

For record 1/22/13

1 of 5 items

3998 Wind Crest Lane
Anacortes, WA 98221
January 22, 2013



Skagit County Board of Commissioners
1800 Continental Place
Mount Vernon, WA 98273

Re: Title 2.80, 14.02 and 14.08

Dear Commissioners,

In the past, hearings on Title 14 have always gone first to the Planning Commission for advice and editing, and then to the BCC. By your hearing these Code changes without Planning Commission input, apparently, all Title 14 Code changes in the future will follow the same process. That violates everything I have heard about public process, or due process.

Other Title changes are decided by the BCC with minimum public notice or process, but that is the tradition. The whereas section of the document before us totally changes the legal authority of the Planning Commission without any staff description, analysis of the impact, or even citing the name of the Planning Commission Act. In 1964, when the County operated under the Constitution, a subdivision was authorized, homes and septic systems permitted and constructed, and mortgages taken out on what looked like an ideal affordable subdivision. When the river rose and water bubbled under the levee, the County ordered several owners out because of contamination. The County said that it did not have the authority to restrict the installation of septic systems, only their use. The result of the ensuing lawsuit was the creation of the Skagit County Planning authority in March of 1965. (See Attachment A, the Short Course on Local Planning, Version 5.1, July 2009, pp. 32,33, and 35 on the Legal Basis for Planning.)

The draft ordinance repeals Resolution R20090532, the Planning Bylaws, in order to re-establish them in sections of 14.02. In so doing

*In insufficient time given, as usual,
to provide the kind of comments necessary
for laws to be useful, fair to all and
accepted by public*

*Erin
e.g. Zeller*

*We were
told that.*

2 of 5 items

A for record 1/22/13
from 0 errors

To be 11/1/11

Tom Long
Chairman

to Department of Commerce home page | to table of contents



Department of Commerce
Innovation is in our nature.

PAW

Planning Association of Washington

A Short Course On Local Planning Resource Guide

A resource guide to accompany the Short Course on Local Planning,
developed by the Planning Association of Washington and the
State of Washington Department of Commerce
Version 5.1/July 2009

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- RCW Update Book

permits, and related actions. Quasi-judicial actions may be taken by hearing examiners, planning commissions, city councils, and county commissions.

This chapter presents an outline of the process, introduces the basic planning model in Washington, and places it into context.

B. The Constitutional Basis for Planning

The constitutional basis for planning is provided in the police power provisions of the Washington State Constitution:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.³

Courts in Washington have long acknowledged the validity of planning as a police power, in that

... zoning ordinances are constitutional in principle as a valid exercise of the police power, and will be upheld if there is a substantial relation to the public health, safety, morals, or general welfare.⁴

When a municipality acts with due regard for proper procedures and considerations, the courts will defer to the municipal actions taken. At the policy level, the actions are presumed to be correct.

C. The Statutory Basis for Planning

There are three statutory enabling acts for planning at the local level: the Planning Commission Act⁵ (cities and counties); the Optional Municipal Code;⁶ and the Planning Enabling Act.⁷ Communities may also operate under a charter model, which provides a different planning structure. Each of

these chapters in the Revised Code of Washington (RCW) imposes significant obligations on parties involved in land use planning. People involved in the process must understand the provisions of each and must know under which chapter a given municipality operates.⁸

The state's Growth Management Act (GMA),⁹ and its implementing amendment,¹⁰ do not change the method or manner of planning in a local community. They merely specify the elements that must be planned and additional criteria to be followed, regardless of the local community's statutory model.

1. The Planning Commission Act¹¹

The Planning Commission Act permits a city or county to engage in planning by creating a city or county planning commission.¹² Once a planning commission has been appointed, it must recommend adoption of land use regulations and implement a "comprehensive plan" for the physical and generally advantageous development of the municipality.¹³ This means that before any regulatory land use rules are adopted, city and county councils must submit them to the planning commission. Not doing so could render the action or enactment void for failure to follow proper procedure.

The Growth Management Act¹⁴ adds this requirement: all counties and cities that are required to fully plan must adopt a comprehensive plan with more specified components.¹⁵ This reverses a long-standing policy that the "comprehensiveness" requirement could be satisfied merely by enacting a basic, community-wide plan.¹⁶

For counties not fully planning under the GMA, the Planning Commission Act¹⁷ is still the basic planning model. However, some jurisdictions not fully planning under the GMA have incorporated certain components of the GMA's requirements into their plans. For example, some cities have adopted a version of an urban growth area.

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RCW Update Book

PRACTICE TIP: The community should reference the statutory basis it uses for planning (e.g., the County of Whitehall adopts Chapter 36.70 RCW as the basis of County planning). This designation will help newcomers understand the rules governing the process, and remind "old hands" that they should check statutory details periodically to assure that proper procedures are followed.

If a county or city is adopting a comprehensive plan or development regulations under the GMA, the adopting ordinance should specifically reference Chapter 36.70A RCW. This will help the county or city establish GMA compliance.



3. The Planning Enabling Act²⁵

The Planning Enabling Act, directed specifically at counties, is the most detailed of the planning enabling statutes. The Planning Enabling Act is more specific, procedurally detailed, and complex than the Planning Commission Act. It provides a specific statutory framework that integrates planning with zoning, platting, and other specific land use regulations.

While the Planning Enabling Act is an option for community planning, it requires a more detailed comprehensive plan. Once a county elects to create a planning agency under this Act, the agency must prepare a comprehensive plan for the

*orderly physical development of the county... [including] any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county.*²⁶

The Supreme Court has left no doubt that under the Planning Enabling Act, the comprehensive plan is a document to be reckoned with.²⁷ The court said

*preparation of a comprehensive plan is the beginning and indispensable precursor to a county zoning law... There is nothing casual, or perfunctory, about a certified comprehensive plan as the statutes require it to set forth a number of specific elements..., and it serves as a guide to the later development and adoption of official zoning controls.*²⁸

As the indispensable precursor to a valid local planning program, a well-ordered comprehensive plan is now incorporated by statute into all planning dictated by the Growth Management Act (GMA).²⁹ It applies to all cities and counties, whether they have elected or are required to develop a comprehensive plan under the GMA.

For record
2 of 5 items

See p 2 ↓

A-5

SKAGIT COUNTY
Resolution # R20090532
Page 1 of 11

C Ehlers

1/22/13

A Resolution Approving Bylaws for the Skagit County Planning Commission

Whereas the Board of County Commissioners established the Skagit County Planning Commission by Resolution No. 3078 on July 24, 1961;

Whereas the bylaws of the Planning Commission have been amended several times since, most recently by Resolution 18289 in June 2001;

Whereas updates to county code, state law, and common practice necessitate corresponding updates to the bylaws;

Whereas the Skagit County Planning Commission, with the assistance of legal counsel, deliberated and approved the attached bylaws at its December 1, 2009, meeting;

Whereas Skagit County Code 14.02.080(6) allows the Planning Commission to adopt procedural rules, but such rules do not take effect until reviewed and approved by the Board of County Commissioners;

Now Therefore Be it Resolved that the Board of County Commissioners rescinds Resolution 18289, approves the attached Bylaws of the Skagit County Planning Commission, and also sets forth its signatures on bylaws page 5.

WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this
22nd day of December, 2009.



ATTEST:

Linda Hammons
Linda Hammons, Clerk of the Board

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Chair

Sharon D. Dillon
Sharon D. Dillon, Commissioner

Ron Wesen
Ron Wesen, Commissioner

APPROVED AS TO CONTENT:

Gary Christensen
Gary Christensen, Planning Director

APPROVED AS TO FORM:

Ryan Walters
Ryan Walters, Civil Deputy Prosecutor

**BYLAWS OF THE PLANNING COMMISSION
COUNTY OF SKAGIT, WASHINGTON**

ARTICLE I – NAME

The name of this organization shall be "Skagit County Planning Commission," or for the purposes of this document, hereinafter referred to as the "Planning Commission."

ARTICLE II – AUTHORIZATION AND PURPOSE

The Planning Commission was created under the authority of RCW 36.70.040 by Resolution No. 3078, adopted by the Board of County Commissioners on July 24, 1961. The powers and duties of the Planning Commission shall be as expressed in the Planning Enabling Act, RCW 36.70, as now exists or hereafter amended (SCC 14.02.080(5)). Pursuant to RCW 36.70.040, the Planning Commission:

shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendations it deems necessary.

ARTICLE III – GENERAL RULES

General rules regarding membership, term of office, vacancies, removal, organization, meetings, powers and duties, shall be in accordance with SCC 14.02.080 and 14.08.080

Planning Commission members will strive to attend all regular and special meetings. If unable to attend, the Planning Commission member will notify the Planning & Development Services as soon as possible prior to the meeting.

ARTICLE IV – ORGANIZATION, OFFICERS AND DUTIES

Section 1 – General

The Planning Commission shall elect a Chair and Vice Chair from among its membership, at the first regular meeting of each calendar year. Officers shall be eligible for re-election. Vacancies in unexpired terms of office shall be elected at the first regular meeting following announcement of the vacancy.

