motion carried by the following vote:

Ayes: Nelson, Crawford, Brenner, Weimer, Knutzen, Mann and Kershner (7)
Nays: None (0)

2. **DISCUSSION WITH LEGAL COUNSEL REGARDING UGA APPEAL ISSUES (AB2010-018) [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW42.30.110(1)(i)]**

3. **DISCUSSION WITH ASSISTANT CHIEF CIVIL DEPUTY PROSECUTOR DANIEL GIBSON REGARDING PENDING LITIGATION (AB2010-018) [Discussion of this item may take place in executive session (closed to the public) pursuant to RCW42.30.110(1)(i)]**

MINUTES CONSENT

Mann moved to approve the minutes, including the substitute pages.

1 The motion carried by the following vote:

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

3 **Nays:** None (0)

- 4
- 5 **1. COMMITTEE OF THE WHOLE FOR JANUARY 26, 2010**
 - 6
 - 7 **2. REGULAR COUNTY COUNCIL FOR JANUARY 26, 2010**
 - 8
 - 9 **3. SPECIAL COMMITTEE OF THE WHOLE FOR FEBRUARY 2, 2010**
 - 10
 - 11 **4. COMMITTEE OF THE WHOLE FOR FEBRUARY 9, 2010**
 - 12
 - 13 **5. REGULAR COUNTY COUNCIL FOR FEBRUARY 9, 2010**
 - 14
 - 15 **6. BOARD OF HEALTH FOR MARCH 2, 2010**

16

17

18 **OPEN SESSION**

19

20 The following people spoke:

- 21 • Mark Robbins, Point Roberts Taxpayers Association, submitted information
- 22 (*on file*) and spoke on the floating dock pier at Lighthouse Marine Park.
- 23 • Dominique Zervas, Langabeer Tull Attorney representing Caitac, spoke on the
- 24 UGA timeline proposed.
- 25 • John Lesow, Point Roberts, submitted information (*on file*) and spoke on
- 26 family wage jobs in Whatcom County and on the Planning Commission
- 27 appointment.
- 28 • (*Clerk's Note: The speaker following John Lesow requested that his/her*
- 29 *testimony not be included in the minutes.*)
- 30 • Joe Knight, 3880 Cabrant Road, Everson, spoke on the process to appoint
- 31 Council vacancies and board and commission vacancies.
- 32 • Mike Gleason, Mosquito Lake Road, Deming, spoke on using E-Verify for
- 33 background checks for County contractors and employers.
- 34 • Liz Gleason, 4761 Mosquito Lake Road, Deming, spoke on using E-Verify for
- 35 background checks for County contractors and employers.
- 36 • Joan Dow, 5491 Woodfern Way, Bellingham, spoke on using E-Verify for
- 37 background checks for County contractors and employers.
- 38 • Bruce Diele, Bellingham, submitted information (*on file*) and spoke on alcohol
- 39 regulation and legalizing marijuana.
- 40 • Skip Jansen, 4167 Mitchell Way, spoke on the Harbor Shores plat for the
- 41 Comprehensive Plan docket.
- 42 • Wendy Harris, Bellingham, spoke about setting urban growth area litigation in
- 43 backroom deals and the West Blaine urban growth area.
- 44 • Sue Brown, 2188 E. Berg Street, spoke about being called a progressive.
- 45 • Shane Roth, Bellingham, spoke about the Charter, Whatcom County Code,
- 46 and whether the Council must have four votes to approve anything.
- 47
- 48

49 **PUBLIC HEARINGS**

- 50
- 51 **1. EMERGENCY ORDINANCE (ORDINANCE 2010-015) IMPOSING A**
 - 52 **MORATORIUM ON THE ACCEPTANCE OF NEW APPLICATIONS FOR WIND**
 - 53 **ENERGY SYSTEMS (WES) GREATER THAN 500 KILOWATTS, OR MULTIPLE**

1 **WES PER PARCEL WITH A CUMULATIVE RATED OUTPUT ABOVE 100**
2 **KILOWATTS, AND DECLARING AN EMERGENCY (AB2010-116)**

3
4 *(Clerk's Note: The Council adopted this ordinance on February 23, 2010.)*

5
6 Crawford opened the public hearing and the following people spoke:

7
8 Abe Jacobsen, 2314 Samish Way, Bellingham, submitted and read from information
9 *(on file)* supporting wind energy.

10
11 Geoffrey Middaugh, 206 Highland Drive, Bellingham, submitted and read from
12 information *(on file)* supporting wind energy.

13
14 Bob Kingsley, 1855 Vineyard Place, Bellingham, stated he is opposed to the wind
15 energy system on Squalicum Mountain. Don't repeat what happened at the Altamont Pass
16 in Oakland, California, which has hundreds of wind towers. The economic resource
17 production predictions were never fulfilled. The cost of maintaining these systems is
18 extraordinarily high. Animal and bird habitats will deteriorate. There are many raptors in
19 his area that would be ill-affected by machines of this nature. Wind technology is old
20 technology. Bloom energy generators are new technology, and are powering many large
21 corporations. Allow the type of electrical generation that doesn't harm the environment in
22 any way, is economically feasible, and returns power to the power grid. Look at
23 opportunities that are technically advantageous to the community, rather than the old
24 technology being presented.

