

**ISLAND COUNTY PLANNING COMMISSION
SUMMARY MINUTES
COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA
TUESDAY SEPTEMBER 11, 2007**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>	<i>Val Hillers</i>	
	<i>Ray Gabelein</i>	
	<i>Mike Joselyn</i>	
<i>District 2</i>	<i>Sheila Crider</i>	
	<i>Bill Massey</i>	
		<i>Alan Schell</i>
<i>District 3</i>	<i>Wayne Havens</i>	
	<i>Deb Eidsness</i>	
	<i>Scott Yonkman</i>	

ROLL CALL

Scott Yonkman – North Whidbey, Sheila Crider – Oak Harbor, Ray Gabelein – South Whidbey, Mike Joselyn – South Whidbey, Val Hillers – Central Whidbey, Bill Massey – North Whidbey, Wayne Havens – Camano Island, Deb Eidsness – Camano Island

APPROVAL OF THE MINUTES

Bill Massey moved to approve the minutes of April 24, '07 as presented, Sheila Crider seconded, motion carried unanimously.

Sheila Crider moved to approve August 28, '07 minutes as submitted, Ray Gabelein seconded, motion carried unanimously.

Chair Hillers added an addition to the Agenda

Commissioner Phil Bakke spoke to the Commission. Commissioner Bakke commended the Planning Commission for the hard work they do and the great community service they provide. Commissioner Bakke announced to the Planning Commission the appointment of Jeff Tate as Director of Planning and Community Development.

Commissioner Bakke brought a gavel to the Planning Commission, given to the Planning Commission by Chuck Edwards in 1969 that says “towards progress”, Commissioner Bakke stated he couldn't say it any better, towards progress, keep plowing forward, and protect our islands. Wanted the Planning Commission to know how much he appreciated their volunteer work and their efforts and thanked them for being here.

Chair Val Hillers congratulated both gentlemen, unanimous congratulations by the Commission

ITEMS FROM THE PUBLIC

None

NEW BUSINESS - Public Hearing

Related to the 2008 – 2013 Capital Improvement Program

Bill Oakes, Public Director and County Engineer for Island County.

Stated there were two public hearings on the agenda which can be combined as one; the six year plan for both the Transportation Improvement Program, which covers road related drainage, paths and trails and our road program and our Capital Improvement program, for facilities for the County.

Capital Improvement Program and the emphasis for the next few years.

- ◆ The Camano annex and the Camano campus itself. The entire campus is the primary focus with two major projects.
 - *The Annex building itself, to provide new office spaces all the County Administrative Departments on Camano, primarily the Health and Planning Department, but other departments use that building as well.*
 - *And a new Sheriff's Precinct Facility.*
- ◆ The other focus is a team effort with Island County Health Department and Skagit Valley Hospital to build additional clinic facilities on the campus location. Stated they are looking at potential grant funds for that in the sum of one million dollars to assist in building that facility.
- ◆ For the Island County Fairgrounds, there is a request to look at an RV disposal facility, the six year plan includes looking into and designing and building that facility.
- ◆ The jail control update is for the adult facility to bring up their controls and sensors to modern standard, includes cable feeds, camera feeds, jail controls, door lock controls and voice control that will go back to the control center.
- ◆ The Libby Bulkhead Study and Design Report is a project that consist of two projects for the Parks Department that requires hiring Marine Engineers to design for the wave energy that is anticipated at that location, which is like the elbow of Whidbey Island which sticks out into the Strait of Juan De Fuca and determine if there is a facility that can be built that will stand up to that wave action.
- ◆ The Nursing Services remodel is a project that has been on the plan for a number of years. It is a remodel to the facility here in Coupeville.
- ◆ The Useless Bay Pump Station is a partnership with Diking District 1, to improve the flood control facility there.
- ◆ The Utsalady Boat Ramp is the other project from Parks for which they need the engineering support and marine engineering support to evaluate what can be done there and how it can be replaced.

Those are the projects in the Capital Plan. The other projects are ongoing programmatic projects.

The Transportation Improvement Plan – by map area

South Whidbey

- ◆ Intersection improvements: East Harbor and Stewart and Sweet Hill Rd. and Burley, both have less than 90 degree intersection angles and some sight distance issues, looking at two minor safety projects to improve.
- ◆ Honeymoon Bay SR 525 signal
- ◆ Rhododendron Trail, an extension of Kettles trail south to Rhodendron Park

North Whidbey

- ◆ Frostad Road improvements are shorter term; it consists of three projects totaling almost two miles of work.
- ◆ Boon Road is farther out, but is also a shoulder widening and safety improvement project. Boon Road will also address the vertical alignment problem, the hill at the south end that is very steep and causes sight distance problems. One of the issues in that project will reduce that.

Camano

- ◆ The Camano Hill Road Improvement Project; the major focus over the next couple of years, which has already started construction. This is the largest project the County Roads Department has ever taken on as one project, by mileage or by dollar amount. It is approximately a \$5.7 million contract. Anticipate it will conclude in the next construction season. He estimated it would take two construction seasons to complete.

Wayne Havens - Wanted to know if in the construction of the Camano County buildings, would there be something to be done about the re-routing of the traffic for the garbage dump?

Bill Oakes - *Stated the Camano Hill Improvements will shift the road to the south slightly and bring it in at a 90% angle instead of the angled intersection it has now. In the area that is vacated by moving the County road, they intend to improve the solid waste facility there and the circulation there. He stated they are trying to create space to make that facility work better, both as a recycling and a transfer station.*

Ray Gabelein - On the Anderson Road Culvert - priority # 11 he questioned the dollar amount and whether or not there were any State funds available due to fish passage.

Bill Oakes - *Stated it is currently all local generated funds.*

Ray Gabelein - Stated he was under the impression there were funds available if it involved a fish culvert.

Bill Oakes - *At this time we have not applied for State funds.*

Ray Gabelein - Expressed his concern about the cost and compared it to what is being spent on Freeland Main St. for road construction, curb, gutter and sidewalks. Expressed concern regarding the dollars going to where the growth is, rather than one culvert.

Bill Oakes - *Anderson culvert has capacity issues, it's a failing culvert, it needs to be done, the regulations around that put us into making it a fish passable culvert. It needs to be replaced just to restore the basic passing of water.*

He further stated they are looking for funds, additional funds, grant funds for Main Street, but without them being secured, they aren't shown in the six year plan.

Ray Gabelein - Questioned whether the Honeymoon Bay signal could be moved up in the timeline. He stated it is an area of tremendous amount of construction.

Bill Oakes - *Stated they are working with the State to try and accelerate that project, but it is a State facility. The State recognizes the need; we are trying to get them to move that up on their priority list.*

Ray Gabelein - Question regarding Crawford Rd., stated he didn't recall there being a RID participation on that project in the last years proposal.

Bill Oakes - *Stated that it had actually been a RID for awhile. Crawford road at this point is being looked at regarding the feasibility of how that road can be improved in phases. Again it is one of these projects of a magnitude that is difficult for the County to fund alone; it is 2 – 2 ½ miles and would cost multiple millions of dollars. He stated they are looking for funding sources; they are looking at how it can be phased and have it make sense. The construction is not in the six year plan; they are looking for funds to bring it in to the six year plan.*

Ray Gabelein - There have been a couple meetings regarding the project. He stated that the local people need to be told very clearly that they will be sharing in the cost of 1.5 million dollars.

Bill Oakes - *Only right of way costs have been proposed by the public in regards to participation How to pay for it is going to be a major concern; it's going to be a building of partnership of funding sources and participants and making that happen.*

Ray Gabelein - Would prefer to have more of the dollars spent where the growth is.

Bill Oakes - *Freeland has been a major focus. Multiple millions of dollars have been put into drainage improvements in Freeland, Main Street and Woodard are on the books. Honeymoon Bay is on the books, certainly that is not everything that is needed, but only so much can be done at a time.*

Bill Massey - Asked whether Frostad Rd. had definitely been scheduled, as it seems like an important project

Bill Oakes - *Stated he anticipated right of way acquisition in '08, and either construction in '08 or '09. The primary objection has been right of way.*

Bill Massey - Stated the Boon Rd. situation was primarily a concern about the dips; stated he was curious as to whether they have looked at speed reduction as opposed to improving it.

Bill Oakes - *Replied, reducing the speed does not reduce the speed of the drivers. In addition to the vertical curve issues on Boon, it has sight distance issues. Sight distance needs to be corrected for the desired safety effect. In addition, Boon Rd is a typical safety project, there are obstructions next to the road and there is no shoulder. Roads that rise in volume to a point where*

you see high volumes and you see road side obstacles or road side ditches with no recovery zones that elevates them to a point that they are then funded to be replaced or widened.