Section 2 – Chair

The Chair shall preside at all meetings of the Planning Commission, enforce the rules of procedure, and execute the will of the Commission. The Chair shall appoint all sub-committees.

Section 3 – Vice Chair

The Vice Chair shall assist the Chair and during his/her absence act as Chair until the Chair is able to resume his/her duties.

Section 4 – Recording Secretary

The Director of the Planning and Development Services Department or his/her designee shall serve as Secretary. The Secretary shall:

- a. maintain the Planning Commission calendar, agenda, public notices and attendance records;
- b. notify Planning Commission members of regular meetings, special meetings, and schedule changes;
- c. keep minutes (if requested by the Chair);
- d. create an electronic recording of all meetings and hearings and create a transcript (when appropriate) in order to maintain an adequate record of proceedings;
- e. collect and number exhibits;
- f. provide to the Planning Commission proposed legislation, staff reports (with findings, conclusions and recommendations), pre-hearing correspondence, draft recorded motions, and all documentation necessary for an adequate record and an informed decision or recommendation. Such materials shall be transmitted to the Planning Commission at the same time as they are made available to the public;
- g. record the Planning Commission's findings of fact, motions, and votes and preparing draft recorded motions for review by the Planning Commission members prior to final approval by the Chair;
- h. provide the Planning Commission's approved recorded motions to the Board of County Commissioners;
- i. notify the Planning Commission members of the proposed schedule for consideration of approved recorded motions by the Board of County Commissioners;
- j. notify the Planning Commission members of any staff proposed changes to an approved recorded motion not less than 1 business day prior to any action by the Board of County Commissioners;
- k. provide Planning Commission members copies of Board of County Commissioners recorded motions, ordinances and resolutions on matters previously before or relating to the Planning Commission.

Section 5 – Chair Pro-Tem

In the absence of the Chair and Vice-Chair, a Chair pro-tem shall be elected informally by the members present to conduct the meeting.

ARTICLE V – MEETINGS

Section 1 – Rules of Procedure

Meetings of the Planning Commission shall be conducted according to the Simplified Rules of Procedure, attached as Appendix A. Procedural disputes may be settled by Robert's Rules of Order.

Section 2 – Quorum

A quorum shall consist of a simple majority of the membership of the entire Planning Commission. In the absence of a quorum, no action shall be taken, except to adjourn the meeting to a subsequent date, place and time, unless the lack of a quorum occurs due to challenges made under the Appearance of Fairness Doctrine. Pursuant to RCW 42.36.900, in the event challenges would make a quorum impossible, those challenged members may return to their seats and participate fully in the debate or decision, provided that the member fully discloses the reason for his/her disqualification before the Planning Commission renders a decision.

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hence -
no
record

Section 3 – Voting

Each member is entitled to cast one vote. Pursuant to RCW 36.70.400 and .600, recommendations on any official control, development regulation, comprehensive plan, or amendments thereto shall be by an affirmative roll call vote of not less than a majority of the total members of the Planning Commission, not simply a majority of the quorum. Pursuant to the Washington State Open Public Meetings Act, all votes must be public.

Section 4 – Regular Meetings

Unless otherwise stated in a public notice, all meetings shall be held in the Commissioners Hearing Room of the County Administration Building, 1800 Continental Place, Mount Vernon, WA. Not less than one regular meeting shall be held each month unless no matters are pending on the Commission calendar (SCC 14.02.080(4)). Meetings shall commence promptly at 6:00 p.m. A meeting may be lengthened or adjourned with approval of the Commission a motion and second.

Section 5 – Special and Emergency Meetings

The presiding officer, or a majority of members, or the Director of Planning and Development Services, may call a special meeting in accordance with RCW 42.30.080. Discussion and action during special meetings is limited to items indicated on the agenda. The notice requirements of this section may be dispensed with in the event a special meeting is called to deal with an emergency pursuant to RCW 42.30.080.

Section 6 – Adjournments and Continuances

Any regular meeting, special meeting, or public hearing may be adjourned to a specified time and place in accordance with RCW 42.30.080.

ARTICLE VI – COMMITTEES

The Chair may appoint from among the members of the Planning Commission whatever committees are deemed necessary. The Chair shall appoint committee chairpersons as appropriate and may dissolve any such committees. To ensure compliance with the Open Public Meetings Act, no committee may include a quorum of the Planning Commission.

ARTICLE VII – ETHICS AND RULES OF CONDUCT

Section 1 – Quasi-Judicial Actions

Planning Commissioners shall comply with the provisions below in addition to the Appearance of Fairness Doctrine articulated in RCW 42.36.

Pursuant to RCW 42.36.060, during the pendency of a quasi-judicial proceeding, members should avoid ex parte communications about the proposal. If a member has had *ex parte* communication with either proponents or opponents of the project during the pendency of the proceeding, the member shall make a public announcement of the content of the communication at each hearing and provide an opportunity for parties to rebut the substance of the communication.

Section 2 – All Actions

Any member of the Commission who in his or her opinion has a pecuniary interest in any matter before the Commission that would prejudice his or her actions shall so publicly indicate and shall step down, leave the hearing room and refrain from voting and any manner of participation with respect to the matter in question so as to avoid any possible conflict of interest or violation of the appearance of fairness.

If a member of the Commission or his/her immediate family has a pecuniary interest in the matter at hand but does not think that this would prejudice his/her opinion the member should publicly disclose this interest on the

record prior to the start of the hearing and allow persons to challenge his/her participation in the hearing. If so challenged the member shall step down, leave the hearing room and refrain from voting and any manner of participation with respect to the matter in question. If not challenged the member may participate.

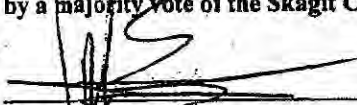
ARTICLE VIII – AMENDMENT OF BYLAWS

The Planning Commission shall review its bylaws periodically. The initial draft of a proposed amendment must be provided to the Commission at least one meeting before adoption.

Any changes to bylaws require a majority vote of the Planning Commission members and approval by the Board of County Commissioners (SCC 14.02.080(6)).

These bylaws, upon approval by the Board of County Commissioners, repeal and supersede all previous bylaws.

Adopted this 1st day of December, 2009,
by a majority vote of the Skagit County Planning Commission


Jason Easton, Chair


Gary R. Christensen, Secretary

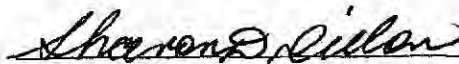
WITNESS OUR HANDS THE SEAL OF THIS OFFICE

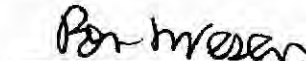
Passed and Effective this 22 day of December, 2009.



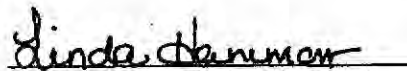
BOARD OF COUNTY COMMISSIONERS:


Kenneth A. Dahlstedt, Chairman

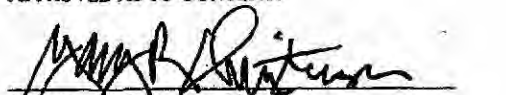

Sharon D. Dillon, Commissioner


Ron Wesen, Commissioner

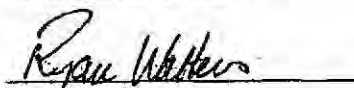
ATTEST:


Linda Hammons, Clerk of the Board
Skagit County Board of Commissioners

APPROVED AS TO CONTENT:


Gary R. Christensen, Director
Skagit County Planning & Development Services

APPROVED AS TO FORM:


Ryan Walters
Civil Deputy Prosecuting Attorney
Skagit County Prosecutor's Office

APPENDIX A – SIMPLIFIED RULES OF PROCEDURE

A. Intent

These procedures are adopted to provide the Chair with guidelines for conducting orderly public hearings and meetings in lieu of Robert's Rules of Order. The Planning Commission reserves to the Chair the authority to make reasonable changes or modify these guidelines to facilitate legitimate special needs and to promote a fair and orderly proceeding.

B. Public Hearings (Legislative and Quasi-Judicial)

1. General Hearing Procedures

- a. Chair declares the public hearing open.
- b. Chair reads the following statement as a guideline, prepared by staff in advance:

The purpose of this public hearing is to [state purpose]. Everyone present will be given an opportunity to speak. However, if this hearing extends beyond [state hour], the hearing will be continued to a later date and time.

[For legislative hearings] Those of you who wish to provide public comment are asked to sign in on the speakers list so that you may have an opportunity to comment. Those who may not elect to sign in will nevertheless be given an opportunity to speak following those who have signed in.

Comments [may] will be limited to a [state time period].

Written comments are encouraged and will be received until the close of this public hearing.

[If applicable] A court reporter is present to record your comments. Before you testify, clearly state your name, spell your last name for the record, and indicate where you reside.