25
26 Leslie Jacobsen, 2065 Squalicum Mountain, stated she is against the wind energy
27 system. The jury is out on wind power technology. There is global reporting about the
28 negative impacts of noise and vibration coming from wind turbines. As a psychotherapist,
29 she is concerned about symptoms of stress, anxiety, and depression.

30
31 Chuck Bebee, 4038 Springland Court, Bellingham, stated he is in favor of any Council
32 decision that protects this area. Alternative sources of energy is important, but they must
33 have adequate regulation to protect the public and property. Industrial wind turbines have
34 affects on natural environments. Ask about the known and unknown affects to those living
35 in proximity of proposed energy facility, the benefits of the proposal, and where a project
36 like this should be sited. The emergency ordinance allows review of these questions and
37 development of a permanent ordinance that would adequately protect the public. New
38 regulations should require setbacks from residential housing that are a minimum of one and
39 one-quarter mile.

40
41 Alex Ramel, 2308 Woburn Street, Bellingham, Sustainable Connections Energy and
42 Policy Manager, stated the Squalicum Mountain project is cancelled because the proponent
43 doesn't want to do a project if the neighborhood is opposed for any reason. However, this
44 community generally wants renewable energy projects here and many residences and
45 businesses opt to pay for green power. People want to keep here the jobs, economic
46 development, and energy security. The support for clean energy in the community is a
47 magnet for businesses. Don't continue this moratorium indefinitely with inaction. Look at
48 good science. Create regulatory certainty.

49
50 Adrian Eissing, 899 Piper Road, Ferndale, stated he is a student at Western
51 Washington University (WWU). Wind turbines are an important part of their future. They
52 have to make sacrifices in the new economic times. Many things make noise. A

1 moratorium on wind turbines specifically is unfair. There are stringent regulations to site a
2 wind turbine. It is not an easy process.
3

4 Lisa Newlight, 899 Piper Road, Ferndale, stated she was shocked when she saw the
5 moratorium on wind turbines. She has stood below a large wind turbine and it didn't sound
6 like a jet engine. Many in this county support alternative energy. Do the research and base
7 decisions on science. The opposition is a case of people who don't want this in their
8 backyards. Clustering development in rural lands is a problem, because those people get
9 upset when there is any farming or other activity that is the original use of the land.
10

11 Michelle Evans, 3899 Isaacson Road, stated she is concerned about the
12 environmental impacts to people who live too close to wind energy systems. Proceed with
13 caution. There is evidence of negative impacts. She asked the Council to consider two-mile
14 setbacks and strong rules for measuring noise, including low frequency noise. She asked
15 that the emergency moratorium be changed to an interim moratorium.
16

17 Liz Vennos, 1848 Vinyard Place, stated there are reasons why people don't want
18 wind energy systems in their back yard, including issues regarding health, noise, view, and
19 environmental impacts. The Council should be certain there is no environmental impact
20 from the use of the devices. She is a physician. Certain technologies come into use, and
21 they find out later that they are a detriment to human and animal health. The wind turbine
22 syndrome has been written about and published. Symptoms include neurological, visual,
23 and cardiac disorders. If the device is allowed, be certain there are no negative impacts to
24 health and the environment. She supports renewable energy, but wind turbines of this
25 magnitude are not either green or renewable.
26

27 Margaret Mawson, 3903 Isaacson Road, Bellingham, submitted information (*on file*).
28 She is an attorney and has researched wind farms in other parts of the country and world.
29 Use experience from other areas to create a better ordinance. The critical issues are
30 setbacks and noise, including low-frequency vibration. She suggests one- to two-mile
31 setbacks.
32

33 Terrance Meyer, 2682 Donovan Avenue, Bellingham, stated he is no longer doing his
34 project at Squalicum Mountain. He is in favor of the technology. In the regulation, the
35 setback was based on the height of the tower. The noise limits are the same regardless of
36 size. Small and large turbines have the same impacts. The conditional use process would
37 address special circumstances and objections. They have an opportunity to improve the
38 ordinance. Other jurisdictions love their turbines. The Squalicum Mountain community
39 didn't want a turbine. Allow communities to make the choice.
40

41 Cary Kaufman, 2065 Squalicum Mountain Road, submitted information (*on file*) and
42 stated rural forestry regulations had a building height limit of 35 feet for 23 years, until
43 2008, when they changed the zoning laws for wind turbines. There are documented health
44 risks. Read the data and testimonials from people who live near wind turbines.
45

46 Tom Anderson, 1744 Sapphire Trail, Bellingham, stated he requests that concerns be
47 addressed in terms of a progressive ordinance that allows projects to go forward. They will
48 need new energy sources in the future. It would benefit the economy to build something
49 local if possible. Spend little time debating this moratorium. Instead, debate the changes
50 needed to the ordinance that would allow projects to move forward. They need forward
51 motion and new jobs in Whatcom County.
52

1 Crawford asked if the public utilities district (PUD) every look at something on local
2 industrial lands. Anderson stated wind in Whatcom County is questionable because of the
3 amount of annual wind in the area. However, if people are willing to take that risk, it's their
4 business. He wouldn't do it as a government. The PUD looked at it when he was there.
5 They decided to not do it because there wasn't enough evidence that it was financially
6 practical.

7
8 Hearing no one else, Crawford closed the public hearing.

9
10 Brenner stated they need to work on an agreement on a setback. They don't have a
11 lot of information one way or another. This is a learning curve. This is the next step.