Wayne Havens - Questioned regarding Maple Grove Rd. Where is that going to be placed?

Bill Oakes - *Answered it would be replaced in the same location.*

Wayne Havens - Regarding the development west of Maple Grove Rd. would like to know about access from that development onto Maple Grove. It is 20 mph, but traffic doesn't go 20 mph.

Bill Oakes - *Enforcement could be looked at, but as a structural fix, there isn't one now. It is being sized for future development that is anticipated there.*

Scott Yonkman - Was the \$1.5 million to \$1.7 million dollar construction figure reconstruction or new construction?

Bill Oakes - *Responded it was a typical widening project where they are basically reconstructing most of the road, adding shoulder, improving drainage. It is also a typical safety project where there are no shoulders, there are ditches or obstacles next to the road, widening that out with 6-8 shoulder for recovery zone and repaving the road.*

Bill Massey - Would that cost be relevant to the Frostad Rd reconstruction?

Bill Oakes - *Frostad road is more costly due to the walls that are necessary, there are wetlands directly downhill from the road surface and so the emphasis is to build walls and try and keep the road to the upland side. Frostad is probably more per linear foot than the rule of thumb. It is also an issue of sub basis and drainage.*

Val Hillers - Invites Public Comment

Steve Erickson - Whidbey Environmental Action Network

Previously, there was a plan to put in a parallel road for the stretch of 525 and 20 between Houston Rd. and north of there, is that still in there.

Bill Oakes - *That is still in the plan.*

Steve Erickson - Stated that they oppose that, there are other cheaper and less environmentally damaging ways to provide alternate access through there.

Stated his second item was an observation. Mentioned a recent Federal Court Decision that the State for State Highways and State Lands have to bring the culverts up to snuff; it would be very easy to have that extended to the junior jurisdictions. The tribes have been very restrained up 'till now, stated he has no idea what is going on internally in the tribes. Stated he strongly suggested that the planning be done along with a timeline to bring all culverts on County creeks and streams that are potentially fish blocking up to snuff.

Chair Hillers addresses the panel

Sheila Crider moved to accept 2008 – 2013 Capital Improvement Program and move that on to the BICC. The motion was seconded by Ray Gabelein and carried unanimously.

Bill Massey moved to recommend to the BICC, the adoption of the Six Year Transportation Improvement Program for 2008 – 2013. The motion was seconded by Ray Gabelein and carried unanimously.

Chair Hillers

Next item on the agenda is a proposed Zoning Amendment to rezone a 12 acre parcel from Rural to Rural Center. The current use of the parcel is for commercial sales and furniture fabrication. The parcel is located at 9067 SR 525 and contains a possible stream and steep slopes.

Jeff Tate

Stated that both this item and the next item on the agenda would have brief presentations by staff. These are both Public Hearings, following the presentation the Planning Commission can ask questions or open it up for Public Comment. Both items are recommendations that are forwarded to the Board of Island County Commissioners for final decision. If the Planning Commission requires additional information that option is available to the Commission as well.

First item has been introduced as a rezone from a Rural to Rural Center.

Andrew Hicks -Planner assigned to this project, ZAA 012/07

Directed the Commissions attention to sections of the documents previously sent to the Planning Commission for consideration in this matter.

- ◆ *Exhibit A, page 34, The Growth Management Hearings Boards recommendations for the Clinton and Freeland RAIDS. On this page the Hearings Board stated these RAIDS look less like Limited Areas of Intensive Development and more like Urban Growth.*
- ◆ *On page 48, in the order of the Growth Management Hearing Board, he advised number 9 is pertinent to this particular issue.*
- ◆ *The next is Exhibit B, the motion from WEAN. In this document on page 2 there is a listing of parcels addressed in the report, the first parcel, south of 525, the 12.5 acre parcel is the piece being looked at.*
- ◆ *Their arguments are located in the same document on page 7 under subsection A for the Clinton RAID, the specific parcel is addressed on page 8.*
- ◆ *Exhibit C, shows the specific area of interest in the highlighted areas, page 3, section 9. This particular document is the response of the Growth Management Hearings Board to WEAN's motion.*
- ◆ *The next page of the same document is read “ Designating these areas as Non-Municipal UGA's, providing the required urban facilities and services and reserving a portion of the area within them for industrial development would greatly assist the County in reaching its goal of much needed new job opportunities”.*

- ◆ *The final order, on that same document on page 8 stated they remand number 9 back to the County.*

Mr. Hicks provided a slide of the quarter section map, showing the highlighted parcel and surrounding area.

He stated the proposed 12.5 acre parcel and the three parcels to the west had been included in the County's original delineation of the Clinton RAID boundaries. Ultimately the Growth Management Hearings Board decided this particular parcel could not be included in the Clinton RAID due to the fact that it is 12.5 acres. To allow the expansion of commercial uses on that parcel would create a new pattern of urban sprawl. Those arguments are contained within the documents provided.

This application ZAA 012/07 includes new amendments to the Growth Management Act. After reviewing those amendments, staff has concluded that nothing in the amendments would change the original decision. The intensification of existing uses was already allowed in RAIDS. The Department recommendation was to deny this application, but to leave the possibility open to pursue this process through expansion of the UGA boundaries in the future.

The subject parcel and surrounding areas are identified on an overhead projection.

Mr. Hicks concluded:

- ◆ *The Planning Department still believed the parcel met the criteria for a Rural Center Zone and the criteria for the LAMIRD's*
- ◆ *Western Washington Growth Management Hearings Board made their decision clear as indicated in the order.*
- ◆ *The Planning Departments recommendation was based on previous litigation before the Western Washington's Growth Management Hearings Board.*
- ◆ *The recommendation was to deny the application and pursue the process through the Non-Municipal Urban Growth boundary process.*

Chair Val Hillers questioned who would initiate that process.

Ray Gabelein stated it would be the citizens of Clinton.

Deb Eidsness stated it would seem logical to include that section.

Andrew Hicks

Stated that was the County's feeling as well to begin with and they still felt it met the designation criteria and logically should be included in that RAID boundary. However the decision had been made by the WWGMB and no new evidence that would change that decision had been provided.

Deb Eidsness questioned if one of the businesses were to go out of business and sit vacant for several years it would be Rural?

Andrew Hicks

Stated the Discontinuation Clause in the Existing Uses Section of Code says they would have to be discontinued for three years in order for that to happen. He confirmed if that if three years passed it would; the assumption when zoning that Rural is that eventually it would be a conforming use on that parcel.

Ray Gabelein

Stated after reading the documents that were provided and reading the staff report, he questions why there is a Planning Commission if decisions and recommendations are going to be made based on a prior hearings board decision?

- ◆ *The Growth Management Hearings Board had been wrong before, which had been found true in court numerous times. Stated he personally believed they are wrong in this decision.*
- ◆ *If a parcel is surrounded by pretty intense commercial use, it is not fair to the property owners to be forced to try to do something other than commercial use with their property.*
- ◆ *It is not compatible, it doesn't make sense, it's not good planning, it's bad for the community and it's unfair to the owners of the property number one.*
- ◆ *The Planning Commission's job is to represent what is right for the County and not base their decision on the Hearings Board.*
- ◆ *The property is surrounded by pretty intense commercial development, it has a road on the other side which is a logical boundary, it has all the reasons it should be included and feels Island County had it right the first time when they included it. In his opinion the Planning Commission should grant their request.*

Andrew Hicks

Stated he would not speak to the Planning Commission's role, re-iterated there are other options for keeping this a commercial zoned lot. The recommendation of the Growth Board is that this be part of an Urban Growth area. With such a relatively small current commercial use on a 12.5 acre lot to be rezoned to Rural Center would create a new pattern of urban sprawl. Their role is to interpret the LAMIRD's Act and prevent that new pattern of urban sprawl and so they have decided not to include it as a RAID, but to suggest we continue with our Non-Municipal UGA process.

Ray Gabelein stated the citizens in the area already had that opportunity and they chose not to pursue that at this time, but he didn't view this property as sprawl when it was already surrounded by commercial uses.

Mr. Hicks stated the frontage along the highway is one thing, but the expansion to the back is other consideration.

Mr. Gabelein stated the natural features, critical areas and such would take precedent over zoning. Any development proposal would have to factor in these issues. Stated that property has had commercial use on it for many years, he doesn't view it as sprawl.

Mr. Hicks stated the critical areas would indeed be regulated regardless of what zoning the parcel was. He emphasized this was not part of the recommendation for denial.