- c. Appearance of Fairness Issues (Quasi-Judicial hearings only)
 - i. Chair requests anyone who objects to the Chair's participation, or any other Planning Commission member's participation, to please state so now and give the reasons for objection.
 - ii. Chair asks the Planning Commission members if any have an interest in the property or issue. Chair asks Planning Commission members if they can hear and consider this matter in a fair and objective manner.
 - iii. Chair requests any Planning Commission member to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chair should request whether any interested parties wish to rebut the substance of the communication.
- d. Chair requests staff to make its presentation (15-minute limit).
- e. [Follow procedures in subsection 2 or 3 below, as appropriate to the type of proceeding.]

- f. Chair declares the public hearing closed and thanks members of the public for their testimony.
 - g. Planning Commission deliberates on the record, discussing findings of fact, conclusions, and recommendations (See "C - Public Meetings" below). The Planning Commission may take all information under advisement and postpone deliberation until a later meeting, provided the meeting is properly adjourned.
2. For quasi-judicial hearings, or for legislative proposals of a site-specific nature, the procedures shall be as follows:
- a. Following the staff presentation, the applicant or his/her representative is invited to comment. If there is an organized group of opponents to a proposal, then the representative of that group is also invited to comment. Notwithstanding subsections (e) and (f) below, the Chair may decide on the timing of cross-examination, depending on the circumstances of the particular hearing, and the availability of the expert witness.
 - b. Chair invites comments from citizens for and against the proposal.
 - c. The chair invites the applicant to rebut the opposition.
 - d. Additional comments from those against and those for the proposal should be recognized, if needed.
 - e. Cross-examination of experts and staff by representative of applicant or opponents.
 - f. Chair requests whether the Planning Commission members have questions of the applicant, citizens, or staff.
3. For legislative proposals that are not of a site-specific nature, the procedures shall be as follows:
- a. Following the staff presentation, the chair invites comments in the order of names on a sign-up sheet.
 - b. Chair invites comments from latecomers or others who may not have signed up.
 - c. Chair requests whether the Planning Commission members have questions of citizens or staff.

C. Public Meetings

- 1. Order of Business
 - a. Call to order
 - b. Roll call (optional. In any case, Secretary records attendance)
 - c. Approval of minutes of last meeting, if applicable
 - d. Officers and Committee reports, if applicable
 - e. Special orders – Important business previously designated for consideration at this meeting
 - f. Unfinished business

- g. New business
 - h. Announcements
 - i. Adjournment
2. Process
- a. Before Deliberations
 - i. The Planning Commission should not begin deliberation on matters before them until the Chair calls for a motion. However, the Chair may allow Planning Commission members to seek additional information or clarification on a matter before them prior to opening debate on such matter.
 - ii. Before making a motion, a Planning Commission member must request to obtain the floor from, and be recognized by, the Chair.
 - iii. Absent a second on any motion, the motion is lost, without any further discussion.
 - b. Deliberations
 - i. After a motion is made and seconded, the Chair repeats the motion and calls for discussion on the motion. The Chair may set a time limit for discussion at his/her discretion.
 - ii. The Planning Commission member making a motion is always allowed to speak first.
 - iii. All comments and debate must be directed to the Chair.
 - iv. The Planning Commission member making a motion may speak again only after other speakers have finished, unless called upon by the Chair.
 - c. Voting
 - i. If there is no more discussion, the Chair asks if the Planning Commission is ready to vote. Alternatively, a Planning Commission member may move to end debate and call for a vote (call the question).
 - ii. Voting may be by roll call or voice vote.
 - iii. When a motion is not likely to be opposed, a motion may pass by general consent. The Chair says, "if there is no objection..." The membership shows agreement by their silence. However, if there is an objection, the item must be put to a vote.
 - d. Types of Motions

The following is a list of the various types of motions, and their use.

 - i. Main Motion: The formal proposal for consideration and action. A main motion cannot be made when any other motion is on the floor, and yields to privileged, subsidiary, and incidental motions.

- ii. **Subsidiary Motions:** Their purpose is to change or affect how a main motion is handled. These motions are voted on before a main motion. Examples are:
 - **Motion to Amend:** Used to suggest an addition or revision to the main motion.
 - **Motion to Divide the Question:** Breaks the motion on the floor into two parts, in a manner suggested by the mover.
 - **Motion to Refer to Committee:** Applies only to the main motion. The Chair may appoint committees pursuant to Article VIII above.
 - **Motion to Extend Debate:** Can be general, or for a specific time or number of speakers. Not debatable.
 - **Motion to End Debate and Vote or Call the Question:** Applies only to the motion on the floor. Not debatable.
- iii. **Privileged Motions:** Their purpose is to bring up important or urgent matters or needs, such as a motion to recess or adjourn. Not debatable.
- iv. **Incidental Motions:** Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before any other business is taken up. Some examples are:
 - **Motion to Suspend the Rules:** Suspends the formal process for dealing with a specific question (such as time limits, motions, etc.) Debatable.
 - **Motion to Appeal Chair's Decision:** Allows the Planning Commission to overrule a decision made by the Chair. Not debatable.
 - **Point of Order:** A question about a process, or objection and suggestion of alternative process. May include a request for the Chair to rule on process.
 - **Point of Information:** A request for information on a specific question, either about process or about the content of a motion. May not be used to obtain the floor for debate.

3. **Other Meeting Guidelines**

- a. **When a topic is first introduced or a main motion is made, the Chair should allow all questions for information purposes to be asked before opening to debate.**
- b. **Discourage the repetition of arguments.** The Chair should attempt to call on people who have not yet spoken before those who have already spoken. The Chair should also discourage dialogues that start up between two individuals in debate.
- c. **If debate carries on too long, the Chair should impose time limits on speakers.**
- d. **Do not speak in jargon, initials or acronyms – unless all present are familiar with common terms, avoid such usage.**

- e. **Be respectful.** Differences of opinion are inevitable. It is up to each Planning Commission member to balance the needs of his/her constituents with the needs of the community as a whole. Agree to disagree. Lose gracefully. Win honorably.
- f. **Be prepared.** Read staff reports and other materials provided before coming to a meeting. Ask questions of each other or staff in advance to avoid spending meeting time becoming familiar with the issue being addressed.
- g. **Be objective.** Planning Commission members must be able to distinguish between fact and opinion, and to support decisions based on facts, regardless of personal opinion.
- h. **Speak in turn.** Public proceedings are recorded. Speaking out of turn may prevent someone's testimony or comments from being recorded, which may unfairly exclude such testimony or comments from the record. Planning Commission members and staff must speak directly into the microphone, and only when in turn, as granted by the Chair.

CS 20

Not allowed to be done by department &
legal staff 2011-12 and taken out
of 2013 "Reform"



Planning Association of Washington



Department of Commerce
Innovation is in our nature.



Insurance Authority

The Planning Association of Washington,
The Washington State Department of Commerce
and
The Washington Cities Insurance Authority
Present

A Short Course on Local Planning

Hosted by
The Town of La Conner
Maple Hall
104 Commercial, La Conner

6:30 pm – 9:30 pm

September 20, 2011

La Conner, Washington

6:30 – 6:40 WELCOME AND INTRODUCTIONS.....Ted Gage

6:40 – 7:40 THE LEGAL BASIS OF PLANNING IN WASHINGTON STATE.... Phil Olbrechts

The statutory basis of planning in Washington State, Constitutional issues in land use planning, the Open Public Meetings Act, the Appearance of Fairness Doctrine, conflicts of interest, quasi-judicial and legislative functions of the planning commission, ex parte communications and how to deal with them, the conduct of meetings, the uses (and misuses) of email, and recent case law affecting land use planning.

7:40 – 7:55 BREAK

7:55 – 8:00 ANNOUNCEMENTS..... Ted Gage

8:00 – 8:30 COMPREHENSIVE PLANNING AND IMPLEMENTATION..... Holly Gadbow

The basics of the comprehensive planning process under the Growth Management Act, including the goals of the plan, the basic elements which need to be addressed, and the concepts of consistency and concurrency, and the tools and techniques available for plan implementation.

8:30 – 9:00 THE ROLE OF THE PLANNING COMMISSION..... Joshua Brower

A discussion of the role of the planning commission, how to develop good working relationships among the planning commission, elected officials, and planning staff, and suggestions for encouraging public participation and holding effective meetings and hearings.

9:00 – 9:30 QUESTIONS AND ANSWERS..... Everyone

over

Tips and Techniques

Joshua Brower
Brower Law PS

Documenting Your Decisions

- Have staff reports that include all information being used to make decision.
- Use maps, charts and photographs – enter as exhibits to record.
- Discuss issues and deliberate – don't rush decision.
- Base decision on evaluation criteria.
- Document your decision in letter, memorandum, report, or Finding of Facts.

