

RECORD OF PROCEEDINGS OF THE  
**WHATCOM COUNTY PLANNING COMMISSION**

1

March 12, 2009

Regular Meeting

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1 **Call to Order:** The meeting was called to order, by Whatcom County Planning  
2 Commission Chair, Jean Melious, in the County Council Chambers at 6:40 p.m.

3

4 **Roll Call**

5 Present: Jean Melious, Ken Mann, John Lesow, John Belisle, Sean Wilson

6 Absent: David Hunter, Geoff Menzies, Rabel Burdge, John Steensma

7

8 **Staff Present:** David Stalheim, Wain Harrison, Alex Cleanthous, Becky Boxx

9

10 **Director's Dialog**

11

12 Stalheim: At your next meeting, on March 26<sup>th</sup>, we will be reviewing the Capital Facilities  
13 Plan for Birch Bay Fire District #21. In April we will begin the dialog about the rural  
14 element. We had several very successful public meetings last week with over 400  
15 attendees. We got some really good feedback from the meetings which will allow us to  
16 focus in on some policy issues. I have a handout for you on the UGA review, which we  
17 have updated after working with the cities for the past four months. There has been some  
18 shift in the numbers, although they aren't dramatic. We have added all three of the EIS  
19 alternatives along with the Growth Management Coordinating Council (GMCC)  
20 alternatives. We will be having some public meetings on March 23<sup>rd</sup> and March 24<sup>th</sup>. What  
21 we are going to try to do, in this round of public input, is focus in on County regional  
22 issues rather than any specific UGA. The County and cities have agreed that the County  
23 will step back for a while and let the cities work through their processes to develop a plan  
24 to bring back to the County.

25

26 Coming up at County Council, on March 17<sup>th</sup>, will be your recommendation regarding the  
27 Columbia Valley issue. The Council Planning Committee will be reviewing it then it will go  
28 to a public hearing that night. They will also be reviewing the front loaded garage issue.

29

30 **Open Session for Public Comment**

31

32 Jack Petree, Whatcom County: Over the years there have been many comments, by  
33 various commissioners, about getting information on the night of the hearing. What  
34 happens is stuff gets up on the internet on late Friday afternoon, and sometimes it's very  
35 complex. You only get a few days to go through it. I know it's frustrating, but sometimes  
36 that's the way it is. I want to emphasize it's not the Planning Department's fault either.  
37 They are hugely overworked and have a massive amount of stuff to go through. I don't  
38 know what the solution is. Don't blame us when we bring you something on Thursday  
39 night because sometimes that's the earliest we can get it done. Maybe someday we can  
40 all get together and figure out how to make this work a little better.

41

42 **Commissioner Comments**

43

44 Melious: I will be out of town during our next meeting on March 26<sup>th</sup>. Commissioner Lesow  
45 will act as Chair.

46

47 Lesow: At the last meeting a comment was made that I was arguing with the Director and  
48 it would be more appropriate to discuss issues, rather than argue with the Director. I'm

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1 not sure if that was Director Stalheim's feeling or not. I felt that what was under  
2 discussion, which was the EIS and the alternatives in the staff report, had gone beyond a  
3 report to advocacy. It had crossed the line from a neutral report to one of advocating a  
4 particular position. When I perceive that to happen I think it is appropriate to bring it out  
5 and discuss, argue, or deliberate based on one Commissioner's feelings about the  
6 direction of that report. As if have said before, we aren't here to rubber stamp staff  
7 reports. We are here to review them and comment on them, constructively or  
8 argumentatively. Sometimes through arguments you do receive some good information. If  
9 it was taken as being argumentative I think that was misconception. I think the practice  
10 should continue as long as it remains civil, as it always does.

11

12 **Approval of Minutes**

13

14 January 15, 2009

15

16 Lesow made a correction to page 22, line 9 to read: My concern is that the consultants  
17 are putting some sort of ~~inframater~~ imprimatur on the OFM...