Jeff Tate

The Department believes the parcel in question and the surrounding parcels meet the designation criteria for a Rural Area of Intensive Development. The decision to forward a recommendation to the Planning Commission, recommending denial is not based on a lack of meeting criteria. It is based on the Departments' Evaluation, looking at the Growth Board decision and making a determination, one based on the issue of resources.

- ◆ *If the rezone is approved it's likely that it will be appealed and then there are required resources to go through that appeal.*
- ◆ *The second factor, which is also tough because not everyone is aware of what is happening with area wide rezones, when they happen. There is an opportunity at the time the decision is made for the landowner or someone else to appeal that decision and that decision was never appealed back in 2000.*
- ◆ *All those things were taken into consideration and with a great deal of reluctance and conflict, the Department had forwarded the recommendation for denial.*

Bill Massey questioned as to whether there was more weight given to resources to defend the recommendation or inability to defend the position.

Mr. Tate replied it had more to do with the former, than the later. There is a lot going for the property in order to defend it.

- ◆ *It is an existing use, it existed prior to 1990.*
- ◆ *It existed prior to the Growth Management Act, which in our view would meet the RCW statute requirement for Limited Areas of More Intensive Development.*
- ◆ *Resources are an issue, defending a case before the Growth Board and potentially beyond the Growth Board it is a demanding venture.*

Bill Massey asked if the BICC were to approve the rezone, would it be the obligation of the County to defend it or would it then be the applicant to put their resources to defend the position with input from the County?

Jeff Tate replied that due to the fact that it's the County's Decision, it's therefore the County's obligation to defend it. What typically happens in a case like this is you would likely have interveners, so the landowner or someone else would intervene and say we have an interest in this decision and we want to be represented and take part in those arguments and deliberations, but it does rests with the County.

Sheila Crider suggested parcel owners and/or the public be allowed to speak at this time.

Chair Val Hillers

Asked if there is anyone who wanted to address this issue from the audience.

Larry Kwarsick – Doing business as Sound Planning Services, POB 581, Langley WA
Stated he was here today representing applicant and owners, who are also in attendance. Noted that this particular property and in fact some additional adjoining pieces of property meet the County's designation criteria for a Rural Area of More Intensive Development. The term has been replaced with Local Area of More Intensive Rural Development. He stated it was important to note that the County still maintains that its' prior action was in fact a correct action. That perhaps based upon the Hearings Board testimony and facts presented, there were errors made in terms of that decision. There was an appeal filed and he did not want to represent that all aspects of that appeal did not have some basis.

- ◆ *In this particular case, in this specific location, for this specific property, the appeal did not have any merit.*
- ◆ *That is recognized by the County in their stance on this project and the conflict they have stated in this application. Land Use Comprehensive Planning and Zoning isn't always fair, the one thing we are fairly certain of in terms of Comprehensive Land Use Laws is that they are suppose to be uniformly applied, they are suppose to be consistent in their application and decisions are not suppose to be arbitrary and capricious.*
- ◆ *In this particular case, the decisions of the Hearing Board were not consistent, they were not uniform and they were absolutely arbitrary and capricious.*
- ◆ *The County does recognize in the application that the law has changed at least twice since the Hearings Board decision. Mr. Kwarsick addressed the pieces of legislation that target the specific section of The Growth Management Act that deal with designations like this.*
- ◆ *There have also been Hearings Board Decisions relative to the ability of a local jurisdiction to revisit these boundaries of these Local Areas of More Intensive Development.*

He referred to the map to go over what Clinton, looks like. Uses map with the Rural Center zone highlighted. Identifies specific area of the map, showing an existing pattern of commercial structures in the RAID prior to 1999, basically you have this existing pattern and that is what this Local Area of More Intense Rural Designation is about; to identify and existing pattern of more intense development that occurred prior to the implementation of the GMA, to define it and contain it. Not identify it an eliminate parts of it, but identify it and contain it. In this particular case the County identified it and included it and for whatever reason the Hearings Board eliminated it.

There was a very well pre GMA definition of commercial land uses that extended along the south margin of the highway, beyond what the Hearings Board agreed to. For some reason the GMHB was appreciative of small buildings on the north side of the highway, but not particularly appreciative of small buildings the south side of the highway.

He stated that State Law always evolves. He provided information on Substitute House Bill 1395, which was approved by the legislature back in 2002. Part of that piece of legislation was to add a completely new section to The Growth Management Act and was identified in the specific House Bill as Section 1.

- ◆ *It in and of itself does not contain a standard that deals with these Local Areas of More Intensive Rural Development, but this whole section is an expression of the legislative intent. It's a new expression of the legislative intent and he wanted to highlight some of what it states.*
- ◆ *It says rural lands and rural based economies enhance the economic desirability of the State. To help to preserve traditional economic activities (exactly like we have here) and contribute to the states overall quality of life, the legislature finds that to retain and enhance the job base in rural areas, Rural Counties **must** have the flexibility to create opportunities for business development.*
- ◆ *Further the legislature finds that Counties **must** have the ability to retain existing businesses and allow them to expand. The legislature recognizes that all business development in rural Counties require an urban level of service and that many businesses in rural areas fit within the definition or rural character identified by the planning unit.*
- ◆ *Finally the legislature finds that in defining its rural element, a County **should** foster land use patterns and develop a local vision of rural character.*

The County did that; the County established that in its RAID designation and in its original designation of this specific piece of property as a part of the Rural Center in the Clinton RAID. The expression of this legislative intent is new it is something that was added to the Growth Management Act after this Hearings Board decision.

Its' intention is to give The Planning Department, the BICC and the Planning Commission new direction. In his opinion, the Planning Commission should feel comfortable in supporting the prior action of the Planning Department, the prior action of the Planning Commission, the prior action of the Board of County Commissioners in rezoning this specific piece of property and again including it in the Comprehensive Plan as part of the Clinton RAID.

The Hearings Board in their Order and Decision did recognize that there was an allowance for the expansion of small scale businesses as long as they fit into the rural character. Although they recognized it, it wasn't part of the law at that time. It is now part of that law.

In 2004 this specific section dealing with Local Areas of More Intense Rural Development was again amended. He read some specific sections.

- ◆ *Section B states "any development or redevelopment, other than industrial use or an industrial use within a mixed use are or an industrial area under a subsection must be principally designed to serve the existing and protected rural population.*
- ◆ *Section C states "any development or redevelopment, in terms of building size, scale, uses or intensity shall be consistent with the character of existing uses. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirement of that subsection.*

Regardless of how small this building was, now the legislature and the Governor, through the approval of this, said vacant land could now be included in the Local Area of More Intensive Rural Development. There was some concern expressed that because this was a 12 acre parcel, that somehow this would constitute sprawl. He disagreed because it was defined, it was used, and

where else would we want that intensification of development if it weren't in area like the Clinton Rural Area of Intensive Development.

Despite the Hearings Board decisions of the past, there have been changes in the law and the County still maintains an obligation to define these areas and contain them and to provide guidance in terms of the form, massing and extent of development through the adoption of standards, which the County has done, to make sure that any development or redevelopment conforms with overall planning goals of the County.

The current applicants did not own the property when it went through the GMHB process. It is true that contested case went through that process without any appeal beyond the GMHB that previous owners did not participate and inexplicably nor did the adjoining properties. Again these were area wide rezones, there's no guarantee that they even knew there were actions going on that pertained to their property.

The County has an opportunity to make right a wrong. He stated he recognized that when the Hearings Board decision was issued, it came with some heavy handed language. It came with a threat of invalidity; the threat of invalidity that would have impacted citizens throughout the County. There was a threat of economic sanctions, which again would have impacted citizens throughout the County.

In this case, none of those other side issues pertain. The owners and applicants are willing to take this case forward as their obligation. Mr. Tate is correct, if the County agrees, if the Planning Commission and the BICC agree, out of necessity the County has an obligation to be involved. The degree of their involvement is up to the County. The landowner, should this be approved are willing to take on the obligation to defend their case in front of any Board at any time in the future because they feel strongly that it is the right decision to make.

Bill Massey

Questioned regarding the 12 acres extending south from the highway, considerably farther than the adjacent zoned property within the RAID. Why is the property being looked at in total, rather than drawing a line parallel to the highway that matches the adjacent property?

Mr. Kwarsick

As indicated in the application this specific property is impacted by a stream system and a wetland system. The applicant is willing to convey the westerly two thirds of the property to a conservation group, to the County Parks System to have, to provide trails, to provide connectivity to the State Highway and to the Dan Porter Park as part of this application. It is the appropriate boundary to ensure all site improvements and support of infrastructure for any future development would occur within the Rural Center Zone.