Joshua Brower
Brower Law PS

Major Do's

1. One hearing/one closed record appeal per project.
2. Final Decision due in 120 days.



CLOSED RECORD REVIEW

RCW 36.70B.020(1):

"Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

5 of 5 items For record
1/22/13 from
C Ehlers

Skagit County Planning Commission
Presentation: Legislative Reform
Election of Officers
January 8, 2013

Commissioners:

Annie Lohman, Chair
Josh Axthelm, Vice Chair
Carol Ehlers
Keith Greenwood
Elinor Nakis
Matt Mahaffie
Dave Hughes (absent)
Jason Easton (absent)

Staff:

Dale Pernula, Planning Director
Ryan Walters, Civil Deputy Pros. Attorney

(NOT PROOFREAD)

Chair Annie Lohman: (gavel) I call to order the Skagit County Planning Commission. It's Tuesday, January 8th, 2013, and it's a couple minutes after 6 p.m. If you guys could review the agenda, and if you see any changes to the agenda, please let me know. The one change that I would like to propose is that we move item number 5, the Election of Officers, to be the first item of business.

Carol Ehlers: We can't have an election of officers because there's four positions that are up for appointment at the end of the month. So I'm going to propose that we postpone that until next month.

Chair Lohman: Dale?

Dale Pernula: It *is* in the bylaws that at the first meeting of the year you elect the officers. That might be problematic in this case but it *is* in the bylaws.

Chair Lohman: Right.

Ms. Ehlers: That was because in the old days it was set up so that the Commission was full in people by the first of the year. But four years ago there were games played with the Planning Commission and that changed. So what I would like is to go back to the days where the Planning Commission was full by the first of the year so we could honor that. But meanwhile since there are four spots up – Annie and I and Matt, and then Mary's replacement – it would not be appropriate, I think, for us to have an election.

Chair Lohman: Well, I would like to propose that we go ahead and have the election and then when we are all officially reappointed that we have a new election just for – it's kind of funny because of this weird situation that we're in, but I don't know how else we could do it because we have a bylaw that says we have to have an election on the first meeting of the year.

Ms. Ehlers: Yeah, we do, and it's this kind of lack of planning like four years ago that we tend to do.

Chair Lohman: Ryan, did you –

Ryan Walters: I'm not sure what happened four years ago but I do have some thoughts on that that maybe we can address under item 2.

Chair Lohman: Go ahead.

Mr. Walters: Do you want to move to item 2?

Chair Lohman: Yes. Is that okay with the Commission?

Keith Greenwood: That's fine if that'll help.

Josh Axthelm: Mm-hmm.

Chair Lohman: Okay, up for election we have the position of the Chair and the Vice Chair. Currently I am serving as the Chair and Josh Axthelm is serving as the Vice Chair. Are there any nominations for the position of Chair?

Ms. Ehlers: I nominate Annie Lohman.

Matt Mahaffie: Second.

Mr. Axthelm: Second.

Chair Lohman: Are there any other nominations?

(silence)

Chair Lohman: Are there any other nominations?

(silence)

Chair Lohman: Are there any other nominations, for the third time?

(silence)

Chair Lohman: Seeing no other nominations, Annie Lohman – well, you know, I can't do this. Excuse me.

Ms. Ehlers: Josh has to do it.

Chair Lohman: Josh, you have to do it.

(laughter)

Chair Lohman: Sorry!

Mr. Axthelm: Okay. So are there any nominations for the Chair?

Ms. Ehlers: No, we've done that.

Mr. Axthelm: Well, I thought you said we can't do it. Can you do the whole thing?

Chair Lohman: No. I have to hand it over.

Mr. Axthelm: So...

Ms. Ehlers: Shall we repeat this –

Chair Lohman: Yes, go ahead.

Ms. Ehlers: – conversation? And I shall again nominate Annie Lohman as the Chair of the Commission.

Mr. Axthelm: Okay. Are there any other nominations or seconds?

Mr. ____: Second.

Mr. Axthelm: Are there any other nominations?

(silence)

Mr. Axthelm: Do I have to repeat it three times?

Chair Lohman: Mm-hmm.

Mr. Axthelm: Are there any other nominations?

(silence)

Mr. Axthelm: Are there any other nominations?

(silence)

Mr. Axthelm: Are there any other nominations?

(silence)

Mr. Axthelm: Seeing no other nominations –

Ms. Ehlers: Can I move by acclamation?

Mr. Axthelm: What does that mean?

Ms. Ehlers: That means that we don't go through the – well, I forgot. Keith might disagree. You might disagree. Sorry.

Mr. Axthelm: All those in favor?

All: Aye.

Mr. Axthelm: All those opposed?

(silence)

Ms. Ehlers: That takes care of that.

Mr. Axthelm: Seeing no opposed, Annie's the Chair.

Chair Lohman: Thank you, everybody. Sorry about that! So now up for nomination is the position of Vice Chair. Are there any nominations for the position of Vice Chair?

Mr. Greenwood: I'd like to nominate Josh Axthelm.

Chair Lohman: I'll second that. So it's been moved and seconded to nominate Josh Axthelm. Are there any other nominations?

(silence)

Chair Lohman: Are there any other nominations?

(silence)

Chair Lohman: Are there any other nominations, for the third time?

(silence)

Chair Lohman: Seeing none, Josh Axthelm's been nominated to be Vice Chair. All those in favor, say "aye."

All: Aye.

Chair Lohman: Aye. All those opposed, say "nay."

(silence)

Chair Lohman: So Josh is our current Vice Chair.

Mr. Axthelm: Thank you.

Chair Lohman: Ryan, did you want to have some comments on this?

Mr. Walters: I was going to address that in my presentation.

Chair Lohman: Okay – on Miscellaneous or right now?

Mr. Walters: Well, under item 2 on the agenda.

Chair Lohman: Okay, so let's move to item number 2, which is Legislative Reform Presentation.

Mr. Walters: Did you want to introduce it?

Mr. Pernula: I could just make a brief presentation. This is something that's been worked on for over a year now. I believe that staff has met with both the Board of County Commissioners and the Planning Commission over a year ago and there has been some direction taken. Ryan's going to making a presentation on the status of this legislative reform ordinance and there will be a hearing scheduled later this month before the Board of County Commissioners.

Ms. Ehlers: You mean we're supposed to decide tonight without seeing it?

Mr. Walters: Nope.

Ms. Ehlers: That's good because there's been far too much presented to us in this way.

Mr. Walters: And this isn't one of those. So this presentation is about the legislative reform options that we came to talk to you about last February and last March after the Board of County Commissioners sent you a letter last January asking you a series of seventeen questions about how the Planning Commission is working, how do you think it could work better, what were your favorite moments – that kind of thing. We sort of put it on hold after March after March because we were in the midst of getting a new Planning Director and because we realized that by that time we were sort of much

farther along in the terms. One of the problems we were hoping to solve is the re-staggering of terms – I think that Commissioner Ehlers mentioned earlier – and it's January 31 of *this* year that several terms end. So I'm going to get to that in a second. But that's sort of why we held off on making additional progress on it last year. But now we're back because that January 31 deadline is coming up so it's sort of a nice date to adopt the ordinance in order to effectively re-stagger the terms.

So we've tried to take everybody's feedback into account, both the Board of County Commissioners and the Planning Commission's. This ordinance addresses three chapters of code. First, Skagit County Code 2.80, which is a new chapter dealing with administrative departments. We don't currently have a code provision or really anything in the code that details the administrative departments of the County. My feeling is that's a best practice to describe the administrative departments. These are Planning Department, Public Works Department, Health Department – the non-elected officials. So we in this ordinance would add a chapter to describe what the Planning Department is, the fact that it has a director, the fact that it has a building official and a fire marshal. So that chapter covers that. It also addresses some sections of 14.02, the General Provisions chapter. That's where the Planning Commission is currently described. And what it does – what the ordinance would do is strike out the existing Planning Commission chapter and replace it with a new, better Planning Commission chapter that addresses a lot of the questions that have come up over the last couple years. And then it also goes on in 14.08 to revise the Legislative Actions chapter. That chapter in Title 14 addresses the process for adopting development regulations, adopting the official controls on development, and also Comprehensive Plan amendments and that kind of thing. And what we wanted to do was flesh out what public process is supposed to be and how that is all supposed to go in a much more detailed way and yet easier to read – more lists, fewer paragraphs – so that it's more useful as a guide, as a checklist to staff when they're going through it, and that it also provides a little bit more structure as to how that process works.

So first I want to highlight the changes in the ordinance that will apply to you. The Planning Commission changes include, first of all, some minor things like adoption of Robert's Rules, which basically you're already using now. And you'll be able to adopt special rules to modify or implement those rules. It also requires continuing education for Planning Commissioners. Planning Commissioners will need to attend at least one training or continuing education event per year. Training might involve something presented by staff or a Prosecutor's office staff, or it might include like the Short Course that several of you attended that's put on by the Department of Commerce each year. There's one coming up, I think, in April in Bellingham. So I think the expectation is we provide a number of opportunities for this but we also want to make sure the Planning Commissioners are getting refresher in these types of issues. I know that Commissioner Ehlers has mentioned before training in SEPA. That would be another opportunity, you know, to get some training.