12
13 Crawford stated they need to have something to introduce soon on an interim
14 ordinance.

15
16 Mann stated he will help Councilmember Brenner develop an interim ordinance.

17
18 **2. ORDINANCE AMENDING THE WHATCOM COUNTY CODE, TITLE 20, FOR THE**
19 **PURPOSES OF CLARIFYING AND REVISING THE DEFINITION AND**
20 **STANDARDS OF ACCESSORY APARTMENTS AND SECOND COOKING**
21 **FACILITIES THROUGHOUT THE CODE (AB2010-048)**

22
23 Crawford opened the public hearing and the following people spoke:

24
25 Gary Honcoop, 770 E. Wiser Lake Road, referenced the language, "that there shall
26 be only one dwelling unit on the property" on Council packet page 370, section 20.97.087,
27 the definition for Cooking facility. As written, staff can interpret it later to exclude the
28 possibility of a future accessory dwelling unit or apartment. Also, staff and the committee
29 have done a lot of work on accessory apartments. It looks good, and he supports it.

30
31 Bob Wiesen, 3314 Douglas Road, Ferndale, stated he has the same concern as Mr.
32 Honcoop. The definition may create a permanent limitation on the property from having an
33 accessory dwelling. That would be bad.

34
35 Maggie Hanson, Smith Road, stated she went through the process of developing an
36 accessory dwelling about ten years ago. Everything is in place to build a bigger house on
37 the Smith Road farm she grew up on, and retain the original house of 800 square feet so it
38 will become the mother-in-law house. She hopes this ordinance doesn't change what is
39 already in place on the map. Consider allowing more accessory dwellings.

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

42
43 **Brenner** stated she agrees with Mr. Honcoop's point. The Council intent was to
44 make sure that the building is a single family home, and not turned into a duplex. This
45 could be interpreted to not allow an accessory dwelling unit. That would upset her. She
46 **moved** to adopt the ordinance. They need to amend the language.

47
48 **Mann moved** to amend section 20.97.087 for Cooking Facility, "...means a room or
49 portion thereof designated and/or customarily used as a place for the preparation,
50 sanitation and cooking of food. A second cooking facility will be allowed within a permitted
51 single family residence if a covenant or agreement document is signed, notarized, and
52 recorded with the Whatcom County Auditor acknowledging that **the cooking facility shall not**
53 **be allowed as part of a separate dwelling unit** ~~there shall be only one dwelling unit on the~~

1 property. The County may draft the covenant or agreement upon whatever terms the
2 County, in its discretion, deems proper." The whole point is that they don't want the second
3 cooking unit to be it's own separate dwelling unit.

4
5 David Stalheim, Planning and Development Services Director, stated acknowledge
6 only one single family dwelling unit. The context of this conversation is a second cooking
7 facility within a single family dwelling unit. It doesn't talk about the accessory dwelling unit
8 at all. Just add "single-family" to the language, and leave the rest as it is.

9
10 Brenner stated it can still be interpreted to allow only one single-family dwelling unit
11 on the property. Acknowledge that the second cooking facility is still part of a single-family
12 dwelling unit. Stalheim stated the context of that definition is about that cooking facility in
13 a single-family dwelling unit. It is not in the context of anything else.

14
15 Brenner stated delete the words "on the property." Otherwise, it could be
16 interpreted to not allow an accessory unit.

17
18 **Mann amended his motion and moved** to amend section 20.97.087 for Cooking
19 Facility, "...recorded with the Whatcom County Auditor acknowledging that **the cooking**
20 **facility shall not be allowed as part of a separate dwelling unit** ~~there shall be only one~~
21 ~~dwelling unit on the property.~~ The County..."

22
23 Knutzen stated the purpose is to avoid apartment units in the county, while
24 accommodating people who want to take in aging family members. Director Stalheim's
25 suggestion accomplishes that purpose.

26
27 Mann stated this particular cooking facility will not be allowed as part of a separate
28 dwelling unit. If there is a permitted accessory apartment, that is a separate part of the
29 code and it would not be affected.

30
31 Stalheim suggested language to amend section 20.97.087 for Cooking Facility,
32 "...recorded with the Whatcom County Auditor acknowledging that **the second cooking**
33 **facility is permitted only as part of the single-family dwelling** ~~there shall be only one~~
34 ~~dwelling unit on the property.~~ The County..."

35
36 **Mann withdrew** his amendment and **moved** to amend section 20.97.087 for
37 Cooking Facility, "...recorded with the Whatcom County Auditor acknowledging that **the**
38 **second cooking facility is permitted only as part of the single-family residence** ~~there shall be~~
39 ~~only one dwelling unit on the property.~~ The County..."

40
41 The motion to amend carried by the following vote:

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

43 **Nays:** None (0)

44
45 The motion to adopt as amended carried by the following vote:

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

47 **Nays:** None (0)

1 **CONSENT AGENDA**

2
3 **Mann** reported for the Finance and Administrative Services Committee and ***moved***
4 to approve Consent Agenda items one through 11, including the replacement pages
5 submitted before Committee.

6
7 Brenner withdrew Consent Agenda item two.