Ray Gabelein wanted clarification that Mr. Kwarsick is confident the changes in law clearly provide a reason to bring this back into consideration?

Mr. Kwarsick

There is no doubt that State Law has been modified, the legislative intent accompanying those laws have clearly stated obligations and expressed intent with regard to the opportunities provided local government and local decision makers.

- ◆ *The inclusion of language that says vacant land, sets aside one of the original arguments that this was a small development because vacant means no development, the issue of how big this building was on a ten acre parcel doesn't seem to have any merit.*
- ◆ *In addition to changes in State Law, there have also been additional Hearings Board Decisions, relative to the County's ability to take a look at their logical outer boundaries.*
- ◆ *In a case in 2001 in Lewis County, the Hearings Boards said the County may make minor adjustments to the local outer boundary to include undeveloped property.*
- ◆ *In a case in Jefferson County, outside the update process, the choice whether to revisit the prior boundary adoption is within the discretion of the County. It is a good and appropriate opportunity for the County to take a look at this prior decision.*

Ray Gabelein asked if the property is surrounded on three sides by commercial, does it meet the definition of sprawl?

Mr. Kwarsick

Stated the packet he submitted included three definitions of sprawl, none of which pertain to this specific piece of property nor would redevelopment constitute sprawl. The Department of Transportation must have felt there was going to be development on this piece of property because at this intersection of Bob Galbreath Road and the highway there is a two way left hand turn lane coming into this specific piece of property.

Bill Massey suggested other members of the public be given an opportunity to speak and further questions from the Planning Commission be held until the end of comments.

Chair Val Hillers

Asked if other members of the audience would like to speak

Steve Erickson speaking for WEAN

Stated this application is being processed improperly. This is not a Rezone Application. This is a Growth Management Adoption Application. It is to change the boundaries of the RAID. It should involve Comprehensive Plan Amendments too and it's being processed improperly.

Stated he would like to briefly review GMA's history in terms of RAID's. In GMA they are not called RAIDs they are called LAMIRDs, Limited Areas of Intensive Areas of Development. They are confined to the logical outer boundaries existing as of July 1990.

Initially in 1998 when the County adopted the GMA, it was appealed by WEAN and the Citizens Growth Management Coalition. The Hearings Board agreed with those appellants and said the Freeland and Clinton RAIDs are way too big. The County argued about specific parcels and the Hearings Board didn't buy it, they didn't meet the concept of a logical boundary. That particular

parcel was very low intensity commercial use. Those uses would have major impact. What is being done here today sets the stage for including this area here, and it just keeps leaping frogging along. This parcel was bought as a Rural Zone property, what you are seeing here today is to reward speculation.

He stated he was very disappointed in what he has heard, is a proposal to defy a Hearings Board Decision. If this is adopted it is going to be appealed. WEAN will appeal this; the Citizens Growth Management Coalition might come back together for this. It will cost the County a considerable amount.

Ray Gabelein questioned Mr. Erickson regarding the property he pointed to on the map.

Mr. Erickson identified the property that he said would be the next likely candidate to be included on the rationale that it was adjacent to other commercial properties.

Ray Gabelein stated he believed the specific property Mr. Erickson was pointing to is actually a County Park.

Dean Enell – Langley, WA

Spent a number of years as part of the Citizens Growth Management Coalition debating this whole RAID issue. Took a number of RAIDs to court, spent years going over the proposed RAID boundaries. The criteria then, were what was developed in 1990. Objected to the capriciousness argument of this, a lot of time was spent drawing up these RAIDs. Doesn't see the rationale for declaring it invalid. An awful lot of time went into that and asks that it be considered.

Mr. Kwarsick

In follow up very important Land Use Decisions and Hearings Board Decisions are not arbitrary and capricious. Note a specific quadrant of the map, showing the number of commercial uses that existed. There was nothing arbitrary, there was nothing wrong, and there was nothing inconsistent in terms of including his clients' property as part of that original designation.

Deb Eidsness

Questioned Mr. Kwarsick as to whether the original RAID was to include those existing buildings on that other side, correct?

Mr. Kwarsick stated the original decision included all those parcels.

Deb Eidsness wondered whether it wouldn't make more sense to include all the properties in the original RAID.

Wayne Havens inquired as to the critical areas. Since there are no sewers in this area, is there ample area for drainfields? Are the soil conditions adequate for that?

Mr. Kwarsick

Soil conditions and un-sewered situations are limiting factor in terms of density and intensity of development. The owners and applicants have had investigations done and believe there are adequate soils on the site to support an expanded commercial use of the property and be responsive to the environment issues pertaining to the wetland and buffer.

Noted that as is the case in many areas, the stream system that is part of this wetland system actually crosses the State Highway and is culverted the rest of the way until it is discharged down by Brighton Beach. Applicants are willing to convey the ownership interest in the sensitive areas on this land to the public or to a conservation entity to expand the Dan Porter Park for passive use recreation and to provide a trail system helping to link and better create a Clinton community.

Scott Yonkman inquired as to the percentage of vacant parcels for potential infill for commercial or do they have residences?

Mr. Kwarsick stated many of these properties have the zoning designation capacity, the problems of course is many of these parcels would have a difficult time developing without sewers.

Mr. Yonkman so Infill is difficult and expensive due to the sewage.

Mr. Kwarsick stated that it is

Scott Yonkman inquires as to what is the current consensus of the adjoining owners?

Mr. Kwarsick stated he could not speak to their feelings. Spoke with parks regarding interconnecting trail system and expansion of the park, which met with enthusiasm.

Steve Erickson asked whether the Planning Commission received the emails regarding this?

Chair Hillers

Received additional comments this morning.

Ray Gabelein

Stated there were a couple comments received

Sheryl Christy Bierschenk

Stated she and her husband are the owners of this property, also residents of Clinton. Advised the way this started was they had looked for available spots to start a small business and could not find a suitable spot for a small restaurant.

In looking around, they discovered this property and became excited about the opportunity to make a difference.

- ◆ *Clinton has become this mini Highway 99.*
- ◆ *With this size property there is an opportunity to create something that is more of a Town Center.*

- ◆ *There is currently no place for people to walk safely in Clinton and get to the shops that are there.*
- ◆ *There isn't the opportunity to create a village by the sea as in Langley because the highway runs up the middle.*
- ◆ *Therefore, because of the size of the property, our vision as residents as neighbors of the property, is to be able to create something where we have some control over it.*
- ◆ *Hence the giving of some of it to the County in whatever form makes sense to the County or Parks so it can be connected to Dan Porter Park.*
- ◆ *We have some opportunity to create something that adds to a community and helps build a community of Clinton because we live here and care about it.*

Bill Massey moved to close the Public Comment period, Sheila Crider seconded, motion carried unanimously.

Bill Massey

Stated he would like to recognize the Planning Commission has received two Public Comments

Jeff Tate

Confirmed there were two Public Comments received supporting staff decision to deny the application.

Bill Massey

Questioned staff as to whether this was actually a rezone or an application to include it into the RAID?

Jeff Tate explained the application was for a rezone, but it does have an effect on the RAID boundary therefore it is here before the Planning Commission. It would be a Comp Plan Map Change to the RAID boundary and a zoning change, which would be bundled as part of the Planning Commissions recommendation.

Bill Massey

Asked whether that recommendation could include expanding the RAID to the properties to the west all the way to the road, including more than just this application?

Jeff Tate

The Planning Commission does not have to limit its recommendation to this single piece of property. If the Planning Commission did make such a recommendation it is something that staff would recommend that the Department do a direct contact with the landowners so they would know what is being considered.

Ray Gabelein

Clarified if the Planning Commission chose to make a recommendation for approval it would be a change to the Comp Plan?

Mr. Tate confirmed a change to the RAID boundary is in effect a change to the Comp Plan.

Bill Massey

Wished to further clarify that if the Planning Commission was to recommend including all the properties that were in the original action taken by the staff recommendation and the Planning Commission back in 1998, would the public hearing process start over again?

Mr. Tate stated if the recommendation were to include more than the application, it would be an amendment that goes beyond the scope of the proposal before the Planning Commission, and would need to include a public hearing that did include all the pieces of property as part of the recommendation. There are several options; the Commission could chose to have two separate motions, one specific to this piece of property and a second motion to include the remaining properties or the motion could be combined into one.

Chair Val Hillers

Inquires as to whether the Commission would like to defer this and have more time to think about it?