But one of the big things that we're doing here in the ordinance is reconfiguring the terms and making the terms three-year terms. That actually was the Planning Director

who came up with this idea. We have three County Commissioners, there are nine Planning Commissioners. If we have three-year terms, each County Commissioner can get an appointment every year. And we really like this idea because it's extremely structures; previously we were required to have staggered terms but because they didn't evenly divide into nine they got off – I don't know exactly when, but maybe four years ago – so that terms now don't end on a staggered basis. With three-year terms, nine Planning Commissioners, three County Commissioners, and three County Commissioner districts we can evenly stagger them and evenly space them out. We also will implement a consistent end date for the terms. Every term will end January 31 of every year – not December 31 because that gets into Christmas and then there's always a rush at the end of the year, so we pushed it back a little bit.

Ms. Ehlers: Then are you going to change the bylaws so we have the election *after* the terms?

Mr. Walters: Yes, we will do that. That makes sense and that's the type of thing that we're trying to accomplish. Now that also means that all Planning Commission members will need to be reappointed because the mechanism for making this happen is we dissolve the Planning Department and the Planning Commission and then reconstitute them in one act. So it will also detail the appointment procedure for later appointments, other than initial appointments.

So if you look at the list of current Planning Commissioners you'll see that four terms – pretty much half of the Planning Commission – ends at the end of this month. That's problematic. There's also another one that ends later this year, and then there are three that end next year, none of which are on the date. So we – this was the problem that we identified last year, that eight Planning Commissioners were going to be replaced or have to be reappointed over the span of two years. We didn't want that. We wanted them to be evenly staggered so that if there's turnover there's an even pace of turnover as much as possible, rather than a wholesale replacement of the Planning Commission at any given time.

Here's what's not changing. We are not proposing in the ordinance any term limits. We are not proposing to change – we're not giving you a stipend. That was the joke bullet that somehow appeared second on the list. And there's no change in the number of members. As you may recall, we suggested that maybe you might want to receive a stipend and you declined. So that was your chance. Sorry, Keith – you weren't here.

Now there's also changes to our legislative process. That's the 14.08 chapter of code. And the first important bullet is that the ordinance will require the Board of County Commissioners to initiate any legislative proposals. So my feeling is that this is a good idea both for the Board of County Commissioners, for the public, but also for the Department so the Department doesn't get conflicting directive on what it is it's supposed to work on. This will mean that the Board of County Commissioners will adopt a work plan as they've been doing for the Department, probably at the beginning of each year but they can modify it whenever they want. The important point is that the

Department will not be allowed to push forward a proposal that the Board of County Commissioners hasn't already authorized in concept. So if the Department is bringing something to you, it's because it's on the legislative work plan that's been adopted by the Board of County Commissioners by resolution. They won't be adopting by resolution what the proposal is, but they'll be adopting the idea for the proposal – the basic subject of what the proposal is supposed to be. Things that would be on that work plan are something that, I think, is going to come up later on your agenda tonight – things like the Shoreline Plan, things that we are required to do. Those would have to be on the work plan in order for the Department to work on them and move them forward through the legislative process.

So that is sort of an important bullet point. There was a provision in the code already that said the Board *may* initiate proposals in this way. Now it's required. If the Board wants the Department to work on it, they have to adopt a resolution directing the Department to work on it.

Second, there are updated public notice procedures –

Ms. Ehlers: Ryan?

Mr. Walters: Yes?

Ms. Ehlers: Does this mean that the Board of County Commissioners would do what I have not seen done, and that is coordinate among the three departments that they're responsible for so that – for example, the Natural Hazard Mitigation Plan, which must be done next year, is on the list for *may* do but it has to be done by federal law. The Planning Department has to cooperate with it. Emergency Management is the one who has to take the lead. It's something Public Works has to take part in because they deal with the hazards. And this kind of proposal you're making would then enable the County to do what it has not done very well, which is coordinate the work programs of departments so that departments are not only enabled to work together but perhaps required to.

Mr. Walters: I don't think that it would *ensure* that that coordination happens. It might help move in that direction.

Ms. Ehlers: It needs to happen.

Mr. Walters: What it hopefully would do is also provide the Board with a holistic view of the Department's work load and expected deadlines and time frames at one time so that the Department isn't taking on additional projects if they can't expect to reasonably have man hours available to devote to it. So it will hopefully deal with resource allocation within the Department. It doesn't really address coordination between the Planning Department and other departments, but it might help.

Ms. Ehlers: May I suggest that it's really necessary?

Mr. Walters: Yeah, the Natural Hazard Mitigation Plan – not that I'm really familiar with it, but it's not a legislative matter for adoption into County code.

Ms. Ehlers: Yes, it is.

Mr. Walters: It is?

Ms. Ehlers: It's a legally mandated – federally legally mandated plan required by Congress of FEMA as of 2002, and the reason I know about it is I got put on the committee. It has to be revised and modernized every five years. The most recent edition was 2008, which rather says that it has to be done in this next year or year-and-a-half. There's another plan that I heard about that – the Comprehensive Emergency Plan, which I've never heard of with the Planning Department, and what that's role is I don't know but Emergency Management's working on that right now. But this Hazard Mitigation Plan deals with flood, it deals with fire, it deals with earthquake, it deals with the kinds of problems that we read in the newspapers with Katrina and Sandy – which is the water and the wind category – but also the earthquakes that happen in California and other places. And the hazard I see most, other than flood, is fire, and it's that wild land interface. Remember when we did the Guemes Plan and I brought up that the highest fire hazard place in the entire county was Holiday Hideaway in that corner of Guemes? And nobody had thought about it, but if you don't coordinate the fire protection where it's really high hazard and and and and, then you've set people up for loss of property and loss of tax money.

Mr. Greenwood: Can I ask a question pertaining to this bullet item? Do you have an example of a legislative proposal that has not been Board-initiated? I mean in the recent past that has triggered this.

Ms. Ehlers: Good question.

Mr. Walters: I think everything is Board-initiated in one way or another. What we wanted to do was formalize the process to make sure that *the Board* – two of the three or all three County Commissioners – are on board with a proposal rather than just a single Commissioner initiating a proposal. We don't want – especially in the time of limited resources – a single Commissioner saying, We want the Department to work on this. We want the Board to act together in a public meeting to make that decision and to make that decision in light of the other obligations of the Department.

So I'm not sure that I can highlight a particular example where the Board hasn't, in one way or another, initiated a proposal. On the other hand, you wouldn't necessarily know if it weren't already on the work plan.

Mr. Greenwood: Right.

Mr. Walters: It's sort of hard to say.

Mr. Greenwood: Okay.

Mr. Walters: The thing that I think is important about this chapter is that this chapter doesn't affect all actions of the County or all legislative enactments of the County Commissioners. It affects legislative actions that are Comprehensive Plan amendments, subarea plans, you know, some other form of Comprehensive Plan amendments, and development regulations. So it's only those types of actions – the Title 14 development code and Comprehensive Plan-type actions – that this would affect.

Ms. Ehlers: Does it do anything with the process?

Mr. Walters: Yes.

Ms. Ehlers: The amount of time you have from being noticed?

Mr. Walters: Yes. So with respect to your comments from last meeting or a couple meetings ago about the Shoreline Plan, the standard requirement is that you have a 14-day public comment period. But what we did is we inserted a line that says for more substantive projects the Department should make available a longer comment period. Now that isn't highly prescriptive but it's still an instruction. And for the Shoreline Plan we're not going to have a 14-day comment period. In fact, we've already had a lengthy comment period and we will have more.

Ms. Ehlers: They have not been allowed to make comments on the record.

Mr. Walters: There was a written comment period – was there not? – for the Shoreline Plan?

Ms. Ehlers: There was but there's a large section of the plan – I think Boating was one of them – that we were given after that comment period was over.

Mr. Walters: Yes. Yeah.

Ms. Ehlers: So those sections of the text have had no opportunity at all for public comment, and I know of – in some cases – there's substantial.

Mr. Walters: And they will. One of the reforms that we sort of started playing with last year, I think it was, was the idea of getting this stuff out to you really early before it's even developed so that you have the ability to comment on even the approach. And that is something that's built into this reform, which I think is on a later bullet here.

Chair Lohman: Well, I have a question for you then. Does that mean there isn't going to be any more Department-initiated proposals?

The schedule for adoption is: We have published a legal notice today – or sent a legal notice today to the paper, which we're getting published on Thursday, and the draft will come out on Friday. We're still tweaking it. And then the Board of County Commissioners will have a public hearing on this on Thursday, January 22nd.

Ms. Ehlers: One of the really basic problems that I have seen across the board is that the decision will be made – let's say October 6th – the decision in a department – and then it's transmitted to the paper sometimes fourteen days later, with two days – with the text in it that says you may have the response time from the date of decision. And I've seen that used as a game.

Mr. Walters: What types of projects are you talking about?

Ms. Ehlers: A number of applications that are required for notice. The first thing I notice is that the application number is not always included so you can't compare this with that to see if it's the same thing. But, more important, often you must respond – this is in 14.08 – by the date of the decision, not the date of the notice. So sometimes the decision has been made two weeks before the notice – for valid reasons. I'm not questioning that. What I am questioning is that you need a real – you need a real two weeks. And to say you have two weeks from the date of decision and you've already lost twelve days because it wasn't in the paper – do you follow me, all of you?