8
9 The motion to approve Consent Agenda items one and three through 11 carried by
10 the following vote:

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

12 **Nays:** None (0)

- 13
14 **1. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
15 **CONTRACT BETWEEN WHATCOM COUNTY AND ACS-ENTERPRISE SOLUTIONS**
16 **FOR AN UPGRADE OF THE AUDITOR’S OFFICE RECORDING SYSTEM TO**
17 **ALLOW FOR MAP IMAGES ON THE INTERNET, IN THE AMOUNT OF \$24,000**
18 **(AB2010-127)**
19
20 **2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
21 **CONTRACT BETWEEN WHATCOM COUNTY AND CARLETTI ARCHITECTS FOR**
22 **THE FINAL DESIGN SERVICES FOR THE HOVANDER MAINTENANCE**
23 **FACILITY, IN THE AMOUNT OF \$53,025 (AB2010-128)**
24

25 **Mann** reported for the Finance and Administrative Services Committee and ***moved***
26 to approve the request.

27
28 Brenner stated she is against the project, which will cost about \$500,000. Even
29 though the Council already approved the project, the councilmembers can change their
30 minds. Councilmembers aren’t obligated to do this. The money can be used for planning,
31 acquisition, construction, reconstruction, repair, replacement, rehabilitation, or
32 improvement of roads, highways, bridges, domestic water systems, and storm and sanitary
33 water systems. Some of these things are critical and a higher priority. Deal with this
34 through the County budget process, not a budget amendment. See it in the context of all
35 the other higher-priority items. Don’t fund this at this time. The real estate excise tax
36 (REET) fund is finite. They will run out of money and still have extremely urgent projects
37 that must be done. This isn’t urgent.

38
39 Mann stated he agreed and voted against the funding for the facility. That facility
40 funding and contract is already done. This contract is to finish the final design. They can’t
41 build it without this step. The Council voted to build this, even though the didn’t vote for it.
42 He will vote for the design, because he wants the drawings to be correct, so they build a
43 good building.

44
45 Brenner stated nothing has been done yet. The Council gave general approval. She
46 hadn’t mentioned all the things that this money could be used for. The Council can not
47 approve the project at this point. Compromise by tabling this project until this summer,
48 when the Council can discuss it in context of the budget.

49
50 Crawford stated this is part of a long-term effort to consolidate maintenance
51 operations in the Parks Department, by locating them in a geographic area that will be more
52 efficient for the Parks Department, and address the needs of the greater majority of the
53 Whatcom County citizens. It also allows them to continue to surplus the Mt. Baker Highway

1 facility for the Parks Department. The taxpayers will see a benefit. He appreciates the
2 administration's effort to look into the future and make this government operate as
3 efficiently as possible. This is a step toward that efficiency.
4

5 Brenner stated that Mt. Baker Highway property can be go into surplus with or
6 without this building. The County will never have enough money for the things it must do.
7 This is not urgent. People will demand stormwater fixes.
8

9 The motion carried by the following vote:

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

11 **Nays:** Brenner (1)
12

- 13 **3. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
14 **CONTRACT BETWEEN WHATCOM COUNTY AND FERNDALE SCHOOL DISTRICT**
15 **FOR THE PROVISION OF BEHAVIORAL HEALTH SERVICES WITHIN THE**
16 **DISTRICT, IN THE AMOUNT OF \$82,500 (AB2010-129)**
17
- 18 **4. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
19 **CONTRACT BETWEEN WHATCOM COUNTY AND BELLINGHAM SCHOOL**
20 **DISTRICT FOR THE PROVISION OF BEHAVIORAL HEALTH SERVICES WITHIN**
21 **THE DISTRICT, IN THE AMOUNT OF \$82,500 (AB2010-130)**
22
- 23 **5. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
24 **CONTRACT BETWEEN WHATCOM COUNTY AND CANTRELL COUNSELING FOR**
25 **THE PROVISION OF MENTAL HEALTH TREATMENT SERVICES TO WHATCOM**
26 **COUNTY RESIDENTS WHO HAVE NO OTHER READILY AVAILABLE SOURCE OF**
27 **FUNDING (AB2010-131)**
28
- 29 **6. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A**
30 **NOTICE OF GRANT AGREEMENT BETWEEN WHATCOM COUNTY,**
31 **WASHINGTON STATE DEPARTMENT OF ECOLOGY, AND US FISH AND**
32 **WILDLIFE SERVICE FOR THE SOUTHERN PORTION OF LILY POINT MARINE**
33 **PARK (AB2010-132)**
34
- 35 **7. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO A LEASE**
36 **AGREEMENT BETWEEN WHATCOM COUNTY AND FREEDOM 2000 (DBA**
37 **CANDO RECYCLING AND DISPOSAL) FOR OPERATION OF THE POINT**
38 **ROBERTS LANDFILL FACILITY, IN THE AMOUNT OF \$750.00 PER MONTH**
39 **(AB2010-133)**
40
- 41 **8. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN**
42 **INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY AND**
43 **WASHINGTON STATE PARKS AND RECREATION COMMISSION FOR**
44 **REIMBURSEMENT OF COSTS RELATED TO FEMA PROJECT ON FRAGRANCE**
45 **ROAD (LARRABEE STATE PARK), IN THE ESTIMATED AMOUNT OF**
46 **\$36,460.80 (AB2010-135)**
47
- 48 **9. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN**
49 **AMENDMENT TO THE INTERLOCAL AGREEMENT WITH THE CITY OF**
50 **BELLINGHAM FOR OPERATION OF THE LAKEWAY YARD WASTE FACILITY IN**
51 **THE AMENDED AMOUNT OF \$55,000, FOR A TOTAL AMENDED AMOUNT OF**
52 **\$185,000 (AB2010-136)**
53