Sheila Crider

Stated she would hesitate to make a decision bearing on the three additional properties to the north and westward of this parcel without them having been contacted. As part of this rezone residents within a radius of this property were not given notice or the opportunity to comment. Therefore she would hesitate to take actions that would impact other's properties without them having a chance for comment.

Ray Gabelein moved to approve the necessary Comp Plan changes and Zoning Amendment ZAA 012/0; Amendment to change parcel R32924-045-3370 from the Rural Zoning classification to Rural Center Zoning and recommend to the County Commissioners for that approval. The motion was seconded by Deb Eidsness.

Chair Hillers

Called for additional discussion

Sheila Crider

Stated infill is one of the mandates of the Act, and this particular inclusion, since it is surrounded on both sides by existing, prior to 1990 commercial uses, certainly felt it would meet the goals of the Act. With the exception of the Park and Ride, these have all been there for at least 8 – 10 years prior to 1990, so consequently there were existing substantial uses in and around this parcel. If nothing more, this is surely an existing highway commercial parcel, while it has only one small business on one corner of it, it is in the midst of intense use in that area. In looking to the Hearings Board decision on page 35 of 56 paragraph number 2 down says, "Regulations which are proportional, reasonable and flexible are an excellent goal as long as the function and values of critical areas are maintained.

- ◆ *It appears exactly what this owner is proposing to do. To set aside those critical areas that exist on this parcel, putting them in some classification to continue that for perpetuity. This is certainly something that has been highly supported by all Hearings*

Boards throughout Washington and has been supported by Island County in the past. Finds that is certainly one of the mandates of the act that this property owner is certainly agreeing to and seems to amicable in support of.

- ◆ *If you refer to page 34 of 66, the Hearings Board did say in paragraph 2, that “these RAIDs look less like Limited Areas of More Rural Intensive Development and more like Urban Growth. The only difference between these RAIDs and the UGA is the absence of planning and funding for necessary urban services.” In years to come we will see things change there.*
- ◆ *Believes the portion of this property can be retained for passive recreation, a place for wildlife, it also meets a further goal of the act and that is the connectivity corridors and which are required around development and today we see diminishing along all highways in Washington State.*

I would certainly support the motion based on those items cited and others.

Chair Hillers

Asked if there were other discussion.

Ray Gabelein calls for the question, Val Hillers – Opposed, the question carried

Chair Hillers calls for a vote on the motion, Chair Val Hillers –Opposed, the motion carried

Chair Hillers calls for a ten minute break at 11:00

Back on the record at 11:08

Chair Hillers announced the next item on the agenda was Amendments to the Comprehensive Plan and Island County Code, Chapter 17.03 to incorporate policies and regulations that govern the use and development of lots created through Public Road Right of Way Segregation.

Jeff Tate

Provided background, following the Growth Management Hearings Board decision, which essentially invalidated the rule that was previously adopted on the issue of Public Road Right of Way Segregation, the BICC adopted an emergency ordinance which would bring this issue before the Planning Commission out of its normal cycle.

Ali Sanders

Provided staff presentation on the proposed amendments by briefly going over the staff report which provides background on the issue, an analysis and a conclusion.

- ◆ *Exhibit A starts on page 6 contains the draft amendments to the Comprehensive Plan and the changes apply to the Rural Element Land Use Designation Policy and the General Land Use Policy section.*
- ◆ *Exhibit B starts on page 27, which contains draft amendments to certain zoning classifications in Chapter 17.03 the zoning ordinance*

- ◆ *When staff began drafting the right of segregation amendments, the process started by gathering background data related to right of way segregation with the help of the Assessors office and by using GIS and other parcel data.*
- ◆ *Since 1987 215 lots have been created using the right of way segregation process and of these 91 of these have been built upon and 124 remain vacant.*
- ◆ *There are 50,580 parcels in Island County and the 215 lots that have been created through the segregation process constitute .04% of the total of the lots in Island County.*
- ◆ *About 319 lots remain un-segregated and these lots represent .06% of the total lots in Island County.*

Chair Hillers

Questioned whether the 319 is that number of parcels to be inserted by September 11th?

Ms. Sanders stated it was.

After gathering the data, staff started considering some general concepts related to Public Road Right of Way Segregation that needed to be addressed by the draft amendments.

- ◆ *First – most of the lots created using the right of way segregation provision or lots that have not yet been segregated, but are bisected by a right of right of way, do not meet minimum lot size or base density of the underlying zoning designation.*
- ◆ *Minimum lot size and base density for land use designations are established by in the Comprehensive Plan and are also included in Chapter 17.03*
- ◆ *It created a conflict between the Right of Way Segregation and the Comprehensive Plan.*
- ◆ *The draft amendments try to address this conflict. In Exhibit A on page 17, contains the Comprehensive Plan’s Rural Land Use Designation. The amendment states that lots created through right of way segregation do not have to have to meet the base density or minimum lot size for the underlying zoning category. This attempts to resolve the conflict between right of way segregation and the Comprehensive Plan.*
- ◆ *Some of the land use designations in the Comprehensive Plan don’t have a base density or minimum lots size, so those are not mentioned in these amendments.*
- ◆ *Similar language was incorporated into each of the zoning designations in Chapter 17.03; page 28 of Exhibit B contains an exception for minimum lots size and base density for lots that were either created through right of way segregation or lots that will be created because they haven’t been segregated yet, but there’s a right of way going through them.*

Other concepts considered when drafting these amendments are:

- ◆ *First the amendments allow an un-segregated lot that is currently bisected by an existing Public Road Right of Way to be segregated, the approximately 319 lots mentioned earlier. When the right of way was acquired, the compensation generally included the ability to segregate. So if a property owner can’t segregate they were not fully compensated.*
- ◆ *Second, people have already segregated their land, using the right of way separation provision, and did so based upon the expectation that they would be able to build upon their property. They were also using a provision in the County Code that was valid and legal at the time that they segregated their property.*

- ◆ *Third the draft amendment do not allow for the abuse of right of way segregation. A property owner that uses a land use action that creates a situation in which their land is now bisected by a Public Road Right of Way, but would not have been if they hadn't used the land use action is not allowed under the proposed amendments.*
- ◆ *Further subdivision of any lot created legitimately through the right of way segregation process must comply with Chapter 16.06 and 17.03 of the County Code.*
- ◆ *Last, in the Draft Amendments it a date that has been left blank, it currently says insert date. That date can be inserted after further conversation regarding the amendments.*

To conclude, the Planning Department has determined that the small number of lots affected by right of way segregation poses no significant threat to rural character and does not compromise the goals and principals of the GMA and under advisement of the Prosecutors Office, the Planning Department would like to propose these amendments for both the Comprehensive Plan and Chapter 17.03 to the Planning Commission.

Jeff Tate

Elaborated – after the Growth Management Hearings Board decision was rendered the Board of Commissioners did have conversations with the Prosecuting Attorney's Office which provided some guidance in terms of conceptual approaches to addressing this issue.

The way that the Code use to be written had a standard in the subdivision section of the ordinance. That is a separate chapter in the County Code that exempted these lots from having to go through the subdivision process.

- ◆ *That exemption could not trump the Comprehensive Plan and the Zoning Ordinance language which declared a base density and minimum lot size for each zoning designation.*
- ◆ *A concept that was advanced by the Prosecutor through those conversations was that you have to go back to the language and the policy document, the Comp Plan and the Zoning Ordinance and you would have to look at each one of those categories that establishes a minimum lot size and a base density. It doesn't include anything that says there is an exception to that rule.*
- ◆ *The concept was to go in under each land use designation in the policy document of the Comp Plan and then into the similar language in the County Code and address this issue stating there is a base density and a minimum lot size, but there are circumstances that would allow a variance of that minimum lot size and base density. It would put language into each of those designations.*

Wayne Havens questioned staff, regarding other requirements to building on a lot that was segregated.

Jeff Tate stated all other requirements would have to be met; only the minimum lot size and base density would be affected by this amendment.

Bill Massey

Stated staff provided several options relative to the date it would go into effect, asked for clarification.

Jeff Tate

Probably the most logical date is to put into the Code is the date the on which the ordinance is adopted. We would verify with Public Works as to whether any new right of ways were created that are now bisecting private properties, which would have the effect of bringing those properties into this variation since 1998 when the Code was adopted. The number would be very few, if any.

Ray Gabelein questioned as why there was no recommendation from staff as to the date of implementation?

Jeff Tate

Stated the Department thought it would be worthwhile to have the conversation of an appropriate date, there is a recommendation, but thought it would be worthwhile for the Planning Commission to discuss.

Ray Gabelein asked if the date of adoption, to be consistent with other recommendations, be the date of adoption by the Board of Commission.

