WHATCOM COUNTY COUNCIL

Special County Council

May 3, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 2:05 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:
Barbara Brenner
Dan McShane
Seth Fleetwood
Sharon Roy
L. Ward Nelson

Absent:
Sam Crawford

OTHER BUSINESS

Brenner stated she received a letter asking the Council to support an application for a federal grant for jail diversion. This is a diversion grant. They do a pre-incarceration evaluation to see if incarceration is appropriate. Time is critical. She asked the Council to write a letter of support for the grant application. She would work on a letter to bring to the Council.

1. COUNCIL TO DISCUSS ISSUES AND CONCERNS RELATED TO THE RECENTLY ADOPTED MORATORIUM IN THE LAKE WHATCOM WATERSHED (ITEMS TO BE DISCUSSED INCLUDE: PROCESS, JUSTIFICATION FOR LIFTING THE MORATORIUM, BENCHMARKS, AND PRIORITIZATION OF TASKS) (AB2005-072B)

Hal Hart, Planning and Development Services Director, stated staff wants to schedule the next few meetings so they can plan the staff’s work schedule. Councilmember Fleetwood gathered comments from everyone about everything they want to address regarding Lake Whatcom. He wants to make sure staff has addressed the universal group of policies that the Council wanted. Staff wants to address those policies as systematically as possible. It’s an organizational matter.

Brenner asked when the new draft cluster regulations will come to the Council. Hart stated they can come forward either sooner or later in the process. Now is the time to lay out the schedule for the sets of recommendations staff should bring forward and in what priority. He doesn’t want a schedule that is too ambitious, but by July, staff will do everything they can except for stormwater.
Roy asked why they are not going to work on stormwater. Hart stated they are, in a sense. They are dealing with the land use pieces, low impact, subdivision, and broader land use issues first.

Roy stated Mr. Hood’s comments at the last meeting suggested that the current stormwater regulations aren’t good enough, and they’re allowing a lot of pollution from every new house. She senses from Mr. Hood that this should be a higher priority.

Fleetwood stated this moratorium response phase was to put together an outline for response. The Council gave general direction on what should be in the outline, but staff hasn’t responded. Not doing anything about stormwater is in opposition to the Council’s direction.

McShane stated stormwater is a Public Works Department item. The actions now are to avoid impacts as much as possible through development standards, including impacts that may have no impact to stormwater, such as agricultural activity in the watershed. It’s clear the Council has not adopted a stormwater program in Whatcom County that complies with the current State Department of Ecology (Ecology) stormwater manual. The Council should think about doing that. Get information from the Public Works Department staff on why they haven’t done that yet.

Roy stated she has the same understanding. The Council is trying to prevent runoff from running into the lake. Another component of the problem is runoff that is already running into the lake from existing impervious surfaces. She would like to talk about this with the Public Works Department staff. The Council keeps bringing it up, but staff isn’t addressing it.

Steve Hood, Washington State Department of Ecology, stated Councilmember Roy had asked what he meant by saying each development going in would be just over 5,000 square feet of impervious surface, or converting three-quarters of an acre of lawn is not up to standards. The thresholds for applying the minimum requirements in Ecology’s manual are the criteria where one must meet all the requirements. Whatcom County has a different set of thresholds that don’t kick in an examination about whether those minimum requirements must be met at those levels. Those are the smallest developments that wouldn’t get evaluated for conditions to be applied.

Not all of Whatcom County’s criteria, from chapter two of the development standards, are as protective as Ecology’s manual. He sent a summary of where Whatcom County is compared to the 1992 manual. A lot of work went into the 2001 manual. Recent updates and corrections have been made. The most current manual is the 2005 version, but there isn’t anything substantial that would apply to Whatcom County.
Kurt Baumgarten, Planner I, stated the County has section 2.21, which is the stormwater special district standards. They apply to every single family residence and duplex in the watershed. Those meet or exceed Ecology’s manual. Mr. Hood is talking about subdivision requirements. Long plats are tough to do in the watershed. Short-plats still come in from the watershed, especially for lots of over five acres. He asked which developments don’t meet Ecology’s standards.