Mr. Walters: I don't think "date of decision" appears in 14.08.

Ms. Ehlers: It appears several places.

Mr. Walters: In 14.08?

Ms. Ehlers: I think so because when we were reviewing it last spring remember I wrote you a letter that didn't get to the Planning Commission, on the subject of 14.08?

Mr. Walters: Maybe.

Ms. Ehlers: I don't remember that I talked about date of decision, but I might have.

Mr. Walters: 14.06 probably references date of decision because –

Ms. Ehlers: Okay.

Mr. Walters: – because 14.06 is Permit Procedures. But in 14.08 you're not going to have a decision until well after the public hearing/public comment period.

Ms. Ehlers: Okay.

Mr. Walters: But what we have constructed is the required fourteen-day period. That starts from the date of advertisement.

Ms. Ehlers: Good.

Mr. Walters: And it's frequently longer than that because it's – at least by a couple days – because it's difficult to construct a fourteen-day period with when the newspaper publishes the legal notices and that kind of thing. But the notice could also conceivably go out earlier to people with e-mail because those people are going to get them instantly rather than waiting for the paper to publish it in the couple days after we send them the notice.

Ms. Ehlers: That's right, but it's still necessary to give the general public an honest period of time. In that same regard, there was a problem last year but not this past – two years ago, but not this past year when – which arises because you folks have furlough days. And sometimes the fourteen days ended on a day in which there was nobody here in the County to accept the document which meant, of course, it then arrived on Monday. But if it arrives on Monday it is then date-stamped on Monday and if you get into a court case (and) someone says, This was due on this date and it's date-stamped this other date – ah, you have failed instantly. Now I noticed that this Thanksgiving John Cooper and the others in the Planning Department avoided that very nicely by saying that it was due – whatever the date was – the Monday after Thanksgiving, and they put in parentheses, "Because of Thanksgiving holiday." So it was a very fair notice, in contrast to the year before. And since you have the furlough days it's something for you to look at here and see if you've taken care of that – please.

Mr. Walters: Well, and some of that, I think, is addressed by modifying the templates that people use, which we are going to have to go back and make sure that they're consistent with revisions to the code.

And one of the other things that Commissioner Wesen asked us to do is identify when a public comment period ends so that we could figure it out on a consistent basis. Because frequently what we have is a comment period of, say, fourteen days and you have a notice about the public hearing that goes out at the same time. And there's some debate about, Well, when do you have the public comment period end? Do you have the public comment period end before the public hearing and then also enable people to submit comments *at* the public hearing? If so, why did you close the public comment period for that span of whatever days? Well, one reason might be so that you could stop people – get people to submit comments a little bit earlier so that you can then photocopy them or otherwise distribute them to the Planning Commission. But maybe the procedure ought to be instead: No, we won't provide any comments to the Planning Commission in advance. We will just get them all through the written comment period, go through the public hearing, then stop (and) collect all the comments, and then pass them on to the Planning Commission. Which means you can't deliberate on the same night but maybe that's fine.

Ms. Ehlers: It is.

Mr. Walters: You just get – that'll get pushed back to the next meeting. Now if you only meet once a month we don't want these processes to all take months between each step, but that's the reason we haven't figured out really how to address that yet either.

Ms. Ehlers: Well, in practice the comments come in. The staff has to have time to think and respond sensibly, because it's not fair to them to expect them to respond instantly. They also might have to look at a law, they might have to look at a record, they might have to look at a previous hearing in order to be entirely precise as to what it is the response needs to be for it to be consistent with previous responses. Then the Planning Commission – in my experience, I certainly need time to think because people's comments have caused me to look at the language, perhaps, quite differently than I looked at it initially. And then someone else's comment causes me to say well, no, no, I don't think it's quite that way. But there is a rumination time that I have found very useful, and I have noticed – the best example is in 2000 when the County gave the whole public two whole weeks to read a thousand pages before the hearing, and the hearing was a disaster. They allowed two more weeks but it didn't make much sense. And then they made us meet Tuesday, Thursday and Saturday in January, February and March. And nobody could respond to anybody's comments in that _____. That was my lesson in having enough time to think, discuss, change your mind – and staff.

Mr. Greenwood: Can I make a suggestion?

Chair Lohman: Keith.

Mr. Greenwood: That if there's a perception that the public has not been getting adequate notice, then I'd like that to be noted so that Carol can look into it when she sees the actual language to see if they've actually made it harder or easier. Because I think that the intent is probably here to streamline it and make it –

Ms. Ehlers: Mm-hmm.

Mr. Greenwood: – more usable. So I wouldn't get too worried about what has happened as much as be – recognize what has happened and, if you're concerned about it, let's make sure that it's better and not worse. Because I tend to think that they go over the board on – well, go to great lengths to make sure people have time to comment.

Ms. Ehlers: It has improved enormously.

Mr. Greenwood: Okay, so I would expect that this change would be helpful, and if we don't see it to be helpful I think we should give feedback to that effect.

Mr. Walters: And so the default, like number of days for comment, under the Planning Enabling Act and GMA is basically fourteen days, and that is what our current standard

is. Now other jurisdictions may have adopted longer periods – probably not shorter, but longer periods of time for comment. What I've tried to do is insert a line saying the Department should create a longer period if the proposal is more substantive. I mean, we've had proposals that have gone all the way through the legislative process with each of all those steps that are one line long. We don't feel that you need two months to comment on those. So there's some balance between those two different – or maybe the whole spectrum of length and complexity of proposals. So we try to give some discretion to the Department to figure that out.

We also include – one of the questions that came up last year is, Can the Planning Commission extend the public hearing or call for another public hearing? And so we include a line in the ordinance that says, Yeah, if you have people that show up and can't be accommodated because there's too many of them, there's not enough time, the room isn't big enough – you know – et cetera, then you can extend the public hearing. It says that if you have a really in-depth discussion of the proposal and you come up with entirely new ideas that you want to be incorporated into it, then you can request to have another public hearing. It doesn't give you the right to automatically hold another public hearing – there's lots of process associated with that and timelines – but you can ask for that so that you can get additional feedback on a whole new set of proposals if you have that.

Mr. Axthelm: Who do we ask?

Mr. Walters: The Department.

Mr. Axthelm: Okay.

Mr. Walters: So we've tried to answer some of those questions. We also explain right there in the text of the code: What is a finding of fact? What is a reason for action? Because those have been questions all along, and we lay out the format of what the recorded motion is, because the recorded motion is really your transmission of your opinion. It's supposed to reflect the opinion of the Planning Commission as a body and so the – you know – the format is findings of fact, reasons for action, your recommendation, your vote. And then we added another section because frequently there are other things the Planning Commission wants to say that are not really related to the proposal or not –

Ms. Ehlers: Mm-hmm.

Chair Lohman: Right.

Mr. Walters: it – directly related to the proposal. You need to have some way to get that out, so there's an additional comment section where you can put in additional comments. I think legal counsel would prefer those not be in the findings or reasons for action unless they actually are findings of fact or reasons for action, but they can be in the document someplace. So we provide that structure and that opportunity.

Ms. Ehlers: Yes, that is what many of us have wanted if we disagreed with the vote – our reasons for saying no.

Mr. Walters: And we don't specifically call out like –

Chair Lohman: Dissenting?

Mr. Walters: – the opportunity for a minority report or something like that. But you could always transmit that separately as well.

Ms. Ehlers: Well, and that could go in that third section you're talking about.

Mr. Walters: It could except that the Planning Commission as a body needs to approve the recorded motion so – or it needs to reflect the Planning Commission as a body, its will. So it'd be up to the majority –

Chair Lohman: So you're basically segregating the deliberations and the result from some other maybe connected message –

Mr. Walters: Right.

Chair Lohman: – that the Planning Commission – you're making it two projects then, in a way.

Mr. Walters: Two different sections –

Chair Lohman: Right.

Mr. Walters: – of the document. And then we also eliminate the requirement to have five votes. It's just a simple majority.

Ms. Ehlers: Isn't that in state law?

Mr. Walters: It is in the Planning Enabling Act, but we're not relying on the Planning Enabling Act.

Chair Lohman: Ryan, does this mean you're also going to – on your public noticing, are you going to increase the language in there so the public knows how – what they are allowed to do? When they come up and orally testify they're going to be limited, whereas they can send in written form however much they want to send. But they're limited when they testify orally at public hearings. Is there going to be something to explain that procedure a little more? Because I think there's a big misunderstanding. People think that they ought to be able to tell their whole story, regardless of time.

Mr. Walters: Well, that would be very non-standard.

Chair Lohman: Right.