18

19 Mann moved to approve as corrected. Lesow seconded. The motion carried.

20

21 January 29, 2009

22

23 Lesow made a correction to page 2, line 34 to read: ...from people that really ~~now~~ know  
24 about it.

25

26 Lesow made a correction to page 7, line 9 to read: Pt. Roberts ~~had~~ has two sheriff  
27 deputies...

28

29 Belisle move to approve as corrected. Mann seconded. The motion carried.

30

31 **Public Hearing**

32

33 File #PLN2009-00001: Proposed amendments to the setback requirements of the  
34 Whatcom County Zoning Ordinance, Title 20. Proposed amendments are to reorganize  
35 and relocate standards for clarity of the requirements of each zoning district.

36

37 Harrison: This item is part of our code scrub work for 2009. These items have been  
38 identified as having problems through the administrative process.

39

40 Belisle: One of the problems I hear all the time is that we have residences too close to  
41 fields and there is manure problems or spray problems. The setbacks in the staff report  
42 don't seem to address that.

43

44 Harrison: That's in a separate area which will be reviewed later. In this proposal all we are  
45 trying to do is organize the information that is already there.

46 Stalheim: That would be a good issue to bring up to the Agricultural Advisory Committee.

47

48 Alex Cleanthous presented the staff report.

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1  
2 Staff's goal in revising the setbacks is to clarify the requirements to make them easier for  
3 the public to understand. The Planning Department has worked with administrative staff  
4 and Public Works to identify what issues there are with the current code. During the  
5 discussion three issues came up. The first issue is road classification. The Public Works  
6 Department is responsible for defining the road types in Whatcom County. The zoning  
7 code is based off of two criteria. The zone and the road type. The current code has the  
8 general access road type listed which doesn't exist and does not include the neighborhood  
9 collector road types. We propose to correct that. The second issue would be to clarify and  
10 reorganize requirements and eliminate cross referencing. Currently the requirements are  
11 listed in three different sections. The goal was to create a new table in which all of the  
12 requirements are in one location. The third issue that we attempt to clarify is to  
13 incorporate the Water Resource Protection Overlay standards into the setback table. The  
14 staff has been using these proposals, on a trial basis, to see how it works and that it is  
15 consistent. Minor revisions were made from that. The proposal is consistent with  
16 Comprehensive Plan Goal 2D, Policy 2D-1 and GMA Goal 7. We recommend you forward a  
17 recommendation of approval.

18  
19 Lesow: Regarding the Pt. Roberts Transitional Zone (TZ), there is the possibility that zone  
20 may go away if Pt. Roberts is made a Limited Areas of More Intense Rural Development  
21 (LAMIRD). If Pt. Roberts were zoned Rural the only change I see would be to the Collector  
22 Arterials or Major Collectors. Is that correct?

23  
24 Cleanthous: Yes.

25  
26 Lesow: Would there be any changes if it went from TZ to Rural Residential?

27  
28 Cleanthous: No, they are the same.

29  
30 The hearing was opened to the public.

31  
32 There was no public testimony.

33  
34 The hearing was closed.

35  
36 **Work Session**

37  
38 Mann: Regarding the questions Commissioner Lesow had there would be two changes to  
39 the TZ zone. The minor collector setback would change if it were rezoned to Rural.

40  
41 **Lesow moved to accept the staff recommendations. Mann seconded. Roll Call**  
42 **Vote: Ayes – Belisle, Lesow, Mann, Melious, Wilson; Nays – 0; Abstain – 0;**  
43 **Absent – Burdge, Hunter, Menzies, Steensma. The motion carried.**

44  
45 **Public Hearing**

46  
47 File #CMP2008-00001: Proposed amendments to the Bellingham Urban Fringe Subarea  
48 Plan. In addition, the proposal includes amendments to Whatcom County's Official Zoning

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1 Code's, UR, URM, and URMX zone's cluster subdivision requirements, and establishing an  
2 underlying zoning of one dwelling unit per ten acres in the Bellingham Urban Growth Area  
3 when public water and sewer service are unavailable. The proposed amendments are  
4 because of a Western Washington Growth Management Hearings Board order.

5  
6 Alex Cleanthous presented the staff report.

7  
8 Whatcom County was challenged on sizing of the Bellingham UGA. The Growth  
9 Management Hearings Board (GMHB) found Whatcom County out of compliance regarding  
10 the Bellingham Urban Fringe Subarea Plan (URSP) to be both internally and externally  
11 inconsistent. The GMHB gave Whatcom County a date of May 12, 2009 to get into  
12 compliance.