Hood stated the Ecology has a different criteria for when flow control is added, for example. Storms around here aren’t 24-hour storms. They’re season-long storms. A detention facility that is designed to drain between storm events doesn’t. The new detention requirements look at continuous runoff and the duration of different flows. That means most developments need a larger amount of storage.

Baumgarten stated that Whatcom County does meet Ecology’s standards for the single family residences, which are based on the King County surface water manual, which is in concert with Ecology’s standard. They have to be careful to frame the conversation around single family residences or larger developments.

Nelson asked if only King County is meeting the Ecology standards. Hood stated many communities adopted Ecology’s manual for their technical guidance, which meets the standard. Most jurisdictions don’t develop their own manual. They just adopt Ecology’s manual. Some large jurisdictions will modify the Ecology manual or adopt their own manual.

Nelson asked if the County can adopt Ecology’s standards for subdivisions or long plats. Baumgarten stated that is up to the Public Works Department. It’s an engineering issue. The Planning Department regulates single family residences based on standards put together by the Technical Advisory Committee, which are the stormwater special district standards that are verbatim from the King County surface water manual, which was developed at the same time the Ecology manual was being developed in conjunction with the research going on at the University of Washington. The standards now meet the intent of the stormwater manual. They stress low-impact development and onsite retention of stormwater.

The continuous model for a storm event works better at a larger scale. They’re talking about 10,000 square foot lots. That’s where the single-family residential standards came in. Ecology may take to task how the County manages stormwater countywide. However, he’s keeping his response framed to just the watershed.

Hood stated his comments last week were relevant to the subdivision moratorium. Ecology’s standards aren’t for protecting a lake, but all of Puget Sound. They are relevant countywide.

Brenner stated the Council has the option of adopting Ecology’s manual. The Council needs to find out if that’s what the Public Works Department is doing or
why it’s not doing that. Hood stated adopting the manual means making decisions. Ecology is ready to help make those decisions.

Roy stated this should not get lost in the process. She asked Mr. Hart to tell the Public Works Department the Council wants to discuss this more. Hart stated he will.

Amy Pederson, Planner II, stated she wants to make sure the fundamental topics are addressed. Review the overall goal and what is necessary to lift the moratorium. To date, they’ve addressed items one and two from Fleetwood’s memo. They are on item three. Staff can get that discussion going at the next meeting with the Public Works Department. She asked if these items are still the goal.

McShane stated the objective hasn’t shifted much. Item three is to direct them toward reducing costs for coming up with a stormwater comprehensive plan to address phosphorus. The moratorium recognizes that they have already gone over the acceptable level of development impacts and phosphorus loading in the watershed. They will have to reduce that number. Pull back from going further beyond what is acceptable by adding to the problem. Look at how much they’ve reduced potential build out from the zoning mechanisms. Be very aggressive about it. Look at the urban growth areas, which are currently being reviewed. They began a discussion of the transfer of development rights (TDR) program last week. It needs to be tweaked, depending on how aggressive they want to be to reduce potential build out.

Brenner stated the councilmembers didn’t agree with the suggested prioritization criteria for implementation measures to lift the Lake Whatcom subdivision moratorium. Pederson stated the memo from Fleetwood outlined the big topics. The criteria were to figure out which alternatives presented relate to the topics.

Nelson stated he is not interested in maintaining the moratorium if they keep expanding the elements they discuss. He’s willing to look at subdivisions and mechanisms for retrofitting. The other elements should be ongoing discussions, but not tied to the moratorium.