Mr. Tate stated that yes that was the norm. There were exceptions, but that was the norm.

Ray Gabelein

Stated that he agreed with the way this has been put together and thinks it makes sense. Agreed with the staff that when a property owner was forced to divide their land, they didn't have much choice in the matter and part of that compensation in fact was the ability to use that property that had been divided off. He thought it would be stealing from the land owner if they weren't allowed to use their property.

Chair Hillers invites Public Comment

Steve Erickson – Whidbey Environmental Action Network

Stated he first had a comment, to call this an emergency is ludicrous. Asked of the 50,000 plus lots in Island County what percentage of those are in UGA's, RAIDs? Stated his recollection was that the vast majority of those might be in the urban areas.

Asked if staff analyzed what zones these were in and the relative acreage in each zone that was affected?

Ms. Sanders stated the relative number had been the total number, but that would be something that could be looked up.

Mr. Erickson stated he was real curious about that. Stated that the way he reads this it that it would allow creation of lots composed entirely of critical areas or critical areas and their buffers? Asked if that was correct?

Mr. Tate replied if it is an unregulated segregation, that would be true, but it would not make it buildable, you can't alter those on a newly created lot.

Steve Erickson

Asked if there were any documents where this ability to segregate was held out to the land owners as compensation, quote, unquote, for building the road?

Jeff Tate

Stated there were conversations with Public Works and how they go about acquiring the property, there are no contracts with individual landowners, but it was conveyed to the landowner that way.

Steve Erickson

Asked how far back that practice goes? Is that what they did in the 1950's & 60's? 70's? 80's?

Mr. Tate stated he did not know how far back that practice went.

Steve Erickson

- ◆ *Stated that what this does is what is basically what the GMHB has already ruled invalid. Thinks it may even go even further because this seemed to him to go from requiring someone to actually do a segregation to just declaring outright that these lots exist. Even if it doesn't go further than what has already been disallowed by the Hearings Board, he was astonished that this has come back here.*
- ◆ *The Board ruled that they were invalid; the exemption was invalid because it violated GMA's goals for resource land, and rural lands. It allowed non conforming lots, lots that are substandard. The argument that this was compensation was rejected by the Hearings Board.*
- ◆ *He stated he was frankly amazed that we're back here again, stated maybe it was something in the moon, earlier you decided to recommend defying or trying to overturn a GMHB decision from eight years ago, here you are trying to overturn a decision from eight months ago. Stated he was trying to decide is this the silly season or what's happening here, because it seemed to him that the County had suddenly decided to embark on a program of simply trying to defy GMHB decisions. Stated he didn't understand why.*
- ◆ *stated he knew what was going to happen when they took this back in front of the Hearings Board, they are going to say this is basically the same as what the exemption did before and they invalidated that exemption because of what it did.*
 - *It allows more sprawl through Island County.*
 - *It impacts rural lands, and development pattern, it impacts resource lands.*
 - *Thinks it would be foolish to pass something that is illegal, defies State statute, defies a recent ruling by the board that is charged with enforcing that State statute and is going to be overturned again.*
 - *He urged the Commission to stop wasting their time, our time, the Prosecutor's time and the taxpayer's dollars and reject this.*

Shane Thatcher – Thatcher & Morrison Surveying in Freeland

Stated that one of the things he's learned in his life is that there are very few absolutes. If we were to say there can be no exceptions to this rule, just for the sake of wanting a rule that there are no exceptions to, seems a little obtuse.

- ◆ *If there is a section of the Code, you can go through virtually every instance; there is an exception to that Code because there are things that come up that were unforeseen when it was written.*
- ◆ *His opinion is that if you create a section of the Code that there are no exceptions to; we are trying not to say that zoning and density are inviolate and yet tract of land are bisected, isolating pieces from ownership, it is not convenient to move from side to side of a road to maintain a property. In fact, the property is already divided; it then just takes a piece of paper at the County to then validate that.*
- ◆ *In reality, in surveying for 17 years, he couldn't think of an instance where an owner whose property was divided by a road that the owner didn't think they had two parcels. That was the policy of the County, without exception they knew about that policy, it would be a retracting of those rights, the rights that the landowner thought they had.*
- ◆ *When the GMHB recently invalidated the first attempt by the County to correct this situation, if it was left to stand as is, I know for a fact that there a number of these parcels that have houses on them, that were created by this segregation process. What about those who have built houses on these lots, what if one of these houses was to burn down and this law wasn't changed? Would they then be precluded from rebuilding a home on this parcel?*
- ◆ *He understands, or maybe this is just hearsay, but it is his understanding that every other County in the State allows this. He felt the County did a very good job in laying this out and he didn't want to elaborate on that, but the percentages that were presented are accurate, it is a very small percentage.*
- ◆ *The impact on the island would be more negative than positive if this were left to stand as is. This situation really needs to be corrected.*

Steve Erickson

Stated just to correct something the previous speaker said, part of the briefing on this case in front of the GMHB last fall, he researched this very issue and found the Code for 26 Counties in Washington and out of those two Counties seemed to have a similar unbridled exemptions, every other County was much more narrowly restrained. He stated there were virtually no Counties in Washington that have a similar exemption.

John Chambers – Oak Harbor

- ◆ *Stated he has been a Realtor since 1978 and has been involved in numerous numbers of these boundary situations, where the road split the property. He had never run across a situation where the owner felt they couldn't develop on the separated piece of land except when the property owner knew there was a situation that meant the new lot wouldn't meet building criteria in order to build a house on the lot.*
- ◆ *These kinds of situations have caught people off guard, because they didn't expect it. Some were planning on building on it, some were planning on using it for their retirement, and these are all issues that no one expected.*

- ◆ *One of the biggest issues for people is, it's not only going to cost them, it's going to cost the County as far as negotiations as far as acquiring right of ways and how they are going to purchase them. If people don't think that a person being able to segregate their property into two pieces makes a difference in how you negotiate that property, they are very wrong.*
- ◆ *Recently the County, because of this situation purchased two ten acre parcels he had listed because they felt they couldn't get the access through and give back two parcels, so they had to purchase them for \$280,000, they still have to negotiate 3/8 of a mile of easement that will need to be paid for, it was offered to the County for free, but wasn't excepted due to this situation that is before you.*
- ◆ *This has a lot more consequences than a lot of us realize. He also thinks if you really looked into the other Counties, you would find there wasn't a specific law on the books, it was just done that way and had always been done that way until one situation popped up and blew up in everybody's face. Stated he would like for the Planning Commission to think about those situations.*

Chair Hillers

Questioned staff, how is this written in a way that is likely to pass a challenge to the Growth Management?

Jeff Tate

The way it was previously written was relatively buried in a section of procedural code. The procedural code couldn't trump the land use policies. The advice was to go directly to the land use policies and amend those and bring those forward. It is important to know and quantify how pervasive or not pervasive this issue is and whether it really is a problem or a threat. So we went right to the root of the issue, the density language in the Comp Plan of the Code and then we went through a process of quantifying those situations.

In terms of expense, stated he was aware of the situation that Mr. Chambers referred to and the prospect of buying full pieces of property, (as attested to by Public Works) and of paying for those pieces of property because there is no bargaining opportunity when trying to acquire right of way, far exceeds the cost of trying to move this issue through to implement and defend it, by magnitudes.

Bill Massey

Clarified the goal as stated on page eleven is to allow for future segregations also, not just those segregations that exist prior to the date and the goal is to help the County to manage future cost of segregation by road right of way acquisition? Asked if that was the primary goal?

Mr. Tate stated the primary goal is to actually protect those situations where it already exists, but there is a provision that will allow for continued use of the provision.

Mr. Massey stated from a defense standpoint it would be easier to defend what happened in the past, but could you defend future segregation?

Mr. Tate he couldn't answer that question, but he stated the Department did ask those questions of those that would have to defend for the County. There are no guarantees with anything, but there is a higher level of comfort in advancing this kind of proposal.

Ray Gabelein

Questioned further on page 11 of 35, section M, states further subdivision of boundary line adjustments of tax lots created by right of way, then there are Chapters that are cited that would need to be conformed to, those are land use chapters?

Jeff Tate

16.06 are the subdivision standards and 17.03 is the zoning ordinance. That is only for further subdivision, it provides protection for abuse of the provisions where people are conducting boundary line adjustments and segregations that put themselves into the situation of a having a parcel bisected by a Public Road Right of Way. Once segregation is done, a formal subdivision would have to be done for any future division and it also states prior to doing the segregation you can't have manipulated the boundary lines thereby creating the bisecting scenario.