13  
14 Internal inconsistencies include the UGA maps, for Bellingham, that were adopted in  
15 February, 2008, are inconsistent with policies within the UFSP.

16  
17 Staff has included proposals that go beyond what the GMHB found inconsistent. We  
18 propose to remove Rural and Agricultural locational criteria as well as add language to the  
19 Commercial and Industrial zoning. This is to show that Commercial and Industrial policies  
20 only apply to land zoned within the UGA. We would remove the Agricultural and Rural  
21 policies to insure against further inconsistencies as staff is in the process of updating the  
22 rural element of the Comprehensive Plan.

23  
24 Staff is also proposing adding a new map to the subarea which would amend the  
25 boundaries of the subarea. There are three portions of the Bellingham UGA which are not  
26 within the Bellingham Subarea Plan. These are within the Lake Whatcom/Chuckanut  
27 Subareas and those do not have locational criteria or policies in place to support the  
28 densities that are adopted within those maps.

29  
30 The GMHB also found that the UFSP is externally inconsistent. It found that in the URMX  
31 zone there are not development standards in place to meet the adopted densities in the  
32 Bellingham UGA maps. Staff has proposed including a table, into the URMX zone, which is  
33 similar to the UR and URM zones. This table provides development regulations that will  
34 facilitate development up to 24 units per acre. Currently it only allows for 10 units per  
35 acre.

36  
37 There are proposals to the UR and URMX zones in regards to development without water  
38 and sewer. In November 2006, the Planning Commission recommended land use policies  
39 for the Bellingham Subarea Plan that stated when public water and sewer are not  
40 available that development potential be one unit per 10 acres. There has been an interim  
41 ordinance, that was adopted in 2007, that implemented those policies as the subarea plan  
42 was being updated. This text amendment makes that interim ordinance permanent.  
43 There is a proposal to lower the minimum cluster subdivision lot size for the UR, URM and  
44 URMX zones. This proposal will allow for subdivision of land without water and sewer. It  
45 would be similar in size to that of lot sizes when public water and sewer is available.

46  
47 We did receive comments on the proposals. The City of Bellingham's Planning Director  
48 commented. The letter stated that the City agrees that the amendments comply with the

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1 GMHB but they did not support the recommended policies of the Planning Commission  
2 from November 2006 as they were not a part of the creation of those policies. We also  
3 received a comment from Brownlee, Evans, Wolf and Lee. They represent some property  
4 owners on Queen Mountain. They were commenting on the land use policies. There  
5 concern is lack of City of Bellingham involvement and further consultation and  
6 consideration is necessary.

7  
8 The staff proposals are consistent with Comprehensive Plan Goal 2A and Policy 2A-1. Staff  
9 recommends the Planning Commission forward a recommendation of approval.

10

11 Mann: Who was it who took this to the GMHB?

12

13 Stalheim: Jack Petree, Futurewise, Dean Haverstraw, Caitac and Bob Wiesen.

14

15 The hearing was opened to the public.

16

17 Darcy Jones, Whatcom County: In general I see the need to bring the maps into  
18 compliance. I am concerned about the land use polices. In a lot of these areas there has  
19 been a lot of planning and infrastructure analysis going on at the City level. I do believe  
20 you should be coordinating with the City on these policies. My client has property in the  
21 Samish Crest and we have been actively involved in the community planning process. I  
22 would urge you to do what the City Planning Director is asking.

23

24 Lesow: Is there anything specific in the November 2006 policies that conflicts with the  
25 work you have continued to do your client?

26

27 Jones: The density assignment to this property, which is adjacent to the City limits, is  
28 going through pretty stringent review as to how we are going to build the roads, water  
29 systems, etc. I don't see it as a long term holding pattern. I can see the reason behind  
30 the reserve area but I don't think it's appropriate in this area. The Interlocal Agreement is  
31 also going to come into play here with the availability of water and sewer. What does your  
32 policy mean when you say water and sewer are unavailable?

33

34 Lesow: The City knew about this in 2006 and before. The idea that the City hasn't really  
35 been involved was of their own choosing not ours.

36

37 Jones: When you were discussing the Yew Street area the City did state why they thought  
38 that area should stay in the UGA. I think for those very same reasons it needs to be  
39 considered an immediate development option for the City. I support the City's request for  
40 involvement.

