

RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION

1

March 26, 2009

Regular Meeting

1 **Call To Order:** The meeting was called to order, by Whatcom County Planning
2 Commission Vice-Chair, John Lesow, in the Northwest Annex Conference Room at 6:40
3 p.m.

4
5 **Roll Call:**

6 Present: John Lesow, Ken Mann, Sean Wilson, John Belisle, John Steensma
7 David Hunter in attendance at 6:55 p.m.

8 Absent: Rabel Burdge, Geoff Menzies, Jean Melious

9
10 **Staff Present:** David Stalheim, Michelle Stiles, Warner Webb, Becky Boxx

11
12 **Director's Dialog**

13
14 Stalheim: At your meeting on April 16th we will be getting into the rural element. We will
15 have a hearing and get some input from the public. On April 30th we will have a
16 worksession on the issue. We will then take the next couple of months to draft
17 Comprehensive Plan and code amendments which we will bring back for more public
18 hearings on.

19
20 In the mean time we will still be working on the Urban Growth Area (UGA) review. We are
21 still on track to have the Environmental Impact Statement (EIS) published at the
22 beginning of May. We are starting to get some initial proposals from the cities for growth
23 allocations. All the communities, except for Blaine, Ferndale and Lynden, have proposals
24 for us. We anticipate the other cities will have proposals to us next week.

25
26 The Growth Management Hearings Board (GMHB) had a hearing the other day, with
27 respect to our request for a six month extension. We expect to have a decision next week.

28
29 The County Council has taken action on some of the recommendations you have
30 forwarded. They had a public hearing on the Columbia Valley UGA and they voted to
31 uphold the UGA and to allocate the low population of 5,000. We are going to take that
32 back to the Foothills Advisory Committee and ask them to come up with a
33 recommendation for a boundary which would then come back into the public hearing
34 process.

35
36 They also considered two different ordinances for the front loaded garages. One was
37 passed on by you and the other was just incentive oriented, which is the one they passed.

38
39 **Open Session for Public Comment**

40
41 Larry Helm, Whatcom County: I raise cattle, and I want to make you aware that three
42 years ago I got a letter from the County basically saying I was going to be fined \$10,000
43 a day unless I came in and talked to the County staff, which I did. The issue with me is
44 the content of that letter. It's off the chart. I know these letters are still going out because
45 I got a call from a lady that lives north of Ferndale who got the same letter last week. I
46 think the County should send a letter out that says you are in violation or we think you
47 need to modify what you're doing, or something, but not a letter that threatens a fine. We
48 don't even fine bank robbers \$10,000 a day if they don't use a gun. I have been to see

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1 Pete Kremen, all the County Council members and now I'm bringing it up to you. Let's
2 treat people better on our first shot at getting them to comply with County codes.

3

4 **Commissioner Comments**

5

6 Mann: I went to the Bellingham City Council meeting, where they were discussing
7 population projections for the County. It was very interesting, because as we always sit
8 here saying Bellingham has to do a better job of accepting infill they were all saying they
9 are doing so much to accommodate infill and it's the County that's not doing a good
10 enough job on clamping down on development. They recommended we look at building
11 permit allocations, TDR's, PDR's, etc. to do something about sprawl and development in
12 the rural areas. They were very sincere and want to send a message to the County that
13 we need to do a better job.

14

15 Lesow: Was there any comment about the tiering policy?

16

17 Mann: No.

18

19 Stalheim: At the same time they are saying they don't want rural growth and they want
20 infill, they are trying to fast track annexations of rural lands. We are reviewing that issue
21 because their choice of population projections show they may not need to add any new
22 land. We will be reviewing annexations more carefully.

23

24 Lesow: I attended the past two County Council meetings, particularly interested in
25 progress of the pedestrian oriented streetscapes. I'm glad that the incentives passed but I
26 was disappointed in the BIA. I kept hearing from Mr. Quehrn. He supported the idea we
27 were trying to put forward but when it came down to the last meeting he was against it,
28 he and I assume his organization. I found the comments from the BIA to be disingenuous,
29 silly and unprofessional. This is not a big brother ordinance. It's not a theme park
30 ordinance. I don't think that type of presentation is helpful. I don't think it reflects well on
31 the profession or lack of same from the BIA in regard to this. If this is now part of our
32 toolbox I'm going to be sure that this tool does not rust in the toolbox for the next six
33 months. If nothing happens then I will be back pushing for more stringent ordinances to
34 make this thing happen. I want to see the evidence on the ground that it is viable and
35 certainly workable. I again extend an offer to all of the Planning Commissioners or any
36 member of the public to come up for a tour of a pedestrian oriented neighborhood and we
37 could go into Ladner and see how it looks on the ground.

38

39 **Approval of Minutes**

40

41 February 17, 2009

42

43 Lesow made a correction to page 16, line 39 to read: Michael ~~Lindquist~~ Lilliquist. Wilson
44 moved to approve as amended. Belisle seconded. The motion carried.

45

46

47

48

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1 February 19, 2009

2
3 Lesow made a correction to page 2, line 42 to read: I want to make sure I'm clear that
4 the ~~FGC~~ STC would still be allowed in Kendall. Wilson moved to approved as amended.
5 Mann seconded. The motion carried.

6
7 March 12, 2009

8
9 Wilson moved to approve as written. Mann seconded. The motion carried.

10
11 **Public Hearing**

12
13 File #PLN2009-00002 - A proposal to amend, for clarification and implementation
14 purposes, the definitions of bed and breakfast facilities and additional standards within
15 Whatcom County's zoning code, Title 20.

16
17 Michelle Stiles presented the staff report.