Mr. Walters: The text in the public hearing section says that everybody needs to be given the same amount of time. It doesn't prescribe the amount of time. It doesn't say it's ten, one, three minutes. But it says everybody needs to be afforded the same opportunity to speak. The public hearing notices that go out usually don't get into that level of detail either. It's sort of up to you to prescribe. I think the standard is probably three minutes. Some jurisdictions give less, some more. Some jurisdictions will give less time if a whole bunch of people show up. You know, if a hundred people show up they get one minute to speak. If ten people show up they get three or five minutes to speak. They vary it that way, depending on how much time is available in the agenda and a variety of factors, I suppose.

Anyway, that isn't spelled out in the ordinance. The ordinance says that everybody has to get the same amount of time and it says the Planning Commissioners cannot interrupt the speaker when they're testifying at a public hearing.

It also explicitly says that the Planning Commission can ask questions after a public hearing. So occasionally you have wanted to ask follow-up questions of people. You can't do that during the public hearing. You can't interrupt a speaker who's testifying at a public hearing, but you can ask follow-up questions later.

Chair Lohman: At the end?

Mr. Walters: Yeah. It's not like it's a closed record proceeding like on a permit. This is a legislative proceeding so you can ask questions, get more information, ask staff to bring you back more information – that kind of thing.

Ms. Ehlers: When we were doing the kennel ordinance, which eventually we failed to be able to do, the crux of the ordinance had to do with puppy mills but no one explained to us what a puppy mill was. And since someone thought his grandfather's six dogs made a puppy mill and someone else thought something else, I asked if the Humane Society could give us information about that. The information came in after the hearing was closed and we were not allowed to read it. So eventually we just aborted the whole subject, which wasn't productive, because the County legal staff wouldn't allow us to have information that was requested before the hearing closed. So I don't know how you want to handle that but it may well happen again.

Mr. Walters: Well, this revised ordinance proposal explicitly says that you have the ability to ask for more information and continue your deliberations to another meeting if you are asking for more information and don't have it yet.

Ms. Ehlers: And if it comes in after the hearing's closed.

Mr. Walters: So that – there's an issue there, and I don't know exactly what happened during the kennel ordinance, but we ask for public comment on proposals in a defined period of time. So there's a public notice that goes out and it says your comments are requested on this proposal and you have them until x date to get them in to us. And, inevitably, most of the comments come in on that date, whenever the date is. But the comments come in and then we may or may not continue to receive comments after that date. Those comments, they come in but they may or may not make it to the Planning Commission because they may have come in after the Planning Commission has had its public hearing or had its deliberations even, but they do make it into some folder some place. What they don't make it into is the formal part of the record, because they didn't conform to the deadline. And the reason that's important is because we need people to get their comments in by a deadline so that we can package them up and send them to the Planning Commission and then also put together a response to comments document. The other reason that that's important is because commenting gives you standing, and if you could comment whenever then we would – and to whomever and in whatever format – we wouldn't know what it is you've commented on or when it has occurred, who you gave it to. There needs to be structure in order to make the process work. We have had comments come in – I guess the Department has had comments come in that are in weird comments, you know, that are difficult to print or make copies of or giant maps of – those kinds of things. We ask that everything be 8 ½ by 11 so that we can make copies of it. Because if we have to start making copies of giant things or books – because people have submitted entire books as comments – that's a problem. We don't want to make copies of that kind of stuff. It is very infrequently useful to make a whole book a copy of something, although staff can obviously evaluate and figure it out if it is useful. But what we want is people to make comments in a succinct fashion that actually focus on the text of the proposal so that they are useful. I'm a City Councilmember for Anacortes and when I get a comment letter that tracks exactly what the proposal is – that says, In this section I have a problem with this word – that makes sense to me. I can find that, I can understand that and figure out what it is I'm supposed to do about it. If it's a lengthy tome that talks about Thoreau I have a harder time, you know, figuring out what to do with the proposal. You can do that kind of thing and you can write – in your comment letter – you can write about your first principles. You don't have to understand the details of the ordinance or the statutes that are involved. You can just talk about what your first principles are and how you want your Planning Commission members to address that in the ordinance or in the proposed plan. But what we want is some structure to that so it can be managed, so we can get it back out to you and so we can respond to it.

Chair Lohman: Well, I have a lot of problems with when the comments are held for such a long time and then we get them a couple of days or on the Friday before the Tuesday of our deliberations or our next meeting. That's not a long enough period sometimes on a real complex issue with a lot of comments coming in. Because the staff has had the comments long enough that they have been able to do their report and their response to the comments, but we haven't seen any of it at all. All of it's hitting us all at once. So there needs to be a little bit of balance between when the comments get given to the Planning Commission, and maybe it *could* arrive before the staff comments.

Mr. Walters: Well, and it could be published to the webpage as it comes in, or that kind of thing. That's one of the things that Commissioner Wesen has had highlighted as a problem that needed to be solved that we haven't really figured out an answer to yet. But, I mean, clearly you need to have time to resolve or to read and review comments that come in. And in some instances there may be a very long process where there're lots of comments that come in over a long period of time. We may want to, you know, dump those on to the website as they come in. And then we also, of course, have issues where, Well, what if the content is not quite appropriate for putting on the web where thirteen-year-olds can find it and that kind of thing. So we have to be able to address those within the text of the ordinance.

Mr. Greenwood: Plus sometimes you want to summarize them because you could have a lot of repeat comments.

Mr. Walters: Well, that may very well occur. But even if there are repeats I think those would probably go up on the web individually.

Mr. Greenwood: But for someone reviewing them, you might not want to read thirty letters that say the same thing if, in fact, they do help you make a decision.

Chair Lohman: Well, but maybe you do. Maybe that would affect somebody's decision because if you have quite a few people sending similar comments it means that they're all reading something in a similar way.

Mr. Greenwood: Well, and sometimes it's a form letter thing and that's what I see –

Chair Lohman: Oh, I see what you're saying.

Mr. Greenwood: – as much as anything, where I see the same excerpt over and over repeated. Somebody got an idea and passed it around. So it's nice to have someone gone through it and combed through it a little bit.

Mr. Walters: Well, and I think that's the idea of the responses to comments document. It doesn't – that staff-prepared document doesn't have to be a letter by letter, line by line response – Yeah, we think that makes sense; no, we don't think that – it can generalize. It can, you know, summarize and respond in summary.

Chair Lohman: Because I don't think we want staff to have to be in the role of deciding which gets published unless it's, you know, vulgar.

Mr. Walters: No. Right.

Ms. Ehlers: Yes, you can't be censor.

Chair Lohman: Right.

Mr. Walters: No, I don't think so.

Ms. Ehlers: I agree with both previous comments but I'd like to go back to the item you said before they changed it. In terms of what gets turned in, you say it has to be 11 by 8 ½ by 11. There are a lot of projects that come where they need the full legal size paper or larger to adequately present all the aspects of that topic. One came as a Comp Plan amendment and it didn't seem to manage to make it into the official record because it was larger, but it was necessary to read that whole document if you really wanted to understand what was proposed, why it was proposed, what the context of the proposal was and the rest of it. We were forbidden last year to turn anything in in color, even though the only way you can look at a Comprehensive Plan map is in color. And when decision after decision is made on the basis of a map that is only available in color then there has to be a way somehow for the Planning Commission and anyone in the public reviewing it to see that in color.

Now in terms of the book, I turned in a book on a project because the County had turned that book into us on a similar project about twenty years ago. The book was equally good and it provided a context for what needed to be said – which context was essentially ignored for a long time. Sometimes I was told by an attorney many years ago that if there were a hearing and it was crucial and I was going to turn in a page, I couldn't turn in the page because it might be that that page misrepresented what the book was. I had to turn in the entire document, and the document is often longer than what you want. But at the initial review of the legal situation on x topic you – traditionally in this state – you have to turn in the whole thing. Then somebody can take that page out of it and say, These two pages do indeed represent what the rest of the book says. That's a reasonable technique – I've seen that in County hearings here – because it means you haven't misrepresented. But it's crucial that people be allowed to give – to be able to follow the law, as the lawyers teach us and require us to do, in hearings of this sort because – well, whatever sort that the Planning Commission might have. It's simply a tradition. So please rethink that as to – because what I did was to turn in the book and then I turned in a couple of pages that raised the issue I wanted the Planning Commission to be able to see so that you could see how those two pages – or three – fit within the book – that I didn't misrepresent anything. Now it didn't come to the Planning Commission because of Evergreen Islands, but I turned it in as part of the legal record should it become necessary later. And I think the public has to have that right to do that, so please rethink that.

Mr. Walters: So those details on 8 ½ by 11, black and white, which are sort of based on a little bit on technological capability and another on, you know, length and other details that I mentioned before. I mean you can copy like a thousand pages in black and white for eight bucks, but if they're all in color you're going to be spending – what? – 800 bucks or something like that. So, I mean, it gets – color is much larger file-sized to transmit and it's much more expensive to photocopy. So there are those constraints, but I think the important thing is that that 8 ½ by 11, black and white thing isn't in code. That constraint isn't part of the code. It's part of a notice that goes out when the

comment period is established, so it could be evolved as we figure out how to manage these things a little better.