Wayne Havens

Stated in listening to the comments of Island County spending tax money, if the County has to purchase full properties for a right of way it takes it off the tax roll, it would be County property. If they separate the property and people can build home on it, it would increase the taxes. People aren't going to give these easements to the County knowing they can't do anything on their property. Stated that he couldn't see where segregating these properties, without the owner having the ability to do something with their property is of any benefit to the taxpayers of Island County.

Mr. Tate stated he didn't know the magnitude of the effect, but there is no question that there are a few financial effects, there is the upfront acquisition cost, once the property is in County ownership Mr. Havens is correct, it goes off the tax rolls, and when it's off the tax roll there is a tax shift that occurs for other property owners to pick up the difference.

Ray Gabelein moved to recommend approval of the Amendment to the Comprehensive Plan and Development Regulations concerning Public Road Right of Way Segregation as presented by staff with the date being the date of adoption by the Island County Board of County Commissioners. The motion was seconded by Bill Massey.

Chair Hillers calls for additional discussion. There was none

Motion carried unanimously.

UNFINISHED BUSINESS –

Continuation of a public hearing on the Freeland Sub Area Plan

Sheila Crider

Requests the public not go over previously submitted documents, welcomes new information.

Jeff Tate reviewed

- ◆ *Planning Commission held a public hearing in Freeland on August 28th.*
- ◆ *That hearing was in response to a staff transmittal to the Planning Commission on August 15th in which the Draft Freeland Sub Area Plan and the Draft Environmental Impact Statement were forwarded to the Planning Commission along with Appendices to the Sub Area Plan, the Comment Letters received up to that point, the Sewer Plan, the Storm Water Plan. Also there were two memos, one from BHC consultants, highlighting some of the points they made during their review and offering some suggestions for consideration, also included was the Freeland Sub Area Committee Transmittal Memo.*
- ◆ *After a detailed staff presentation on the 28th the Planning Commission opened it up to a Public Comment period.*
- ◆ *At the end of that hearing, the Planning Commission voted to keep the Public Comment period open until at least until September 11th, today and allow for any additional oral testimony today.*
- ◆ *It was left up in the air as to whether the Planning Commission would begin deliberations today or whether an additional three weeks to absorb information, read the materials, read the comment letters, hopefully drive through Freeland at some point. Look at some of the maps of some of the specific pieces of property discussed.*
- ◆ *Staff agreed to provide some information and post it to the website for the public, which was essentially an attempt to highlight some of the main themes and offer some information regarding those main themes.*
- ◆ *There are lots of other comments received, those are appropriate for the Planning Commission to evaluate and ask staff questions about.*
- ◆ *Staff is not here to answer all the questions. Many of those questions came up already during the Sub Area Planning Committee process and had been voted on those issues by that committee and had lots of very thoughtful discourse on those issues. Now they are in the hands of the Planning Commission.*
- ◆ *Staff's role right now is one of supporting the Planning Commission as questions come up as you review those comments and proposals.*
- ◆ *Staff did transmit a memo that did include some information and response to different issues that came up that included four attachments that included maps, aerial photographs and topography for Freeland Hill, some zoning maps and a couple site specific requests to change zoning in the draft proposal.*

Chair Hillers opened it to Public Comment

Mitchell Streicher - Freeland

Stated he wished to speak in response to the response to Public Comment by Jeff Tate

- ◆ *Item 1 on Freeland zoning, the minutes reflect Rick Brown and Steve Shapiro as supporting the present zoning in the Freeland Sub Area Plan, Mr. Streicher stated he would like to remind the Planning Commission that both have changed their minds, in writing, since then.*

- ◆ *He also noted one of the four Freeland Sub Planning Committee members, Chuck Edwards, who did not change his mind makes it abundantly clear why he wants the zoning as it is in the original Sub Area Plan.*
 - *The following statements are from those minutes, “one of his concerns is the cost of sewers, and he thought the ten acre parcel would be a good candidate if it could be developed at a 3 to 6 unit per acre.”*
 - *At another point Chuck Edward noted that his original motion was to change the zoning from low to medium density, he felt the parcel was a prime area for sewers and could help with spreading out the cost. Mr. Streicher state he doesn’t believe that spreading out the cost of sewers is a legitimate reason for zoning property.*
 - *Another point in the minutes, Chuck Edwards noted “that Best Management Practices would be put in place to take care of any impacts on the properties located below the ten acre parcel for the septic, drainage and storm water run off”. The Planning Department has stated on several occasions that steep slopes would not allow the development of 90 houses, so why worry. Mr. Streicher’s response was, don’t plan for problems, plan to avoid them.*
- ◆ *Toward the end of item one, among the many possibilities listed, “However a low density zoning designation with regulatory provisions that require clustering, dedication of open space, protection of sensitive species, avoidance of the destabilization of any unstable slopes, the requirement to incorporated different types of housing and the use of Low Impact Development techniques would allow for a reduction in density and mitigation of many of the concerns the individuals have raised.” Mr. Streicher stated, because of the steep slopes, I don’t believe the Low Impact Development is realistic.*
- ◆ *Item six, “Our opposition is based on the additional bureaucracy that will be created which will lengthen the permit process and establish new demands on staffing resources.” Mr. Streicher stated he didn’t see the design review as additional bureaucracy, rather replacing and absentee one with a local one.*
- ◆ *Item eleven is so irrational as to be ludicrous, I am embarrassment by the fact that my County’s Planning Department could up with something like this. “ Moratorium – It is inappropriate for the Planning Commission to recommend development moratorium. Only the Board of County Commissioners has the authority to issue a moratorium on development. Such a recommendation is outside of the Planning Commission’s authority or purview.” It is not any more or less appropriate for the Planning Commission to recommend the moratorium than it is to recommend the Freeland Sub Area Plan, that’s what there job is.*
- ◆ *The last remark is about change made for the Freeland Sub Area Plan, on page 14 and 15 under the categories of Medium Density Residential, Low Density Residential and Rural Estate, the following has been deleted. Free from commercial and industrial activities, for those three areas, Rural Estate, Low Density and Medium Density, free from commercial and industrial activities. Stated he didn’t believe this represented the public driven process the Planning Department was always talking about.*

Christine Goodwin – President of Friends of Holmes Harbor

Stated she would like to discuss the design review. Stated they have a very involved community and thinks a design review board, which would also maybe take in hand impervious surfaces, and parking design in these applicant proposals. Stated she felt they could come during their design process, prior to the application process, they could work with the design review board to help with determining a good proposed project, that would meet more the needs and requirements and desires of the local community, so then in turn there would be less opposition. In reality she stated she believed it could shorten the permit process.

In that design review process she hoped Holmes Harbor could be addressed, trying to protect the aquatic environment plus the communities' ability to use Holmes Harbor stated they feel the design review committee could help protect that environment.

When you look at the Freeland area, we would like you to take a look at the fact that we do have persistent levels of fecal coliform in the Harbor and have had shell fish harvesting closed down, which affect more than just the Freeland community but visitors alike. Please bear in mind we have topography that the business center all drains into Holmes Harbor, that the terminology should or shall that is more representative of what needs to be happening there, due to that topography. When people are exercises their property rights in their proposed applications, what they don't consider is that it does affect other's property rights and it does affect the community at whole. Everybody pays the price.

Lou Malzone - Freeland

Wants to emphasize that Planning Department more or less recommended reducing the zoning on Freeland Hill to low density and the option that is not there and not really discussed is if you remove these two parcels from the NMUGA map and since the Planning Department is going to discuss having some logical outer boundary for the joint planning area, the owner of that property could apply for annexation once infrastructure changes have been made.

Stated that he needs to understand how the public is going to be able to comment on the final FSAP, we have seventeen other comments that we submitted and they must have been lumped together under these technical non substantive comments, but there are deleted land use categories from the Draft FSAP and he doesn't believe that is a non substantive comment. Stated he would like to know what is going to happen.

Dean Enell

Would encourage the Planning Commission to designate Freeland as a NMUGA.
Would like to have some ability to determine what Freeland will look like in the future.
The citizens need to have some control.

Bill Fredrick

Clarify the Vision Statement. The Sub Area Planning Committee came up with 18 Vision Statements, refurbished for Freeland from some used in Salisbury North Carolina, after we reflected on this, we decided to add a 19th Vision Statement. The first 18 statements are basically infrastructure and decided it was all about trying to make a community where people would be

developed to their full potential. So we developed a statement, which was the 19th statement but it wasn't done formally. We would like that 19th statement to be included when it is sent to the Board of Island County Commissioners.