18
19 We are eliminating the reference to bed and breakfast lodging. Bed and breakfast lodging
20 was referred to in the zoning district but not defined in the definition section, 20.97.
21 References to bed and breakfast lodgings have been replaced with bed and breakfast
22 establishments or bed and breakfast inns, as applicable. Staff is also proposing several
23 changes to the existing definitions of bed and breakfast establishments and bed and
24 breakfast inns. For the most part, these changes do not affect the meaning or the intent
25 of the original language but are simply being proposed to make their meaning and intent
26 clearer.

27
28 20.97.027, Bed and Breakfast establishments. We are emphasizing that the dwelling in
29 which the bed and breakfast operation is located in is the primary residence of the owner
30 and the bed and breakfast shall be clearly incidental and subordinate to its use for
31 residential purposes and the purpose of the applicable zoning district.

32
33 The proposed code also clarifies the size of bed and breakfast establishments. Staff
34 proposes that the definition be changed to read: one to two rooms that are used to house
35 or lodge individuals or families. Previously it read one to two persons. Limits establishing
36 the number of rooms are easier and more straightforward to regulate.

37
38 20.97.028, Bed and breakfast inn. We added the same text, that emphasizes a dwelling in
39 which the bed and breakfast is located within must be the primary residence of the
40 owners. We have also proposed code that clarifies the size of inns. Staff proposes that the
41 definition of bed and breakfast allow three to five rooms. Previously it was three or more
42 sleeping units. We made this change because 20.97.185 defines hotels as six or more
43 rooms. Building Services previously relied on the code interpretation to meet their building
44 standards so we are incorporating the 2009 International Building Codes so the code
45 interpretation is no longer necessary.

46
47 With these clearer guidelines we are permitting bed and breakfast establishments as
48 accessory uses and are continuing to allow bed and breakfast inns as conditional uses.

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1 These changes mostly affect the Residential zones. In Agricultural zones we are proposing
2 to allow bed and breakfast establishments as an accessory use and bed and breakfast inns
3 as a conditional use. In Small Town Commercial districts inns would be deleted as a
4 permitted use and establishments and inns would be accessory uses. This is done in order
5 to recognize that bed and breakfast is secondary to the primary residence. In the Resort
6 Commercial district it will allow both inns and establishments as accessory uses.

7
8 Mann: Did you get any feedback from the people in the lodging industry on these
9 changes?

10
11 Stiles: No. We consulted with staff, who deals with those people.

12
13 Mann: Does this make any existing bed and breakfast inn or establishments non-
14 conforming?

15
16 Stiles: I don't believe so. The changes aren't that substantial.

17
18 Stalheim: They would be grandfathered in if they didn't meet these standards. We are
19 changing it from the amount of people to the amount of rooms.

20
21 Stiles: We are assuming two people per room but we aren't regulating how many people
22 per room.

23
24 Lesow: Has there been an uptake for applications for these types of permits, in the past
25 six months?

26
27 Webb: There have been a lot of inquiries with the Olympics coming up.

28
29 Lesow: What happens if you get a lot of people and cars coming to these? Is this
30 something that staff or enforcement will regulate? Do you see an enforcement issue down
31 the road?

32
33 Stalheim: It does fall under our enforcement. I don't anticipate it being an issue, but that
34 doesn't mean it won't happen.

35
36 The hearing was opened to the public.

37
38 There was no public testimony.

39
40 **Work Session**

41
42 **Mann moved to accept the recommendation for approval. Belisle seconded.**

43
44 Wilson: I did reach out to some members of the community who have bed and breakfasts
45 in my area to ask them if these changes were substantial as far as they were concerned.
46 They did not have any concerns.

47
48

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

3

4 **Public Hearing**

5

6 File #PLN2009-00003 - A proposal is to amend, for clarification and implementation
7 purposes, the definitions of daycare facilities and additional standards within Whatcom
8 County's zoning code, Title 20.

9

10 Michelle Stiles presented the staff report.

11

12 The first step in updating the language for daycares was eliminating the reference to
13 20.97.052.1, "child care facilities" in the definition section. We are going to relocate the
14 definitions that are currently located in this section. The proposal creates an independent
15 definition for family day care homes, mini day care center and day care center that
16 clarifies existing text standards. In addition to these three definitions the proposal creates
17 a definition for mini day care homes.

18

19 The proposal, for 20.97.242, mini day care home, will alleviate the inconsistent,
20 cumbersome references to mini day centers, located in the family dwelling, which are
21 referenced in several of the zoning districts.

22

23 Next we propose to amend references to day care facilities. We propose to change family
24 day care home from a permitted use to an accessory use where it was listed as permitted.
25 We are doing this because the home is a primary permitted use in these districts and the
26 mini day care home and the family day care home is accessory to the dwelling unit. In the
27 Commercial districts and Tourist districts we are going to primarily permit mini day care
28 centers and day care centers. This is not a change, it was just previously referenced as a
29 day care facility. The proposal would permit family day care homes and mini day care
30 homes as an accessory use consistent with the change as previously discussed, in the
31 residential districts. In the Industrial zones, Manufacturing and Airport Operation districts
32 staff is proposing to only permit mini day care centers and day care centers as an
33 accessory use. In most of these zones dwelling units are not permitted. Having day care
34 homes conducted in the primary is inconsistent with the intended use of the zone. Staff
35 proposes that the day care centers are more appropriate for these districts.