- 1 10. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO PURCHASE FROM
2 VENDOR OM WORKSPACE THROUGH KCDA CONTRACT, ADDITIONAL
3 CUBICLES AND MOVING SERVICES TO RELOCATE PUBLIC WORKS
4 ENGINEERING WORKSTATIONS FROM UNITY STREET TO THE CIVIC CENTER
5 BUILDING, IN THE AMOUNT OF \$39,385.95 (AB2010-137)
6
7 11. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ACCEPT ALL BIDS FOR
8 ANNUAL SUPPLY OF ROCK, GRAVEL AND SOIL FOR USE AS NEEDED FOR
9 VARIOUS COUNTY MAINTENANCE PROJECTS, AND SELECT THE
10 APPROPRIATE VENDOR AS DICTATED BY THE SPECIAL CIRCUMSTANCES OF
11 EACH PARTICULAR JOB, IN AN AMOUNT TO EXCEED \$35,000 (AB2010-138)
12
13

14 **OTHER ITEMS**

- 15
16 1. CONSIDERATION OF HEARING EXAMINER'S RECOMMENDED APPROVAL OF
17 A PLANNED UNIT DEVELOPMENT, FILED BY MAYFLOWER EQUITIES, INC.
18 FOR "MONTEREY HEIGHTS" (PUD2007-0001), PRELIMINARY LONG
19 SUBDIVISION (LSS2005-0004) (AB2010-122)
20

21 *Knutzen* reported for the Planning and Development Committee and *moved* to
22 approve the planned unit development.
23

24 The motion carried by the following vote:

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

26 **Nays:** None (0)
27

- 28 2. RESOLUTION INITIATING COMPREHENSIVE PLAN AND ZONING
29 AMENDMENTS FOR 2010 (AB2010-113A)
30

31 *Knutzen* reported for the Planning and Development Committee and *moved* to
32 approve the resolution with changes that include:

- 33 • Deleting 2009-H regarding lot consolidation
- 34 • Deleting all but the last sentence of the description on Council packet page 294 for
35 2008-G regarding the agricultural program update
- 36 • Adding File # PLN 2010-0009 regarding Council initiation of Zoning Amendments
- 37 • Adding File # PLN 2010-0010 regarding the rezone from R10A to R5A in Birch Bay
38

39 Weimer asked about language regarding Harbor Shores. When this came forward
40 during the urban growth area (UGA) discussion in November, there was discussion that it
41 was already approved for sewer. He asked if the sewer is really approved and who will be
42 the sewer provider. He asked if these lots would be developed with septic instead of sewer
43 since the lots have already been created.
44

45 David Stalheim, Planning and Development Services Director, stated the lots were
46 created quite a few years ago. They are legal lots of record. Mr. Jansen secured shoreline
47 and other zoning conditional use permits to extend water and sewer to this property from
48 the Birch Bay Water and Sewer District. They also have active discussion with the City of
49 Blaine to annex into the city of Blaine, which requires it to be in the UGA, pursuant to State
50 law.
51

52 Weimer stated this is a critical marine resource area. He asked if they really want
53 more houses in this area, and if these lots will not be built if the Council turns this down.

1 Stalheim stated he's not sure the houses will be prevented from being built. They are legal
2 lots of record. The County will have to find a way to accommodate reasonable use of those
3 lots. The lots can be sold to individual owners. The applicant explored the option of
4 community drain field systems. The property has quite a few wetlands. The effort to get to
5 a reasonable use would cause more impact on the wetlands than having a public sewer.
6

7 Weimer asked if reasonable use applied to septic approval. Stalheim stated there
8 has to be some economic use of the property. To get to some of those results, there will be
9 some development there. It may not be the same level of intense development. They
10 applicant went through quite a few scenarios of how that could happen and the impacts.
11 The applicant is going to the Hearing Examiner with a developer agreement to work on a
12 coordinated strategy for this property and for wetland mitigation purposes. They are
13 working on addressing the concerns on the entire property as a whole, not the individual
14 lots. From everything they've seen so far, that is more responsible than trying to sell it off
15 individually.
16

17 Crawford asked about adding UGA components to the docket, particularly the
18 applications of folks such as Caitac. The fees are not an issue with Caitac. They are willing
19 to pay the fees. He asked the difference between saying they are going to deal with this
20 through a settlement and docketing. It doesn't make a lot of difference. The Council's will
21 is clear that it would like another look. His efforts the last two months have in trying to
22 work with the administration to use the County's resources the best way possible. He made
23 it clear to everyone on December 31, 2009 that the Council needs to take another look at
24 the UGA's. He's torn. The applicants feel like there is a big difference whether or not the
25 Council docket these items. He's explained to the applicant that he doesn't think there is a
26 difference. The desire of the Council to take another look at UGA's has been well-expressed
27 over the last month or so. They are walking away from docketing it. He's trying to figure
28 out the difference, and whether the Council should or should not docket it. He asked the
29 meaning of docketing at this point. Stalheim stated the docketing concept is to amend the
30 Comprehensive Plan only once per year. Most jurisdictions came up with a process to do
31 that docket. However, the County can go outside that process under settlement
32 negotiations on appeal in front of the Hearings Board. The docket can be amended through
33 settlement discussions. If settlement discussions fail, the County would carry forward
34 regardless if those items were on the docket.
35