Debra Houseworth – Owns ten of the acres called Freeland Hill

Felt it was important to say who she is. Wanted people to know when we purchased this property we purchased it because it was beautiful. We are not developers, but we're not wealthy so we're not philanthropists, so we don't have the ability to develop it into a park, don't want to mislead people into thinking that.

We have a vision for the property; felt it was great for cluster development. We did some topographical studies and hired a structural engineer. When you get to the top of that hill, it levels out; there are places where you could have cluster development. Eight or so years prior to when we took possession of the property, the previous owners logged it; we feel it gets more protection if you have cluster development with designated open spaces, than if you leave it in it's current designation.

We support a medium ground, 1 – 3 homes per acre, low density. Any development on that land is going to have to prove that land can ecologically sustain the development. There may only be ten homes allowed, not necessarily thirty. We do think the natural beauty of the ten acre parcel along with its' proximity to down town Freeland makes it an ideal site for cluster development. The homes could be within walking distance to services, something that people who choose to live in more densely developed community desire. The reason we support cluster development, growth is going to happen, regardless, so if we cluster homes together we preserve open space around them and have these developments close in to town that's going to help to preserve more of our rural island. We just want to say, we think this is a middle way, the meeting ground for environmental concerns and housing needs so that growth can occur in a manner that preserves the existing beauty and respects the natural environment we all cherish.

Steve Shapiro - Langley

Member of Freeland Sub Area Planning Committee from the beginning to its conclusion. First wants to register his objection to some of the work done by BHC, the consulting firm hired to fine tune the Draft Sub Area Plan created over a four year period. He met with BHC early in their process and offered to be a resource for them if they had questions about the intention of the Freeland Sub Area Committee. They never contacted him.

BHC has said that all they did in addition to some word-smithing was to make changes to bring the draft into conformity with the Island County Comprehensive Plan. He stated this was no so, either on their own initiative or in collaboration with the Planning Department they have suggested changes that would entirely alter the meaning of the plan by changing shall to should, by deleting references to aesthetics, by deleting requirements for ample off street parking, by changing some zoning designations and by deleting the highway corridor overlay zones entirely.

- ◆ *The Planning Commission is under no obligation to accept any of the offensive changes proposed by BHC. To do so would subvert the public process which created the draft submitted by the Freeland Sub Area Planning Committee and might invite appeals to the*

Growth Management Hearings Board by those members of the committee and by the greater community that participated in the process.

- ◆ *It was the consensus of the members of the Freeland Sub Area Committee and it's vital to members of the Freeland community that future non-residential development in Freeland be regulated by robust design review in which community volunteers play a major role. To quote from the letter of transmittal sent by the Freeland Sub Area Planning Committee, "our recommendation that this plan be adopted is predicated on the assumption that the Planning Department and this representative body will develop a practical way for the citizens of Freeland to play an ongoing role in the development implementation, review and enforcement of these design standards." We chose to word this sentence positively. Another way of saying it we cannot support the designation of Freeland as a NMUGA unless, such a body with ongoing power is created.*
- ◆ *In his summary of the comments, Jeff Tates writes "the Department continues to support the need to assemble a group that will assist in the creation of design standards that will be incorporated into Island County as regulation. The Department continues to oppose the creation of a committee that evaluates specific development proposals. Our opposition is based on the additional bureaucracy that will be created which will lengthen the permit process and establish new demands upon staffing resources."*

The position of the staff of the Planning Department should not trump the clear desire of the Freeland Sub Area Planning Committee and the Freeland community to have meaningful ongoing control over the development of and enforcement of design standards for future commercial development in the Freeland area. Allowing community members to fill a position or two on a committee which would draft regulations is not sufficient. The Planning Department's staff argument against design review is really pretty weak. Additional bureaucracy and longer permit processing times, if they occurred would be a small price to pay for giving the community control over their own destiny. They might even be argued that a committee composed of community volunteers could process applications more quickly than Planning Department staff. Several qualified individuals have offered to serve on a design review committee without compensation. It is far more desirable for development in Freeland to be managed by qualified involved concerned members of the community than by bureaucrats in Coupeville. The public has spoken loudly please listen.

Sheila Crider moved to closed the public hearing on the Freeland Sub Area Planning, the motion was seconded by Bill Massey the motion carried unanimously

Lou Malzone

Was hoping staff would address the process; we don't have the final draft of the Freeland Sub Area Plan, so how do I know that what I asked for is even being considered?

Jeff Tate

Advised what that the process is:

- ◆ *The Planning Commission accepts public input for a set period of time, to be designated by the Planning Commission; the Planning Commission has to have time to deliberate and discuss everything that they've heard and read.*

- ◆ *It is after that there will be a public dialogue that the Planning Commission will participate in, the public is welcomed and encouraged to attend and listen to that conversation to listen and see how the Commission members are thinking about the different things that they heard.*
- ◆ *Staff's role is to provide information, some background, some clarification and we look to the Planning Commission to ask us questions.*
 - *At times deliberations include asking direct questions of the public who are present who may have commented so that you can learn a little more about what their point was on a certain issue. That is the dialogue that occurs.*
- ◆ *Ultimately the Planning Commission can choose, after deliberating and talking, because they can't talk to each other outside a public forum, to ask for more comment.*
- ◆ *The Planning Commission can choose to start making some recommendations; the recommendation maybe broken into pieces or it may be in one big chunk.*
- ◆ *The customary process that would occur is that the Commission would close the Public Comment period at least for now and begin a deliberation process.*
- ◆ *At this point what the process holds is the Planning Commission would reconvene, people could come and listen to the conversation and see where that goes.*
- ◆ *The staff, the Department, nor the Commission in advance of those deliberations can automatically determine what the outcome is going to be. We have recommended because the Board of Commissioners have recommended as a whole, has indicated that they would like a certain deadline met. It's a goal, that's there words, it's been out there and we're moving towards that goal.*
- ◆ *October 2nd would be a very revealing meeting date to see where each member is and the Commission as a whole and how to move forward.*

Sheila Crider requested to address her motion.

The purpose of closing public input at this point is time to enable this body to ask of staff if there other items which they may need and at a juncture where our day ends. Public Comment if we so choose may continue on if not the deliberative process is one that we need to proceed on with. We need to be able to ask of staff if there are other items that this body requires at this point to assist us and as Mr. Tate just stated for the record we do not have the opportunity to discuss among ourselves outside this body these issues. So there may be issues any one of us might feel that we need at this point to ask of staff, such as materials or clarification thereof.

Ray Gabelein asked if the owners of the other 10 acre parcel have been contacted?

Jeff Tate replied there has not been any outreach to that landowner, nor have we heard from the landowner.

Ray Gabelein stated Freeland Hill seems to be a hot issue stated he was glad to see a letter from one of the owners. Perhaps if it's appropriate to at least notify them of to see if they have any input.

Unidentified member of the public asks to have until midnight for further comment.

Chair Hillers stated it would be by the end of business today, 5:00 p.m.

Bill Massey stated that after deliberations and a recommendation is made to the Island County Commissioners, they may wish to hold an additional public hearing process.

Jeff Tate stated the way that the statute is setup, is that once the Planning Commission forwards a recommendation, statutorily they have three options.

- ◆ *Accept the Planning Commissions recommendation with no public hearing*
- ◆ *Remand back to Planning Commission because they feel there are issues that haven't been adequately addressed.*
- ◆ *Or advertise and conduct their own public hearing on the matter.*

Built into the schedule is at least one public hearing for the Board of Island County Commissioners to hold. When there are issues that are particularly controversial and lots of public interest, the Board has tended to hold their own public hearing so that people can continue to talk. I can't say that will or won't happen. In advance of these deliberations we can ask what the boards' feelings are.

Wayne Havens

Stated he lives on Camano and drove to Freeland at his own expense, not taxpayers, met with another Planning Commission member who is a resident there and spent two hours driving around Freeland to get familiarized with all of these locations. He wants the citizens to know it is important to him and he knows it is important to them.

Sheila Crider moved to adjourn

Chair Hillers Before a motion to adjourn we need to set a date for the next meeting.

Sheila Crider Motion-maker will remove the question

Chair Hillers It has been suggested that the next meeting be October 2nd and that on the Agenda be Planning Commission's deliberations related to Freeland Sub Area Plan. Bill Massey, so moved, the motion was seconded by Ray Gabelein Chair calls for a vote on the motion to hold a meeting October 2nd. Motion carried unanimously.

Chair Hillers, it is now time for a motion to adjourn, Sheila Crider, so moved. Bill Massey seconded, motion carried unanimously.

The meeting adjourned at 12:35 p.m.

Respectfully submitted

Paula Bradshaw

Administrative Assistant