36

37 Hunter: I have found that you get complaints from neighbors, when somebody in a
38 residential environment, decides to run a little day care. The primary reason for the
39 complaint is traffic. I have always assumed that in the City of Bellingham they had a
40 conditional use permit. That seemed logical to me. It seems that the County has decided
41 that either it creates an insufficient burden on the neighbors to not require any analysis
42 on an individual basis or that the benefit of it would somehow overcome any concerns you
43 have about it. Did you think about that issue at all?

44

45 Stiles: Yes. In the residential areas family daycare homes are the only ones that are not
46 accessory uses. Conditional use permits are required for the mini day care centers and
47 day care centers.

48

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1 Stalheim: The RCW's prohibit us from treating it as anything other than a residence if they
2 have six or fewer children.

3

4 Belisle: Does anyone check these homes to make sure they are suitable?

5

6 Stalheim: The Health Department regulates and I believe the larger ones are regulated by
7 the State Dept of Health.

8

9 Belisle: How many of these little day cares are out there?

10

11 Stalheim: The smaller ones are purposely set up to be under the zoning radar screen.

12

13 Webb: The larger ones do have to meet certain requirements. They usually start out as a
14 small day care, do that for a while and work up to the larger center. That's when more of
15 the inspections come into play.

16

17 The hearing was opened to the public.

18

19 There was no public testimony.

20

21 **Work Session**

22

23 **Mann moved to accept the recommendation for approval. Wilson seconded. Roll**
24 **Call Vote: Ayes – Belisle, Hunter, Lesow, Mann, Steensma, Wilson; Nays – 0;**
25 **Abstain – 0; Absent – Burdge, Menzies, Melious. The motion carried.**

26

27 **Public Hearing**

28

29 File #PLN2009-00011 - Proposed amendments to the Whatcom County Code 20.42 the
30 Rural Forestry District. The proposed changes would make the provisions from interim
31 ordinances Ord. 2006-00045, Ord. 2006-00057, Ord. 2007-00028, Ord. 2007-00064, Ord.
32 2008-00018, and Ord. 2008-00045, permanent. These changes remove language
33 referencing Lot Clustering from subsections WCC 20.42.130, 20.42.251-253, 20.42.300-
34 320, and 20.42.450. Lot clustering would no longer be allowed in the Rural Forestry
35 District.

36

37 David Stalheim presented the staff report.

38

39 This request is based on a long history of interim and emergency ordinances by the
40 County Council. They feel clustering in the Rural Forestry zone does not belong. Staff
41 recommends approval of the amendments and also the recommendation that when time
42 and resources allow that staff will continue to look at this issue to study the feasibility of
43 clustering in the Rural Forestry zone.

44

45 Steensma: When will that happen?

46

47 Stalheim: When time allows. Not this year.

48

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1 Stalheim: In Growth Management there are three classes of land. Resource lands, Rural
2 lands and Urban lands. When I first looked at this I wondered if we are classifying Rural
3 lands that have forestry or if it's Forest land with rural character. This is classified as
4 Resource land. The Rural Forestry zone is intended as long term forestry lands.

5
6 On October 2006 the Council adopted an emergency ordinance then every six months
7 they renewed it as an interim ordinance that bans clustering within the Rural Forestry
8 district. When I first got here I started looking into what was going on and why it kept
9 being renewed. In May 2008 the issue came to the Planning Commission. You stated that
10 there should be some additional studies done because clustering may have some
11 potential. I took that back to the Council, who agreed to study it, but didn't fund it for this
12 year. I then took it back to the Council asking what they wanted to do with it and they
13 said they would like the Planning Commission to make a recommendation to stop having
14 interim ordinances and make it permanent.

15
16 The Comprehensive Plan has quite a few goals and policies that draw different kinds of
17 conclusions. The County Wide Planning Policies also have policies with respect to natural
18 resource industries and the environment. The GMA also has those kinds of goals and
19 policies.

20
21 When the GMA was first passed there were no provisions for innovative techniques within
22 resource lands. It wasn't clear. At one point there had been a series of GMHB decisions
23 that stated you can't do cluster development within resource lands. That was problematic
24 in some areas. The GMA was then amended to allow cluster development but it was only
25 done for agricultural lands. I don't know if it was purposely left out of forest land or not.
26 This is something to take into consideration.

27
28 There is a feeling with the Council, and perhaps the Planning Commission, to look into this
29 more but we don't want to keep renewing the ordinance and leave the feeling that lot
30 clustering in the Rural Forestry should be allowed. Most people agree that the existing
31 standards don't work. Therefore we believe at this time making this ban permanent is the
32 best thing and we can always take this issue up again when time and resources allow.

33
34 Lesow: Do I understand that we aren't budgeted for staff nor a consultant to work on
35 this?

36
37 Stalheim: That's correct.

38
39 Steensma: When did the County begin clustering in Rural Forestry?

40
41 Stalheim: It's been happening since the 1980's.

42
43 Belisle: One of the things that clustering does is protect the underlying zoning. There are
44 places that are unbuildable. Is there a way to survey the land to decide where it's best to
45 build? Can those unbuildable areas be removed from the underlying zoning?

46

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1 Stalheim: What we are going to get is 20 acre lots. It may not fit the landscape well both
2 from a development or forestry perspective. 20 acre lots are exempt from subdivision
3 review.

4

5 Steensma: Is clustering working in the Agricultural zone?

6

7 Stalheim: They don't seem to be working for agricultural purposes.

8

9 Lesow: In the staff report is a statement saying that by removing the lot clustering
10 provision there are likely to be more interactions between humans and threatened and
11 endangered species. Is there some science to back up that assertion or is that anecdotal?

12

13 Stalheim: I think that's anecdotal.

14

15 Lesow: In terms of managing it at a landscape level there doesn't appear to be much
16 enforcement. Is there an enforcement mechanism, through the Planning Department, to
17 ensure that the reserve is being managed to the proper level?