36 Crawford stated he's undecided. There is a compelling concern of those who feel
37 affected by this, including the cities and landowners. He has felt that the administration has
38 gone to great lengths in the last several years to work with the Council to give clear policy
39 direction in a way that allocates the appropriate level of resources at the Planning and
40 Development Services Department with a means of prioritizing projects. There are so many
41 things they would like to do, but they have limited resources. He hates to hand to the
42 administration a docket that includes everything but the kitchen sink. He has to think about
43 it.
44

45 Brenner stated the difference is that it gets finalized this year or next year. It's
46 expensive for the small cities to wait an extra year. Most or all have done their work. It's
47 not a big step to tweak certain things.
48

49 Knutzen stated they can pick up docket items if necessary after the settlement
50 meeting. They are giving the small cities and landowners time to converse with the County
51 and negotiate a settlement. He is in favor of settlement discussions.
52

1 Brenner asked if it makes a difference this year for the small cities if it is docketed
2 now or later. Stalheim stated it doesn't change the end result. The earlier they have that
3 conversation and direction, the easier it will be. The challenge is that annual amendments
4 have to be done through the Council by February of next year. If they want to do any of
5 this stuff, staff has to get going on it. Some of them may have to go through the Planning
6 Commission. The Planning Commission agenda for the year is almost full. If it has already
7 gone through the Planning Commission, it wouldn't have to go there again.

8
9 Nelson stated the idea of docketing is to provide concurrency and the idea they are
10 working on the whole picture. Many of these have already gone through the Planning
11 Commission. He would rather see everything together, including new proposals that come
12 forward.

13
14 Crawford stated he would like to go into the settlement meeting with a strong and
15 persuasive message of believing in the self-determination of these cities, that adequate
16 urban growth areas are important to the concept of good planning, that they intend to look
17 closely at these things so that legal counsel can face inevitable legal challenges, that they've
18 created a process, and that the whole community agrees, so the Council is doing what the
19 community wants to see. He understands the dilemma they have. There is a legal
20 conundrum for these folks. Once the ordinance was adopted, they entered into a realm of
21 legal response rather than political or legislative action.

22
23 Kershner asked what the settlement process will eventually yield. She wants to
24 make sure that some of these petitioners have a some resolution sooner rather than later.
25 She doesn't know if docketing will be that answer.

26
27 Brenner stated that according to Mr. Stalheim, anything that the Council will get into
28 the settlement process about has already been through the Planning Commission. If
29 something isn't settled, it can be docketed and not have to go through the Planning
30 Commission.

31
32 Kershner asked if some of these cities and petitioners will not have to wait until the
33 2011 update, and if the Council will have an opportunity to make some changes if it decides
34 it is appropriate. Stalheim stated that any changes have to have an ordinance and go
35 through the public hearing. He doesn't believe there has been a specific proposal subject to
36 hearing from Caitac before the Planning Commission. There has never been a specific map
37 or zoning amendments for that proposal before the Planning Commission. Everything other
38 proposal has already been subject to some sort of direct review by the Planning
39 Commission. Those proposals don't have to go back through the Planning Commission
40 process.

41
42 Crawford stated there is a tremendous feeling among the folks who have appealed
43 that docketing is extremely significant to this process. It's a particularly strong feeling from
44 the private landowners. They believe the Council is making a serious mistake by not
45 docketing. He wants to make sure the Council has clearly vetted that concern before they
46 finalize this docket.

47
48 Nelson stated he would much rather all these issues go forward to concurrency. All
49 the docket items should be together, whether or not they go to mediation.

50
51 ***Kershner moved*** to amend to include Caitac in the docket in 2010.
52

1 Karen Frakes, Prosecutors Office, stated she doesn't understand why the landowners
2 feel the need to be docketed. Clearly, when they have filed appeals and the County is in
3 the process of pursuing settlement, the County can consider those things outside the docket
4 process. The County can address anyone who files an appeal, including Caitac, without
5 them being on the docket.

6
7 Brenner stated that even if docketed, Caitac will have to go through the Planning
8 Commission if there is no settlement. All the rest can come straight to Council. That's the
9 case whether or not it's docketed. Leave it as it is and work on the settlement.

10
11 Mann stated he agrees with Councilmember Brenner. They've talked about this a lot.

12
13 Knutzen stated it is not fair to add some applicants and not others. The County is
14 asking them to negotiate with the Council in good faith, knowing they aren't on the docket.
15 Either add all to the docket and remove them later, or add none and add them to the docket
16 after settlement negotiations.

17
18 Nelson stated whether or not the cities and landowners are on the docket will have
19 an effect on the settlement negotiation. Add them all to the docket, and go through the
20 mediation process to determine what stays on the docket.

21
22 Weimer stated he agrees with Councilmember Knutzen. It may not make a lot of
23 difference. The Council can do whatever they want between now and June, as they have
24 the settlement discussions. Leaving them off the docket as they go into discussions makes
25 more sense than having some of them on the docket. It makes more sense to leave them
26 all off the docket now. As they move forward, they can add proposals.