41

42 Dominique Zervas, Whatcom County: I just want to raise some issues. For example the  
43 two tiers issues is vague. You don't know where those are. We don't really know what  
44 UGA it is. What we see are the 1997 maps so we don't know if you are talking about those  
45 maps or 2007, 2008, 2009. Without that knowledge how can people really participate?  
46 People need predictability. Will there be another opportunity for public participation before  
47 moving this forward? Has there been evaluation about how this tiering might impact UGAs  
48 in the County?

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1  
2 Another issue is the Title 20 changes. The UR, URM and URMX changes are kind of  
3 imbedded in this plan. According to the SEPA DNS it indicates these changes are restricted  
4 to the Bellingham Urban Fringe Subarea Plan but those changes are going to impact all of  
5 the UR, URM and URMX areas throughout the County.

6  
7 Mann: Is there anything specific to the proposal that you think needs work?

8  
9 Zervas: Right now it's hard to tell because it's in general terms.

10  
11 Lesow: Would it be fair to say that your law firm does not embrace the idea of tiering, at  
12 all?

13  
14 Zervas: Because it's hypothetical, it's hard to say.

15  
16 Cal Leenstra, Whatcom County: I'm a partner in 50-60 acres in the Governor Road area.  
17 It's some of the same property Darcy Jones spoke about. I want to echo what he said. We  
18 have spent over \$100,000 so far planning that whole area in the last 10 years. We've  
19 planned roads, subdivisions, etc. We were up for approval of Governor Road Subdivision  
20 #2 and just months ago that was disapproved because of a technicality regarding water  
21 availability. We have water availability to some of the property, but not all of it. We even  
22 built a tank for Samish Highlands and agreed to build a tank for the rest of the property,  
23 up on the top of Palmer Road. The City said it was a good idea and to go ahead and build  
24 it then they changed their mind. Now we don't have water for all the lots in our proposed  
25 subdivision. This is not a rural area. This is property that we've been spending a lot of  
26 money and time on. Not just our money but public money too. There is pretty high  
27 density around our property. It seems like you are picking on a piece of property right in  
28 the middle and I'm not sure what the reason is. We realize you don't want short term  
29 development that's not the proper density. We don't want to do that either. I guess my  
30 question is how long is this interim thing going to last? We think our property is unique in  
31 that it's been in the development stage for 10 years.

32  
33 Jack Petree, Whatcom County: I would like you to look at the notice and try to figure out  
34 if even one or two of the landowners in the thousands of acres in the urban fringe, that  
35 you are down zoning, even understand what you are doing. Do you think that anyone  
36 hear tonight understands that you are replacing an entire County subarea plan in one  
37 hearing? This process is of little use and violates GMA. Bellingham should be involved in  
38 this process. The GMA requires that this be a joint meeting between you and Bellingham.  
39 Does anyone know what areas we are talking about? Where is tier 1 or tier 2? I don't  
40 know. GMA requires meaningful public participation. How can we testify on something  
41 when we don't know what area you are talking about? If you are going to downzone  
42 thousands of acres in the County shouldn't maps of the entire area being down zoned be  
43 included in your mapping? Where is the analysis on this? There's not a scrap of analysis  
44 regarding the impact of the changes, proposed here, on the subarea plan. This proposal  
45 places draconian restrictions on development in the UGA with no analysis. The plan before  
46 you doesn't even address some of the UGA. Only UGAs adopted in 1997 are included in  
47 this plan. Do you have the power to force Bellingham to comply with your demands? Is it  
48 appropriate to combine three complex issues into one hearing? You guys held 46 meetings

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1 on this but it was all in 2005 and 2006. A lot has happened since then and this has not  
2 been updated.

3  
4 Mann: I'm glad you brought up the issue of all the meetings we had. You, and others, say  
5 there has been no public participation in this plan. Those 46 meetings were the public  
6 participation. How can you complain there is no public participation?

7  
8 Petree: Your joint process, with Bellingham, ended in 2005 because you weren't willing to  
9 move on this. The City was going to lose its grant money, just like you have lost your  
10 grant money because you didn't do your work. The City didn't want to do that so they  
11 adopted their plan in 2006. They sent you a letter saying you broke your word. The City  
12 did not participate in the process after that. You can't just dust off something and say it  
13 has anything to do with what is going on now.