18

19 Stalheim: No. That would be a challenge.

20

21 Mann: You mentioned that no one likes the current clustering ordinance. What is it that
22 people don't like?

23

24 Stalheim: There are two issues that come up. One is the ratio of the forest reserve to the
25 development. Maybe the development size should be smaller. The other thing I have
26 heard is there are no provisions for what happens on the reserve to make sure it's
27 managed for forestry purposes.

28

29 The hearing was opened to the public.

30

31 Larry Helm, Whatcom County: I got involved in this issue about four years ago when the
32 Iverson and Sygitowitz group was going to put a cluster on top of Squalicum Mountain,
33 which is close to me. They ended up putting that on top of the mountain, on a flat area.
34 There were road issues, water issues, etc. What's important to me is that I moved here
35 for a rural lifestyle. I moved here to raise some cows on a small operation. I enjoy that.
36 Now I have a perfectly dark valley, of no noise or anything. When that cluster goes in I've
37 got light noise, the works. I'm back to an urban environment. When I moved there it was
38 agreed that the land would be 5 and 20 acres. Now I'm looking at ½ acres and 64 houses.
39 There is a whole different attitude of people when they are on a ½ acre lot versus a 5 or
40 20 acre lot. I think there is a lot of science to that. When you put a cluster in a rural
41 environment you start the urban process. People want urban services in these
42 developments. I would encourage you to pass this. If you want urban services live in the
43 city.

44

45 Lesow: Do you consider the clustering to be helpful for the interaction between the
46 humans and endangered species?

47

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1 Helm: No. There are bear, cougar, etc. barely surviving. The wildlife corridor goes over
2 the top of the mountain, in a little saddle, where they are going to put the houses. The
3 animals are going to go on the least grade where you are going to want to put the roads.
4

5 Mann: If you have the 32 acres of houses, with one road into it, and the rest is untouched
6 isn't that better than having a house on every 20 acres?
7

8 Helm: I would rather see one house per 20 acres because of the impact. If you put all of
9 those houses in one area you have created a mini city. You block the animal migration.
10 You are putting a huge amount of services in a very restricted area versus spreading it
11 out over several hundred acres. But that's not the issue. It's the type of people you get. If
12 you get someone who buys 20 acres he has a commitment to take care of that property.
13 If you put someone on a 1/2 acre cluster they aren't going to do any forestry because they
14 don't have enough land.
15

16 Virginia Watson, Whatcom County: I got involved in this because of the same
17 development Mr. Helm spoke about. I think staff did an excellent job with the staff report.
18 One of the points in the staff report is a point I also want to make. It is about how the
19 State legislature says there can be clustering on agricultural land but not on forest land.
20 The law is clear that you can't cluster on forest land so I'm not really sure why it's in the
21 staff report to study this issue further. I understand the need to study it for the
22 agricultural land because it's allowed there. I have a handout for you with statements
23 from four of the County Council members stating they don't think clustering should be
24 allowed in the Lake Whatcom watershed. Laurie Caskey-Schreiber said that cluster
25 development gives people a false sense of being in an urban area and they then expect
26 urban services. I have included GMA references that I feel support the ban on clustering in
27 the rural forest zone. We are all bound by this State law. On Squalicum Mountain we do
28 need the forest to protect the Lake Whatcom reservoir. When the project on Squalicum
29 Mountain was first brought up the Planning Director at that time, Hal Hart, told us that
30 building on mountain tops was going to be the next new wave. 7 out of 10 people state
31 they want the County to retain its rural and agricultural character. As this development
32 moves ahead every lot is going to require a well that will penetrate the aquifer that
33 supplies the Lake Whatcom reservoir. Those wells will affect that reservoir and those
34 houses will pollute the lake.
35

36 Lesow: I see you have a petition with 238 signatures. Were these taken over a period of
37 time?
38

39 Watson: It was over a period of time.
40

41 Mann: You can have a cluster and leave the rest as one contiguous piece of property or
42 have the houses spread out. How is one so clearly environmentally better than the other?
43

44 Watson: I don't believe the natural environment would support the full buildout. They
45 probably won't wind up with 64 houses. I also believe that if the cluster went through that
46 there will not be sufficient water to support it which will eventually create a public health
47 emergency. I also think that development follows infrastructure and once that comes in
48 the whole area will be developed.

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1 The hearing was closed to the public.

2

3 **Work Session**

4

5 **Wilson moved to accept the staff recommendations. Belisle seconded.**

6

7 Wilson: Does the GMA actually prohibit clustering in the Rural Forestry zone?

8

9 Stalheim: I think there is a valid argument that it could be interpreted that way.

10

11 **Lesow made a friendly amendment to vote on each of the two recommendations**
12 **separately. Wilson accepted the amendment, Belisle did not accept the**
13 **amendment.**

14

15 Hunter: While I think we should agree to the first part of this and forward it to the Council
16 I think the second part of this is a waste of time. There has been ample opportunity to
17 look at this issue. Until I am confident that State law would allow clustering in forest lands
18 I don't see any point in trying to promote an investigation into that. I think it should be
19 done but the State needs to act on this first.

20

21 Lesow: I haven't heard anything from the public asking for further study of this issue.
22 That's why I don't favor voting for the second part of this.

23

24 Belisle: I'm a really strong proponent of clustering until you look at the history of it. It
25 doesn't work. There are no design standards that protect the resource lands. I'm not sure
26 that we, as a County, have the strength to stand up to pressure to change that.