McShane stated he would like to make progress, reverse trends, and meet the total maximum daily load (TMDL) requirements before allowing additional building lots in the watershed. They can reduce the burden created by a subdivision moratorium. Given the costs they are facing and the fact that they don’t know what the TMDL will require them to do, he is leery. A review of the urban growth areas (UGA’s) is already happening. He needs to see how the UGA’s play out. Those are the areas where they will have the biggest stormwater challenges. The actions and review that are occurring will influence how he views things. Finish the changes to Whatcom County Code (WCC) 20.71, then
concentrate on a stormwater management program. After a program is created, talk about lifting the moratorium at that time.

Caskey-Schreiber stated she agreed. She wants to finish WCC 20.71 before moving into stormwater. There are changes the Council should adopt as soon as possible.

She asked if the City of Bellingham can do anything to reduce the UGA. Hart stated this discussion is occurring at the Planning Commission. Staff will meet tomorrow with the City staff to discuss these kinds of issues generally. It has been an ongoing discussion. The City doesn’t want it in the UGA. They want some of these areas out of their UGA. Then, the County will have all the responsibility. As they work out the land use question of the UGA, they are also working out the interlocal agreement. The staff is working out the interlocal agreement as a separate issue, which overlays the complexity of the issue. As the City rewrites its Comprehensive Plan and urban growth areas, the County must negotiate what is in the City’s plan so the two plans are more consistent. That negotiation is occurring over the next six to eight weeks.

Brenner stated the City said several years ago it doesn’t want those areas. She asked about something in the City’s Comprehensive Plan that the City won’t allow those areas in the UGA. Hart stated the County makes that decision, not the City.

Brenner stated that just leads to an impasse if the City won’t annex the area. Hart stated that’s why they’re negotiating delicately.

McShane stated do whatever they can to reduce the potential build out in those areas. They’ve already gone beyond the problem. Take actions to minimize the problem. A substantial part of the current Lake Whatcom UGA should remain in the UGA’s. The reality is, the County is going to have to provide an urban level of service for stormwater regardless of whether or not the density changes. It is already in need of urban infrastructure. Hart stated the County and City are discussing areas of the UGA that can be cut back. However, citizens are clearly saying they’ve counted on being in the UGA to develop their properties, and they expect to remain in the UGA. The Planning Commission is looking at the UGA on a parcel-by-parcel basis.

McShane stated that’s when the TDR program will be critical. Make sure there is fair compensation. That ties in with the other UGA’s in the city. Be extremely aggressive on potential build out. The data is very clear. Treating for phosphorus and stormwater won’t be a great solution. They won’t be able to get the phosphorus out of the stormwater systems.

Fleetwood stated he’s hearing that the Council doesn’t agree on what is necessary to lift the moratorium. At a minimum, keep looking at stricter building codes and finish WCC 20.71.
He asked where low impact development standards would be incorporated into the County code. Pederson submitted a handout *(on file)*. She’s cited where in the code the development standards would go.

Fleetwood asked how Ecology is assisting King County, and if Ecology is offering to bring forward a County stormwater plan ordinance. Hood stated there is a model ordinance that the Puget Sound Action Team developed. He can’t prepare something for the County, but he can sit down with staff and get other agencies involved, if necessary. As they come up with what they want to do, he can work on getting the resources to determine whether the ideas are equivalent to the Ecology standards.

*Fleetwood moved* to request Mr. Hood and Ecology to start working on this issue sooner rather than later.

*(Clerk’s Note: The motion was not voted on.)*

Baumgarten stated staff is working on a comprehensive stormwater plan for Birch Bay, which would look at a variety of issues similar to Lake Whatcom. Many people are looking to that product to assess the challenges and possible solutions. It’s a very specific tool that could be used to lay out a road map. Also, staff is involved with the Puget Sound Action Team to look at how to infuse low impact development, or create stand-alone standards for low impact development, to be used countywide or in specific areas. Staff is looking for expertise from this group.