14  
15 Lesow: Back then we were talking about more than the policies. We were also sizing the  
16 UGA which included the five year review areas. Don't you agree that is what our work was  
17 all about?

18  
19 Petree: It began as a five year review then the County got in trouble for not doing its  
20 work and morphed it into the ten year review. There was never any analysis done,  
21 especially on tiering.

22  
23 Lesow: You would agree that the tiering came towards the very end of the process, after  
24 the UGA sizing, which took up the majority of the process?

25  
26 Petree: I would not agree with that. What the tiering amounts to is it makes it entirely  
27 possible to stop growth in Whatcom County.

28  
29 Mann: Do you have any constructive comments or recommendations?

30  
31 Petree: I think the verbiage for the URMX, etc. is probably just fine. The problem is you  
32 can't build in the UGA until you are annexed so it really doesn't matter what the UGA is  
33 zoned.

34  
35 Bob Wiesen, Whatcom County: This was a subarea plan. Was there an advisory group  
36 originally on this thing? Have they met since November 2006? It looks like there are a lot  
37 of changes that have taken place in the mean time? Has there been other public process  
38 on these other issues? How was Bellingham involved in this process? I would have  
39 expected Bellingham to be here tonight. In the November 2006 Policy IG-1 it said you  
40 would work with Bellingham. It's Bellingham's UGA so they get the say in this. I also raise  
41 questions about the map. There's a lot of property not included on that map. I think the  
42 steps you have put in this process make it almost impossible for any development in the  
43 UGA. Saying Bellingham has to infill before development can move out makes it  
44 impossible to build. It's not all condos and apartments in Bellingham that are going to fill  
45 the market. Bellingham does not have single home lots available, so Ferndale, Lynden,  
46 Birch Bay and Blaine are supplying those homes.

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1 The public process is failing in this County. I think sometimes, on purpose, you don't want  
2 people to know what is really going on in their neighborhood or what effect your policies  
3 will have on those people.

4  
5 Dave Pros, Whatcom County: Just a couple of things for you to pass on to the City of  
6 Bellingham, who I think has the final say. The concept of phasing or tiering does give the  
7 County some control over some of the areas. Otherwise the City definitely determines  
8 what goes on. The County currently defines urban as six units per acre. I don't know what  
9 power they have to enforce that in urban areas.

10  
11 In an effort to establish a real working Transfer of Development Rights program (TDR) I  
12 think the time as come that the Council recommend being able to buy down the density.  
13 If a developer wants to build to a lesser develop density why not make that available by  
14 purchasing a development from somewhere else? It accomplishes the same goal.

15  
16 Lesow: I would like to get something on the record in regards to the statement there was  
17 no public process. You were on the Planning Commission at that time. Do you agree or  
18 disagree with the idea that the public didn't have adequate input into this whole decision  
19 that we are looking at now?

20  
21 Pros: I don't have a real strong feeling on that issue. It's not that we didn't have a lot of  
22 public hearings but there is a time sensitivity. What happened in 2006 was important in  
23 2006.

24  
25 Lesow: I would like to hear the additional comments from Mr. Wiesen.

26  
27 Wiesen: I'm not being critical of the Commission, I just think the system is falling down  
28 because the right people aren't getting involved at the right time. I don't know what the  
29 answer is.

30  
31 The hearing was closed to the public.

32  
33 **Work Session**

34  
35 Melious: I think one of the issues we need to clarify is the scope of the staff  
36 recommendation. My understanding is it only addresses Appendix A and B and doesn't  
37 include all of the Planning Commission recommendations from earlier.

38  
39 Stalheim: The reason we included this information in the packet is because it is part of the  
40 process of reviewing the required amendments based on the GMHB decision. We also took  
41 your recommendations, from about three years ago, and forwarded the whole package on  
42 to the City of Bellingham to do the inter-agency coordination communication issue. As far  
43 as we know, they had never received your recommendations from 2006. Tonight's hearing  
44 is not at all about trying to reopen the policies that you did in 2006.