27

28 **Belisle made a friendly amendment to vote on each of the two recommendations**
29 **separately. Vote in favor of the first recommendation to move this forward to**
30 **Council and not have the Planning Department review the clustering issue in the**
31 **future. Wilson accepted the amendment.**

32

33 **Roll Call Vote: Ayes – Belisle, Hunter, Lesow, Mann, Steensma, Wilson; Nays – 0;**
34 **Abstain – 0; Absent – Burdge, Melious, Menzies. The Motion Carried.**

35

36 **Public Hearing**

37

38 File# CMP2007-00014 – A proposed amendment to Chapter Four of the Whatcom County
39 Comprehensive Plan and the Birch Bay Subarea Plan regarding levels of fire protection
40 and emergency medical services and adopt by reference the capital facilities plan of
41 Whatcom County Fire District 21.

42

43 Warner Webb presented the staff report.

44

45 The request is to amend the Whatcom County Comprehensive Plan and to amend the
46 Birch Bay Community Plan, more specifically to adopt, by reference, the Capital Facilities
47 Plan submitted by Fire District #21, formerly Fire District #13 and part of North Whatcom
48 Fire and Rescue.

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1 We propose to amend the Birch Bay Community Plan level of service (LOS) standards in
2 table 17-1, as it relates to fire response times. We also propose to add new language
3 describing land use policies in Chapter 8 of the plan to provide clarity about urban levels
4 of fire protection and emergency medical services. We will also delete references to Fire
5 District #13 and replace them with references to Fire District #21.

6
7 The reason for this request is to ensure that LOS standards, as adopted by Fire District
8 #21, may be evaluated for consistency with the Whatcom County Comprehensive Plan
9 requirement for concurrency. This also allows for determinations to be made as to
10 whether or not the Fire District is able to provide concurrency with the level of service that
11 is required. This will provide the fire district with the mechanism to evaluate that probable
12 funding is capable of meeting existing needs and if not the fire district may be empowered
13 to procure realistic funding sources as required by GMA and outlined in the Whatcom
14 County Six Year Capital Facilities program.

15
16 Staff recommends that the Planning Commission vote to approve the proposed
17 amendments.

18
19 Stalheim: One of the challenges that we have is that we can only amend the
20 Comprehensive Plan once a year. The Council is scheduled to take up the amendments
21 soon. If this item is held up tonight then it will not be resolved until next year.

22
23 Mann: Was the Capital Facilities Plan voted on by the Fire Commissioners of the district?

24
25 Stalheim: That is a question for the Fire Commissioners.

26
27 The hearing was opened to the public.

28
29 Jon Sitkin, Whatcom County, representing Fire District #21: This issue stems from the
30 existing Birch Bay Community Plan. In our view it falls way short of the requirement for a
31 capital facilities plan. The district plan sets a LOS of four to six minutes for a response
32 time. The district is not able to meet that standard for Birch Bay. As a result they began
33 challenging development approvals under the County's concurrency ordinance and the
34 approval criteria for development, such as the subdivision rules that require adequate
35 public services. When you analyze adequacy of facilities the first question is what is the
36 LOS? For fire and emergency services you get response times. In rural areas you accept a
37 lower LOS than in urban areas. We have not been able to understand where the four to
38 six minute response time came from and how it got into the Birch Bay Community Plan.

39
40 We were asked to develop a Capital Facilities Plan by the development committee and the
41 County staff. We formulated a Capital Needs Assessment which went through an
42 extensive community review process. They then produced a refined plan which lead to the
43 Capital Facilities Plan that has come forward.

44
45 Under performance standards the district is required to address the standards of ???. This
46 is what they feel they can reasonably achieve for the various areas. The district adopted
47 an eight minute response standard 90 percent of the time for urban areas. The district can
48 attain that standard with no growth in the district. It can't attain that with growth. It has

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1 developed a capital facilities plan to try to achieve that standard by anticipating all of the
2 growth the County projects over the next 20 years. It does not have the funding available
3 from other resources to reach the level of service needed for the growth. Another issue is
4 the district takes equipment and personnel out of operation at least two hours every day
5 to transport to St. Joseph Hospital. This often leads to system failure.

6
7 So what is the solution? The district commissioners either say they can't provide the
8 service and we tell the County that there is no concurrency and get rid of the Birch Bay
9 UGA or you develop a solution. The district has developed a concurrency mitigation
10 program as a solution. The County has encouraged that. That is the bridge that makes up
11 part of the funding for the impact for new growth in the district. It is spread district wide,
12 not just in Birch Bay.

13
14 Mann: Has this Capital Facilities Plan been passed by the district?

15
16 Sitkin: The district has not formally approved the plan because we want to reconcile it
17 with the County. It doesn't do any good if the district has one plan and one LOS and the
18 County has a different one. The Commissioners voted to authorize the submission of the
19 plan to the County to supplement and amend the Comprehensive Plan. It has approved
20 the concurrency mitigation program and it has approved the standards of covenants. Once
21 you make a recommendation and it goes to Council we would like to see a joint adoption
22 of the plan. We manage the district but we don't set the LOS standards for the County.

23
24 Mann: Did you see the letter from Langabeer and Tull? What do you think about their take
25 on it that we will be institutionalizing a Birch Bay policy that is already highly controversial
26 and legally suspect?

27
28 Sitkin: I know they feel that way. We have been litigating the issues already over
29 development approval. They have told us there are conditions on the concurrency
30 mitigation program. I know their views and I disagree with them. What is not before you
31 tonight is impact fees. The district does not have an impact fee authorized. The County
32 can, through its SEPA process, answer concurrency requirements, impose mitigation and
33 can deny projects through those concurrency requirements and its development approval
34 criteria. The developer is left to find a solution or not. The district doesn't want to stand
35 on the sidelines and say no growth but they aren't saying the existing residents are going
36 to bear the burden of the impacts of growth with in their response time.