*(Clerk’s Note: End of tape one, side A.)*

Baumgarten continued to state Whatcom County has a different geologic makeup compared to the rest of the state. They don’t want to use Ecology’s low impact development manual. Use local expertise to come up with the options they will accept locally. The Technical Advisory Committee would review the methods. Then, the councils could approve a set of standards that are appropriate to the area and apply them to certain areas. That process has funding and momentum.

Nelson stated the focus is the same. There are varying degrees on time and effort they will put into it. He encouraged them to get information on things that are working and aren’t working on the ground.

Brenner asked if the Technical Advisory Committee includes people with a specialty in low impact development. Hart stated a number of engineers are on the committee. He’s made recommendations to add positions to modernize the committee.

Brenner stated include someone with specific experience and who is in the forefront of low impact development. Find a list of the people who are working on low impact developments, but who are frustrated with the County’s regulations.
Baumgarten stated they have to work with the Puget Sound Action Team. As the community moves forward on this, local experts will have to be involved.

Brenner asked why those constraints would prevent the County from setting up a low impact development users committee. Hart stated the constraint is staffing.

Caskey-Schreiber stated they need to finish the amendments to WCC 20.71 at the next meeting.

Pederson stated the existing provision for agriculture has been reinstated. The Conservation District has strong concerns about this provision and the role it would have to play in administrating the regulation. The critical areas ordinance is working on amendments that broadens the responsibility beyond the Conservation District.

Nelson stated he would be willing to drop out the 50 percent threshold and use the critical areas ordinance. Otherwise, they will have to take out the option for allowing agriculture in the watershed at all. The easiest thing to do is allow hobby farms as a permitted use.

McShane stated he is concerned about additional animals coming into the watershed via hobby farms that won’t be well run. Grandfather existing hobby farms, or give them a phase out period. Don’t allow hobby farms to expand in the future. The problem is the importation of phosphorus into the watershed and what the animals do to the ground. It’s not a big problem now, but it may be down the road as more people convert their properties to a rural use.

Nelson stated they already have language in the ordinance now to allow the critical areas ordinance regulate the use.

Caskey-Schreiber asked if the language can stipulate that a user must adhere to the critical areas ordinance. Pederson stated the regulation as written now is less restrictive than the critical areas ordinance.

Caskey-Schreiber stated that phosphorus will be added to the lake if horses aren’t properly managed. Make sure they are doing everything they can. Pederson stated the critical areas ordinance is in addition to and supercedes this language.

Brenner stated the Council can’t do something about certain things, like geese and wildlife. They can do something about domesticated animals. In the best of all worlds, let those who now have the use to continue as a nonconforming use. One concern is with people shopping for property in the watershed who see hobby farm uses existing so people assume they will be allowed the same use.
**Nelson moved** to reinstate WCC 20.71.051, without the provision about the 50 percent threshold for animal units that the Council approved at its previous meeting.

McShane stated he’s not sure about grandfathering or phasing out the use. If they grandfather the use, the County must find out who has animals at the time the ordinance goes into place. It would take an effort by the County. Phasing would give people a deadline when animals would no longer be allowed in the watershed.

Caskey-Schreiber stated adopt the motion, with the stipulation that the use meets the new critical areas ordinance.

Brenner stated she would rather grandfather the use. The use will be phased out by attrition, anyway.

McShane stated he would like to know the cost of identifying parcels for the grandfathering provision. Ban the use, grandfather those with the use currently, and don’t use the critical areas ordinance.

Brenner stated she would rather not spend resources on doing an animal inventory. The process is complaint-driven, which will work. Send out a public notice so everyone knows about it.

Hart stated typically, they do have to have a snapshot in time of what is going on. People in the rural areas know what the Council is talking about.

McShane stated the staff might not inventory them all, but it would be to their advantage to have the use inventoried if there is a complaint.

Brenner stated there are ways for people to prove their use on their own, without spending a lot of money. It would be impossible for staff to inventory this type of use.