45  
46 Regarding the testimony about down zoning I don't know where that is in this packet.  
47 There is no down zoning proposed.

48

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1 The amendments in the UR, URM and URMX zones have been in an interim ordinance that  
2 took some of your initial policies, about the 10 acre reserve, and put them into that  
3 interim ordinance. What we are now doing is making that a permanent ordinance. The UR  
4 and URM zones have no major changes other than what we have done is reduced the  
5 minimum lot size down, if there is water and sewer, to an urban size rather than the  
6 12,500 square feet. We also have set a reserve so it can be redeveloped. The changes are  
7 of very little consequence county wide.

8  
9 Most of the issues are on things that passed out of this Commission two years ago. Our  
10 intention was to provide a back drop to the City and you to see the policies and remind  
11 yourselves of what you passed. We have taken out any inconsistencies and made some  
12 minor changes.

13  
14 Lesow: Has there been any communication from the Bellingham Planning Commission,  
15 with respect to this?

16  
17 Stalheim: No.

18  
19 Lesow: Has the Planning Commission shown any interest in this so perhaps we can have a  
20 joint meeting regarding this? Are the Planning Director and the Planning Commission on  
21 the same page?

22  
23 Stalheim: I don't know.

24  
25 Stalheim: The City is not ready to see the policies yet.

26  
27 Mann: Mr. Leenstra and Mr. Petree brought up issues that nothing can be done in the UGA  
28 because everything is going to be down zoned to one house per 10 acres until the  
29 property is annexed. Do you have any reaction to that?

30  
31 Stalheim: It's not being down zoned. There are some policies regarding annexation but  
32 those policies are not in effect until they are passed by ordinance.

33  
34 Mann: Regarding TDR's, Mr. Pros just brought up the issue of redoing the way they are  
35 done so you would be able to buy down your minimum density by using TDR's. Can we  
36 change some of those TDR formulas?

37  
38 Stalheim: We didn't notice that issue for tonight. I'm not prepared to answer questions on  
39 that subject.

40 Wilson: From the letter, it seems that the City of Bellingham is very supportive of  
41 addressing those items that would bring us into compliance. Then they go on to discuss a  
42 few concerns about language they believe has been revised through this process. They  
43 don't seem too inclined to just agree with them. What effort has been put towards  
44 reaching some sort of agreement on those issues? What is the disadvantage for extending  
45 the time on those issues?

46

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1 Stalheim: The disadvantage would be that we have a GMHB compliance deadline by May  
2 12, 2009 so we have to move this through in order to meet that requirement. As far as  
3 the policies the City isn't interested in having a dialog about them at this time.  
4

5 Melious: So is it correct to say that the City doesn't have any disagreement with what we  
6 are proposing tonight, it's just the policies from 2006?  
7

8 Stalheim: That's my understanding. We will be taking those policies to the Council who  
9 will have a hearing on them.  
10

11 Mann: If we pass this tonight will this be the last we hear of the Bellingham Urban Fringe  
12 Subarea Plan?  
13

14 Stalheim: No. At some point in time we will bring it back again. We are having  
15 conversations with the cities about a different approach to UGA planning. The cities may  
16 take more of a lead.  
17

18 Mann: I don't understand finding #18.  
19

20 Cleanthous: That is referring to the proposal to remove the Agricultural, Rural,  
21 Commercial and Industrial locational criteria and policies so we can avoid future  
22 inconsistencies as we are updating the rural element.  
23

24 **Lesow moved to accept the staff report as presented. Belisle seconded.**  
25

26 **Mann proposed a friendly amendment to remove Findings #21 and #22. Lesow  
27 and Belisle accepted the amendment.**  
28

29 **Roll Call Vote: Ayes – Belisle, Lesow, Mann, Melious, Wilson; Nays – 0; Abstain –  
30 0; Absent – Burdge, Hunter, Menzies, Steensma. The motion carried.**  
31

32 The meeting was adjourned at 8:30 p.m.  
33

34 Minutes prepared by B. Boxx.  
35  
36  
37  
38  
39  
40

41 WHATCOM COUNTY PLANNING COMMISSION ATTEST:  
42  
43  
44

45 \_\_\_\_\_  
46 Jean Melious, Chair  
47  
48

\_\_\_\_\_

David Stalheim, Secretary

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