37
38 Doug Robertson, Whatcom County, Belcher & Swanson: I represent a number of people
39 either directly or through our firm. I have been involved in this process since November
40 2005. There are issues with the details in the plan. The cart has been put before the
41 horse.

42
43 I am very impressed with what the Birch Bay community did by adopting this community
44 plan. The fire district was party to the plan.

45
46 What we have here is a decision that will change Birch Bay. This is a shifting of millions of
47 dollars. If the County adopts certain levels of service and certain mitigation fees you will
48 be shifting population. Development goes to where it's economically feasible.

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1 Right now, for fire fees, commercial land is between \$6.00 to \$10.00 a square foot in the
2 Birch Bay UGA, motels are \$7.86, an office \$3.79, retail, \$2.95, or a nursing home is
3 \$28.67 per foot. That means that these impact fees alone will constitute 30 to 300
4 percent of the land value. If you impose that type of fee what is going to happen with
5 development? It will go elsewhere. If this type of fee is adopted you need to go back and
6 amend the Comprehensive Plan and change the population forecast. Birch Bay will not be
7 able to absorb the current calculated population growth because this fee is an economic
8 barrier that will send population elsewhere.

9
10 Why are we here talking to the County about what the proposed LOS should be? It should
11 be back with the Birch Bay Community. This is the group that organized the Birch Bay
12 Subarea Plan in order to allow this area to become a city in the future. Why didn't this
13 come back to the Birch Bay Subarea group to discuss these issues? Why is it coming here
14 with an unadopted plan? Birch Bay has to decide what LOS they want.

15
16 As Director Stalheim noted in a letter from June, this is a countywide planning issue.
17 When you are adopting levels of service you can't have different times in different areas.
18 Coordinated planning has to take place. That is why we can't look at this in one night and
19 then send it to the County Council. This is a unique analysis and it doesn't reflect reality. I
20 have read all of this and I can't see any current study of the fire district's response time.
21 They are coming forward saying they can't meet the LOS in Birch Bay. If they can't meet
22 it in the Birch Bay UGA why don't they move fire trucks down from Blaine to Birch Bay to
23 average the response times out? Has that ever been analyzed? Never. Has anyone ever
24 seen why Birch Bay can't meet the LOS? No. The real issue here is there is one service
25 area. How can they take one portion out and say the LOS can't be met there, so make
26 these people pay the fees? I don't understand what Mr. Sitkin is saying regarding whether
27 or not everyone in Fire District #21 will be paying the fees. We do know that Blaine will
28 not be paying the fees yet they are in the district.

29
30 The bottom line is this is a huge economic impact. This fee broke projects in 2005.
31 Imagine what it does to them now. This is the first step for the County to adopt levels of
32 service for fire districts. Why are we doing it on an unadopted plan at one meeting, when
33 Birch Bay hasn't even looked at it?

34
35 On several occasions I have asked the fire district for data and didn't get it. I did a
36 request for public disclosure and there was no raw in the documents to look at. Where is
37 the proof of inefficiency?

38
39 My request is to give this 30 days for more review.

40
41 Mann: You made it sound like we can't have different LOS standards in different districts.
42 You also suggested we leave it up to the community who might select an LOS different
43 than what another community selects.

44
45 Robertson: If different communities select different LOS standards then you calculate
46 what the economic impact is and look at what that does to the population distribution. In
47 addition to this fee you have the Birch Bay transportation concurrency fee. If you put
48 those two together you have burden on development in that area that is enormous. You

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1 are correct in that individuals could say what they want for an LOS and the County can
2 either decide no you get this LOS or yes we will leave it to the individual areas. Either
3 way, once those decisions are made you need county wide planning to accommodate what
4 that does to the population distribution. In this case none of that has been done.

5
6 Kathy Berg, Whatcom County: All I really know about this proposal is what I read in your
7 background material for this meeting tonight. I don't know how it's going to work. That's
8 my major concern. We haven't had any kind of public process where we can find out how
9 it's going to work. Back when we did the Birch Bay Community Plan we put in a
10 description of the goal standard, which is a response time of four to six minutes. I believe
11 that came from the American Heart Association. Their standards say if you can get to a
12 person, having a heart attack, within that time you can save their life. We asked the
13 County if we could adopt that standard and they said no. They said whatever was adopted
14 for Birch Bay had to be adopted county wide. Then we got the information from the fire
15 district, who participated in the process, that their response time was five to six minutes
16 so we said we don't even have to ask the County for four to six minutes when we are
17 getting it now. Why would we want to change our plan now to a higher response rate?
18 Someone needs to talk to us about all of this before you change our plan.

19
20 Bob Tull, Whatcom County, Langabeer and Tull: I represent Brown and Cole which has
21 owned property next to the fire hall for over 30 years. We support the efforts that are
22 being made. For my clients this issue is about the economics of this proposal. It is enough
23 to stop a lot of projects.

24
25 When you look at this document you can see that the district assumes, somehow, in the
26 years 2012 to 2014 that 20 million dollars is going to flow in from private projects. I have
27 no idea what the possibility of that is. I suspect that it's very, very low. What the staff has
28 recognized, at different times in the past, is that they are going to have to be careful
29 because what is adopted may turn out to drive people into rural areas which will require
30 more environmental analysis. It all comes down to the fact that this is about concurrency
31 mitigation, as they call it. I believe what will happen, if the County imbeds this into the
32 Comprehensive Plan, then they are guilty of doing an improper mitigation fee that is being
33 called a concurrency fee. I don't know where this notion of a concurrency fee comes from.
34 I know impact fees aren't allowed so they are calling it something else. If my clients were
35 to pay their \$300,000 fee they would be able to go forward with their project. I doubt that
36 we would have a specific change in operations of the district. This particular method of
37 raising money has shifted the burden in a way that is going to have enormous
38 consequences. It is not currently allowed under State law.