**Nelson amended his motion** to amend WCC 20.71.051, “Preexisting agriculture...two or more acres Shall be subject to completion of a conservation plan in conformance with...and implemented a conservation plan which provides for a smaller buffer.” Everything preexisting is permitted. He asked if that allows grandfathering.

Roy stated she agrees with the complaint process. There is no difficulty about the landowner having to show evidence of the use.

Brenner stated they should add language at the end of the section, “...provided that these uses may not be expanded or continued if there is a sale of the property.”
McShane asked if existing uses would be grandfathered in if they simply say it’s not permitted and there would be nonconforming uses. Pederson stated an existing use that is grandfathered in would be subject to the nonconforming use policy and allowed to expand or change.

Caskey-Schreiber asked if the language must list that it’s a nonconforming use. Pederson stated it’s easy to verify with an aerial photo to show a preexisting structure, but they can’t verify what animals were on the property at a certain time.

Brenner stated the animals will go away through attrition. She asked if a nonconforming use will allow for expansion and continuation if someone else buys the property. Pederson stated she would have to check with legal counsel.

Nelson stated he’s not worried about expansion, which would require additional facilities that require permits.

McShane stated the intent is to strike the language, and without adding language existing uses will be grandfathered in. That will happen either way.

Nelson asked if a structure that currently exists would be a nonconforming use and wouldn’t be allowed to be repaired and maintained. Pederson stated one would be able to repair and maintain a use, even if it burns down.

Nelson withdrew his motion.

McShane moved to strike WCC 20.71.051.

Motion carried 5-1 with Nelson opposed.

Pederson stated WCC subsections 20.71.153 and .154 have been proposed to be stricken. She would like to finalize the Council’s direction on that issue. The Council did not identify any existing uses. There may be a few uses that are cottage industries.

Nelson asked if that would affect the urban areas in the city. Pederson stated it would not.

McShane moved to strike WCC 20.71.153.

Motion carried 5-1 with Nelson opposed.

McShane moved to strike WCC 20.71.154.

Fleetwood asked why they would strike this section.

Caskey-Schreiber stated these uses use fertilizer.
Brenner stated the Council could allow the use with phosphorus-free fertilizer. Add it as a condition.

Roy stated there aren’t any of these types of uses that exist currently. This is much ado about a small issue.

Motion failed 3-3 with Nelson, Brenner, and Fleetwood opposed.

Pederson stated she needed clarification on subsections WCC 20.71.301(3) and 20.71.350 through .352. It does not relate to cluster development, only open space requirements for commercial development, which is just the Park Store, and about 17 acres in Sudden Valley. There are concerns related to the specific requirements and wording that she wants to discuss with legal counsel.

Brenner stated the Council already voted on this issue. Staff can go forward based on what the Council already voted on.

Fleetwood asked if staff will bring forward a clean version of the ordinance based on latest amendments. Pederson stated they will.

Roy stated the motion to remove WCC 20.71.154 failed, so it is still in there. She moved to add a condition to require phosphorus-free fertilizer only for uses in subsection 20.71.154(4)

Fleetwood asked if it will conflict with subsection .154(3).

Brenner stated it will not.

Motion carried unanimously.

Pederson stated the cluster subdivision regulations in WCC 20.71.350 through .352 have been before the Council Planning and Development Committee. Any additional amendments to that section will be made when it goes to the Council.

Brenner stated the Council could have another special meeting at 1:30 p.m. on May 10 to discuss low impact development.

(Clerk’s Note: End of tape one, side B.)

Pederson stated the cluster regulations would be adopted before this item. Staff will submit the cleaned up version of this ordinance next Tuesday.

Caskey-Schreiber stated the Council can have a public hearing in June.
OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 3:45 p.m.

Jill Nixon, Minutes Transcription

The Council approved these minutes on May 24, 2005.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk    Laurie Caskey-Schreiber, Council Chair