27
28 **Nelson suggested a friendly amendment** to add all Comprehensive Plan
29 amendments and 2010 suggested zoning amendments to the docket.

30
31 **Kershner accepted** the friendly amendment.

32
33 Stalheim stated not all UGA petitions are on the docket list. The Cities of Sumas and
34 Nooksack don't have applications. The only application they have is from Councilmember
35 Crawford for Ferndale. They have private petitions for the UGA's, but not all of them are on
36 the docket list, either. When they add these, they still have not added everything, because
37 no one applied for those as private amendments. By adding them, they really aren't adding
38 everything.

39
40 Weimer stated that's why they should all be left off the docket.

41
42 **Nelson withdrew** his suggested friendly amendment.

43
44 **Kershner withdrew** her amendment.

45
46 The motion to approve the resolution carried by the following vote:

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

48 **Nays:** None (0)

49
50 Brenner stated someone mentioned that the Council has been having secret
51 settlement meetings. She hasn't been at them. She would like to know. That bothered
52 her.

1 Crawford stated two of the private landowner attorneys requested to meet with the
2 Council's legal counsel. He and Council Policy Analyst Rebecca Craven sat in on meetings
3 with the Caitac and Trillium attorneys. They each proposed a settlement that favored their
4 development. They sat and listened, said 'thank you,' and that was the end of the
5 meetings. Councilmember Brenner maybe didn't get a copy of the proposed settlement
6 agreements. He can provide that information. It is appropriate for their attorneys to
7 contact the Council's legal counsel and have that discussion.

8
9 Brenner stated she wasn't a part of any secret settlement stuff.

10
11 Crawford stated there was no discussion about settlement.

12
13 Nelson stated a settlement could not occur without the Council. A meeting does not
14 constitute Council action.

15
16 Crawford stated he made it clear that the Council intends to have this an entirely
17 public process. He credits Councilmember Knutzen for saying this needs to be kept open
18 and public. That was in response to a lot of information the Council gets almost daily from
19 many appellants and attorneys on many issues. During the summit meeting, everyone will
20 have equal time around the table. He suggests allocating time for all the appellants to
21 present their important points. Those settlement discussions occur on the record with the
22 public. There is no backroom wheeling and dealing. Once the Council crafts an ordinance,
23 it will go through a public process also. The process will be very inclusive. A meeting of the
24 attorneys doesn't constitute a settlement meeting.

25
26 Nelson stated it would be helpful if the councilmembers are notified of these
27 meetings and their agenda. He didn't know about it until after the fact.

28
29 Crawford stated the attorneys requested some time with Karen Frakes, who informed
30 him and Ms. Craven. They agreed to sit down and listen to what the attorneys had to say.
31 No one from the Council said anything in those meetings that offered anything. The
32 attorneys wanted to talk about the legal framework for settlement, but it wasn't a
33 negotiation.

34
35 **3. APPOINTMENT TO FILL A WHATCOM COUNTY PLANNING COMMISSION**
36 **DISTRICT 2 VACANCY (PARTIAL TERM ENDING 12/31/2012) – APPLICANTS**
37 **NOMINATED AT THE FEBRUARY 23, 2010, COUNCIL MEETING ARE:**
38 **RICHARD BANEL, DONALD KNUTZEN, MARY KAY ROBINSON, MARY BETH**
39 **TEIGROB, SCOTT THOMPSON, AND TERRY SHILEY (AB2010-053)**

40
41 Crawford stated the Council made nominations at its previous meeting.

42
43 Knutzen voted for Mary Beth Teigrob.

44
45 Kershner voted for Teigrob.

46
47 Nelson voted for Mary Kay Robinson.

48
49 Mann voted for Scott Thompson.

50
51 Crawford voted for Teigrob.

52
53 Weimer voted for Thompson.

1
2 Brenner voted for Richard Banel.

3
4 **Nelson moved** to take another vote for the top two vote-getters, Teigrob and
5 Thompson.

6
7 The motion carried by the following vote:

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

9 **Nays:** None (0)

10
11 Knutzen voted for Teigrob.

12
13 Kershner voted for Teigrob.

14
15 Nelson voted for Teigrob.

16
17 Mann voted for Thompson.

18
19 Crawford voted for Teigrob.

20
21 Weimer voted for Thompson.

22
23 Brenner voted for Thompson.

24
25 The Council appointed Mary Beth Teigrob.

26
27 **4. CONFIRMATION OF THE COUNTY EXECUTIVE'S APPOINTMENT OF JOHN**
28 **STEENSMA TO THE PURCHASE OF DEVELOPMENT RIGHTS OVERSIGHT**
29 **COMMITTEE (AB2010-139)**

30
31 **Mann moved** to confirm the appointment.

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. REPORT ON PROCUREMENT ACTIVITIES AND EXPENSES INCURRED UNDER**
38 **AUTHORITY OF THREE (3) PROCLAMATIONS OF EMERGENCY (WRITTEN**
39 **REPORT ONLY) (AB2010-140)**

40
41 **Nelson moved** to accept the report.