39
40 The district should undertake a steering committee with the County, the community and
41 other interested parties to see if there are some better solutions. I don't know of any
42 reason why that can't take place. I don't know of any significant impacts that are going to
43 take place if this is not adopted. The district needs more time to figure out what they are
44 going to do if our dire predictions are correct. They need to figure out what they are going
45 to do if the 20 million dollars doesn't come through.

46
47 There needs to be a realistic assessment of what happens when someone pays the fees.
48 What does it get them? What does the district mean when it says it can't take more

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1 growth? Does that mean one more house, one more subdivision, etc? Impact fees are
2 supposed to have that clear connection of what the impact is and what the fix is. What
3 happens when a person pays a fee and it doesn't get fixed?

4
5 Mann: Would you agree with Mr. Robertson that the cost of the mitigation fees are
6 sometimes 30 to 300 percent that of the raw land prices?

7
8 Tull: I have not been tracking the raw land prices. I would assume he knows the numbers.

9
10 Steensma: In your mind are impact fees unfair?

11
12 Tull: Impact fees are clearly not allowed in this situation. If they were or if the County
13 were to decide, through the SEPA process, that it wasn't an impact fee but an impact that
14 needed to be mitigated then we focus on that particular project that requires expenditure
15 of additional money to achieve mitigation of the identified impact. They are two separate
16 issues.

17
18 Tom Fields, Chief, Whatcom County Fire District #21: I think the important thing to
19 understand is this is simple Economics 101. It's very simple. It's the law of supply and
20 demand. Growth is creating a demand on our organization and we can no longer supply
21 that demand. We are not here to penalize any developer or community. We are here to
22 protect your lives and right now we aren't doing that very well.

23
24 Mr. Robertson said we took resources and gave them to Blaine but what he forgot to tell
25 you is the amount of resources that come from Lynden, Ferndale and Blaine to protect
26 Birch Bay. We can show you the number of times that we have had to bring fire engines
27 and aid cars, which delays the response, because it brings people out of other areas to
28 serve the Birch Bay community. 15 percent of the time we are in station failure. Nobody is
29 there to respond because we are responding in other areas of our district. The City of
30 Blaine has the same problem.

31
32 We talk about the burden we are putting on development but nobody here has talked
33 about the burden that development is putting on the fire service. We need to consider
34 that. The mitigation fee issue is a solution that we tried to come up with to keep people
35 moving forward.

36
37 I don't know where the five or six minute response time came from. It may be in the plan
38 but it's not reality.

39
40 We don't have trouble raising money but we have trouble raising sufficient funds to
41 provide the levels of service that will be created by the growth and other development
42 going on in our area. Our solution might not be the best but it's the only one that has
43 been brought forward.

44
45 Hunter: I sense that there is more to this than just Birch Bay supply and demand. I think
46 it has county wide consequences. Those are hard to measure and that's the part that
47 makes me anxious. What are the consequences to the district of putting this off for a
48 year?

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1 Fields: Are you going to put growth off for a year too? I don't think the growth will
2 continue because my elected officials are not going to sign any more letters of
3 concurrency. We can't sign them because we are assuming the liability when we know
4 there is a deficiency we can't serve.

5
6 Mann: Mr. Sitkin, there has been talk of putting this off. How do you feel about that and
7 what are the impacts of delaying this?

8
9 Sitkin: The district doesn't have a GMA compliant Capital Facilities Plan but they have a
10 UGA so the district suffers the burden of having to find a way to provide an urban level of
11 service without funding resources. The Commissioners would love to have the ability to
12 provide urban levels of service but they don't have it. The district is under no obligation to
13 sign a letter of concurrency but the real effect, if development continues to occur is that
14 the citizens will be affected by the response time failures, not only in Birch Bay, but
15 district wide.

16
17 Belisle: You guys have been looking at this for a few years. Why do you think people say
18 there was no public input?

19
20 Sitkin: We have had meetings with the community, individuals, the County, etc.

21
22 Belisle: Who controls the LOS standards?

23
24 Sitkin: That is a County policy decision, under GMA. The County sets the policy as part of
25 the Comprehensive Plan.

26
27 Belisle: Is it the same for the whole County?

28
29 Stalheim: No, we don't have LOS standards adopted for fire protection. This will be the
30 first. I don't believe GMA requires us to have fire LOS standard, except we have a
31 requirement under GMA to demonstrate that we have urban services in UGA's which does
32 include fire protection. This fire district not only serves Birch Bay but the Lynden and
33 Blaine UGA's also.

34
35 Stalheim: To clarify something else, all those lots out there don't have to go through the
36 SEPA process so they can be built on but they won't pay into this.

37
38 Mann: In the plan you have tiers with different response times, but I don't see the four to
39 six minutes.

40
41 Sitkin: That is in the existing Birch Bay Community Plan, not the district's Capital Facilities
42 Plan.

43
44 Wilson: Mr. Tull, having heard the dialog do you still recommend putting this off?

45
46 Tull: Yes. The reason is that despite what I have heard it doesn't give me any comfort in
47 that we don't have a discernable theory for assigning any particular costs to properties.

48

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1 Wilson: Mr. Robertson how do you feel about it?

2

3 Robertson: Who pays the fees if you adopt them? This is a form of taxation that is being
4 proposed. It's an unfair burden on a limited number of taxpayers. It should be put off to
5 be studied.

6

7 Mann: There is a strong possibility that the Blaine UGA, and others may be reduced. How
8 will that play into this?

9

10 Stalheim: In the plan they worked on the population to align it with the forecast that we
11 had for the entire fire district, not just Birch Bay. It is consistent with our current
12 Comprehensive Plan. I think the question would be are any of the capital projects that are
13 proposed shifted as a potential?

14

15 Stalheim: If the Planning Commission wasn't willing to pass this would the fire district
16 accept the notion of just passing the LOS standards, in the plan and would those who
17 testified have any objections to those standards?

18

19 Sitkin: In our view you can't address the issue by just adopting a new LOS. That new LOS,
20 on it's own without the Capital Facilities Plan, does not allow the district to attain that
21 standard and accommodate the new growth.

22

23 Tull: Part of the problem with the proposal is that the LOS and the litigation fee are not
24 easy to interpret. Would my client have to pay and no one else would? The lack of direct
25 connection between what you pay and what happens is difficult to interpret.

26

27 Berg: There has been a defacto moratorium on growth in Birch Bay for the last couple of
28 years because the developers aren't getting concurrency letters, so growth has stopped.
29 Why not take another year to get this right?

30

31 Hunter: Ms. Berg asserts that there is no growth going on in Birch Bay. Is that true?

32

33 Stalheim: There are only certain projects that are subject to the concurrency
34 requirements so it's those projects being held up. In the past six months we have come
35 up with a SEPA mitigating condition that we have used with the district and developers
36 that have agreed to it. This has allowed some developments to move forward. And as I
37 said before there are the single family lots that continue to be developed that aren't
38 subject to SEPA.

39

40 **Work Session**

41

42 **Hunter moved to accept the staff recommendations. The motion failed for lack of**
43 **a second.**

44

45 Mann: Director Stalheim, based on what you have heard tonight do you still think staff
46 recommends going ahead with this recommendation as it is right now?

47

48 Stalheim: That is a decision for the Commission.

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1 Hunter: I don't think I can forward this tonight because I'm not sure what kind of changes
2 I would want to make to it right now. I don't have that information. But, I am very uneasy
3 about the situation the fire district is in.

4
5 Lesow: In three years why has nothing happened to make this a more complete plan?
6 Why are we being asked to make this decision without having some input from the
7 community, with regards to the levels they want? I'm not ready to vote on this tonight.

8
9 Wilson: I listened to all of the testimony very carefully and I didn't hear the fire chief say
10 this was the best solution and there may be other solutions out there. I can see a lot of
11 work has gone into this but I think there is more clarification needed which may lead to a
12 better product, through a collaborative effort.

13
14 Stalheim: You may want to recommend to the Council that the fire district form some sort
15 of steering committee to work through these issues. Staff has been working with the Fire
16 District on this for a long time. We have made a lot of progress. I think with a little more
17 time we can get it worked out with the community.

18
19 Lesow: What kind of time frame do you have in mind?

20
21 Stalheim: We can only amend the plan once a year so you have about a year.

22
23 Hunter: Do the agreements that you have made with developers include the potential for
24 money to mitigate your expenses associated with the building?

25
26 Sitkin: No money is exchanging hands at the time the agreement is being signed. The
27 development community has said it wants to defer the payment to the latest time
28 possible. The fire district was agreeable to this. The funds will be paid at the time the
29 certificate of occupancy is issued.

30
31 Hunter: Is it fair to say that the bulk of your money needs arrives at the time that the
32 building starts being used.

33
34 Sitkin: Yes.

35
36 Hunter: Even if this were put off for a year is it possible to keep your response time close
37 to what it is now?

38
39 Sitkin: The district won't have the money to build the facilities needed.

40
41 Hunter: Over the next year will you be building anyway?

42
43 Sitkin: No.

44
45 Hunter: Is the money you receive required to be put into facilities?

46
47 Sitkin: Yes.

48

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1 Hunter: Can you use it for staff?

2

3 Sitkin: No.

4

5 **Mann moved to recommend to the County Council that they direct Fire District**
6 **#21 to further develop and refine its Capital Facilities Plan, especially the**
7 **concurrency mitigation fee program, and do this in consultation with the Birch**
8 **Bay Steering Committee and the development community and major land owners**
9 **in the area. Wilson seconded. The motion carried.**

10

11 **Public Hearing**

12

13 File #CMP2008-00004 - Proposed amendments to the Whatcom County Code 20.78 to
14 add provisions from the interim Chapter 20.78 that were inadvertently omitted when the
15 chapter was repealed and replaced with the permanent chapter by Ordinance 2009-004.

16

17 Stalheim: When we went from the interim ordinance to the permanent ordinance some
18 procedural items were missed. They are outlined in the memo you received.

19

20 The hearing was opened to the public.

21

22 There was no public testimony.

23

24 **Wilson moved to approve the staff recommendation. Belisle seconded.**

25

26 Mann: There are some areas in 20.78.50 regarding *or* and *and* that need inserted or
27 corrected.

28

29 Stalheim: We will correct those.

30

31 **Mann made a friendly amendment to add these corrections to the main motion.**
32 **Wilson and Belisle accepted the amendment.**

33

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

36

37 The meeting was adjourned at 10:20 p.m.

38

39 Minutes prepared by B. Boxx.

40

41

42 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

43

44

45

46

47 _____
John Lesow, Vice-Chair

47 _____
David Stalheim, Secretary

48