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 **6. RESOLUTION SUPPORTING THE CITY OF BELLINGHAM'S GOOGLE FIBER FOR**
48 **COMMUNITIES SUBMITTAL (AB2010-144)**

49
50 **Mann** reported on the project and **moved** to approve the revised resolution. If
51 Google invests in the City, it would be an awesome opportunity for the City. The future is
52 going to be high speed internet. Everything will happen digitally at high speed. If Google
53 invests in the community in 2010, it can set the stage for job growth and economic

1 development for a very long time. Bellingham is part of Whatcom County. Support this
2 effort.
3

4 Nelson stated this is an example of a private-public partnerships that make sense.
5 He supports the resolution. He is concerned about any potential costs to the community.
6 Also, the federal government is trying to get high speed internet access across the nation
7 for these same reasons. Unfortunately, they want to put about \$60 billion into it. By the
8 time it is done, there will be new technology.
9

10 Crawford stated the federal project is to provide broadband access to all parts of the
11 country. Google proposes to increase the broadband network speed by 100 times.
12

13 The motion carried by the following vote:

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

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

17 **7. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN**
18 **INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY AND**
19 **WASHINGTON STATE PARKS AND RECREATION COMMISSION FOR**
20 **REIMBURSEMENT OF COSTS RELATED TO FEMA PROJECT ON CLEATOR**
21 **ROAD (LARRABEE STATE PARK), IN THE ESTIMATED AMOUNT OF**
22 **\$106,440 (AB2010-146)**
23

24 *Nelson moved* to approve the agreement.
25

26 Brenner asked if there are any strings attached.
27

28 Frank Abart, Public Works Department Director, these are not County roads, so the
29 County doesn't maintain them. They are asking for assistance to do their Federal
30 Emergency Management Agency (FEMA)-related repairs on their roads. There are no
31 strings attached.
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 **8. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER INTO AN**
38 **INTERAGENCY AGREEMENT BETWEEN WHATCOM COUNTY AND**
39 **WASHINGTON STATE PARKS AND RECREATION COMMISSION FOR**
40 **REIMBURSEMENT OF COSTS RELATED TO FEMA PROJECT ON CLEATOR ROAD**
41 **(LARRABEE STATE PARK), IN THE ESTIMATED AMOUNT OF \$69,232.80**
42 **(AB2010-147)**
43

44 *Nelson moved* to approve the request.
45

46 The motion carried by the following vote:

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

48 **Nays:** None (0)
49
50

51 **INTRODUCTION ITEMS**
52

53 *Mann moved* to accept the Introduction Items.

1
2 The motion carried by the following vote:

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

4 **Nays:** None (0)

- 5
6 **1. RESOLUTION ADOPTING THE WHATCOM COUNTY COMPREHENSIVE SOLID &**
7 **HAZARDOUS WASTE MANAGEMENT PLAN (AB2010-141)**
8
9 **2. RESOLUTION VACATING A PORTION OF PORTAL WAY (AB2009-406A)**
10
11 **3. ORDINANCE AMENDING THE 2010 WHATCOM COUNTY BUDGET, EIGHTH**
12 **REQUEST, IN THE AMOUNT OF \$462,943 (AB2010-142)**
13

14
15 **OTHER BUSINESS**

16
17 Mann asked what happened to the discussion about limited areas of more intense
18 rural development (LAMIRDS).
19

20 David Stalheim, Planning and Development Services Department Director, stated
21 they are ready to go when they get the Council go-ahead. He suggests two Committee of
22 the Whole meetings of two hours apiece to review the Planning Commission
23 recommendations and statute, then have a public hearing on the Planning Commission
24 recommendation, and then start working on any alternatives. Staff is ready to go.
25

26 Crawford stated community members are advocating for a two-year extension of plat
27 approval on vesting plat applications. They need to put together an ordinance. Stalheim
28 stated the LAMIRD discussion is complicated, and will take the Council's attention for a block
29 of time, with no other items on the agenda. He recommends getting the councilmembers
30 up to speed at these two meetings, so they have background when the public comes
31 forward to speak.
32

33 Mann stated all councilmembers should attend those two meetings.
34

35 Brenner stated schedule those two meetings as special Committee of the Whole
36 meetings, not on regular Council meeting days.
37

38 Crawford stated he doesn't agree. Schedule it in a regular Planning Committee
39 meeting.
40

41 Knutzen asked if these meetings should be scheduled before or after the UGA
42 settlement meetings. Stalheim stated schedule it after that settlement meetings. Be able
43 to focus solely on the LAMIRDs.
44

45
46 **REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS**

47
48 Knutzen stated he and Councilmember Mann participated in Operation Homeless
49 Connect. It was very well-run and gave him a new appreciation of the homeless in the
50 community. It's alarming how many are recently homeless or just hanging on. The
51 community is hurting. Anything they do to help is good.
52

1 Kershner stated she attended the Bellingham International Airport Advisory
2 Committee. The airport will be closed September 1 through September 21 for runway
3 expansion. Also, she is a member of the Community Development and Advisory Board for
4 the City of Bellingham. They distribute federal funding to community organizations and will
5 look at the potential duplication of efforts and funding gaps amongst all the incoming funds.
6
7

8 **ADJOURN**
9

10 The meeting adjourned at 9:57 p.m.
11
12

13 _____
14 Jill Nixon, Minutes Transcription
15

16 The Council approved these minutes on April 27, 2010.
17

18 ATTEST:

WHATCOM COUNTY COUNCIL

1
2 Please contact the Council Office to obtain an
2 official, signed copy:
2
2 360-676-6690 or council@co.whatcom.wa.us
2