Ms. Ehlers: Until you figure out how to present the zoning code, the aquifer map, and some of the other maps in other than just color, you're going to have to accept them as evidence in color.

Mr. Walters: So the adoption schedule here is: There's a public hearing before the Board on Tuesday, January 22nd, at 11. The Board of County Commissioners – I don't know; they may deliberate after that or the following week. But we do hope that they adopt by January 31 so that this can all go into effect on February 1, which is the effective date that we've written into the ordinance and also the day after four Planning Commissioners' terms expire. So we would then have the Board reappoint the Planning Commissioners for the new length terms at the same time as they adopt the ordinance – at the same time or thereafter. And you can submit written comments as well through the end of the public hearing. You would submit those to the Board of County Commissioners, not the Planning Department, because the Board of County Commissioners is taking this action, and it's not a legislative action itself, like those contained in chapter 14.08. It's a different kind of legislative action to establish our public participation program.

So the notice will go out, it will be available on the front page of the Skagit County's website so you can read it right there on Friday, and also go out on all the mailing lists and that kind of thing. We're hoping to get you an advance copy sooner. It may not be the final version but it'll be something that you can take a look through and go through and tear apart. I'm looking at you, Carol. And you can provide comments to the Clerk of the Board through the normal process, but you can also provide comments to me and you can provide comments whenever you want and I can try to work them in before we finalize the draft that goes out on Friday. It probably will go out Thursday afternoon so that it's published on Friday morning on the website. And, Commissioner Ehlers, will you be able to receive this document via e-mail?

Ms. Ehlers: No.

Mr. Walters: No. Okay. Well, we will get you a paper copy –

Ms. Ehlers: Okay.

Mr. Walters: it – if we have to and deliver it.

Ms. Ehlers: I was just – I was grinning because I was hoping that maybe Debbie'll make a transcript of this and what Keith has said and Annie has said and I have said will have been said.

Mr. Walters: She will probably make a transcript.

Ms. Ehlers: And then, you see, we can think and see if there's anything in addition.

Mr. Walters: Yeah, especially with a couple of Planning Commissioners not here it'll probably be useful to have you pore over the written document and see what you think. So I'll plan to get that out via e-mail to you really soon so that you can take a look and get me any comments before the public draft goes out. We can make changes after that draft, too.

So, anything else? Any other concerns you want to make sure we address?

(silence)

Chair Lohman: Okay.

Mr. Walters: Okay.

Chair Lohman: Thank you, Ryan.

Mr. Walters: Thank you.

(end of these items)

For record 2/4/13 1 of 5 items



To: Board of County Commissioners and Planning Department of Skagit County

From: Carol Ehlers *C. Ehlers*

Date: February 2, 2013

Re: Land Use Legislative Reform Ordinance of 2013

PC required to receive meeting materials electronically -14.02.110 (3) (f)

There are two objections to this. It expects that PC members are on broadband, have the latest computer and printer equipment, are willing to spend hundreds on that and on the latest software that the County buys. All so the County can save on its copy budget. Staff makes paper copies for themselves; they can for us.

Equally important is the need for PC members to represent "varying geographic, demographic, and socio-economic [means what?] perspectives", and the "unincorporated areas". Huge areas of the County have little or no access to the kind of electronic toys that this Code expects. Many are caught in foreclosure, have old equipment that does not have the capacity to download scanned files, cannot get video either because they have dial-up, inadequate equipment, or the County franchise agreement did not require that service.

On 9/29/10 EDASC and the federal government sponsored a broadband meeting in the BCC room. No city or County employee came, but the tech dean at SVC did. He reported there were large areas in the county where on-line courses cannot be taken. The numerous public present illustrated many reasons why. Topography and distance are major financial issues for any provider. Those present talked about sporadic cell-phone coverage, and of semi-competent internet providers.

These people have the right to participate, be represented and their difficulties recognized.

To: Board of County Commissioners and Planning Department of Skagit County

From: Carol Ehlers *C Ehlers*

Date: February 3, 2013

Re: Land Use Legislative Reform Ordinance of 2013
"early and continuous public participation"

This principle is not only good practice, it is law. Skagit has a spotty history fulfilling it to the PC much less to the public.

This past year, Betsy has done her best to provide Shoreline info to the PC, and gave us a huge portfolio to digest, but with a CAC, Aquaculture TAC, consultants with minds of their own and other members of County staff (not to say other ancillary duties like legislative reform), it has been hard for her to get materials to the PC before a meeting. She does manage to have something in writing at the meeting, so while we cannot prepare, we at least have text before us to see and respond to. There were initial meetings with the public: the one I went to in Anacortes was held, as always, during the dinner hour so the working generation can not come. The consultants insisted that every statement had to be in 3 to 4 words, so we retreated from real opinions and information to "protect our property rights". I am not sure that even yet the consultant realizes how much residential development at what high taxes occupies a geomorphologically influenced shoreline. In addition, there has been early and continuous communication on the website and with the PC.

That has not been the case on the legislative proposal before the BCC, not before the PC.

In that case, there was an early effort to "consult", but the initial meeting on the subject on February 7, 2012, is described in my notes as "the worst PC meeting ever. 8 people were given 35 minutes to 'discuss' 17 un-organized topics." The March 6th meeting was much better run: I see by minutes read to me recently, that many of our ideas that night were paid attention to, but there was no follow-up or "continuous participation" for the PC or the public. Evidently 4 PD staff and 3 attorneys worked during the next 9 months. By January 8, 2013, a draft proposal was ready but it was not sent the PC before the meeting that date nor was it given the PC at the meeting.

A proposal to improve public participation should demonstrate the improvement it purports to provide.

For record 2/4/13 3 of 5 items
2 pages

3998 Wind Crest Lane
Anacortes, WA, 2013
February 4, 2013

Skagit County Board of County Commissioners
1800 Continental Place
Mount Vernon 98273

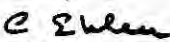
Re: Land Use Legislative Reform Ordinance of 2013

Dear Commissioners,

There are many edits I would suggest to the "Reform" ordinance, and some praise too, but my left hand is not willing to type accurately. That leaves me to raise the basic issues left:

1. There are no reasons given, no analysis for why RCW 36.70, 36.70A and 35.63 have conflicts other than they require 4 year terms, and the County can have 3 year terms if it goes way back to 1879, before Planning was a modern profession. What implications are there for government or the public? Analysis is required.
2. Why is it acceptable for Skagit County to so often use the calendar to stifle any public or PC input?
3. Why are ethical issues raised only for PC and not for government or employees? See the attached article from the Herald April 8, 2009 "After complaint, planning commission to get more say in county decision making".
4. Why, when R20090532 (attached) was written in response to PC complaints, is the PC given no authority in hearing, public comment or deliberation on their own rules?
5. The PC has had the right to hold hearings over Title 14, on land use issues. Why is this taken away for 14.02 and 14.08 under this "Reform"?
6. It is a good idea to put in Code the duties and authority of the Planning Department and Director. It should be as complete as possible to protect from those who do not understand the crucial need for the County and the land owners to have accurate, complete, available and useable records, as well as professionally competent staff to write, follow, interpret and enforce rules.

Sincerely,


Carol Ehlers

After complaint, planning commission to get more say in county decision making

415105

By **RALPH SCHWARTZ**
Staff Writer

Members of the Skagit County Planning Commission on Tuesday remedied what they considered to be a breakdown in communication with the Board of County Commissioners.

Their concern was with the county planning department, which stands in the middle of that line of communication.

A discussion among planning commissioners about their by-laws quickly became a criticism of how the planning department changes the planning commission's recommendations, sometimes without notifying the recommending body.

What stung the most for planning commissioners recently was a slew of changes to their proposed amendments to the county's critical areas ordinance, approved by county commissioners in December.

In the final hour, the county commissioners made 42 changes to the planning commission's version of the ordinance, Planning Commission Chairman Bill Stiles said. The critical areas ordinance protects habitat and streams from developers.

The last-minute changes were made after a group threatened to sue the county over the planning commission's version of the critical areas ordinance, officials said.

Officials at the meeting wouldn't name the group or the basis of the threatened litigation, citing confidentiality.

"It's not an excuse though," Planning Commissioner Jason Easton said, "to not have better communication, even if why you made the 42 changes had to do with something legal."

Planning Director Gary Christensen and the county commissioners said they were willing to give the planning commissioners a bigger role at the final phases of decision making. All planning commissioners, not just the chairman, can review the planning department's version of the planning commission's report before it is

passed to county commissioners. Also, planning commission members in some cases may give a presentation to the county commissioners before their decision.

The effort to give planning commissioners more of a say has apparently put an end to the communication issue.

"As far as I'm concerned, it's over," Stiles said.

■ Ralph Schwartz can be reached at 360-416-2138 or rschwartz@skagitpublishing.com.

7a memo

2/4/13

4 of 5 items

To: Board of County Commissioners and Planning Department of Skagit County

From: Carol Ehlers *C Ehlers*

Date: February 4, 2013

Re: Land Use Legislative Reform Ordinance of 2013
Public Notice 14.08.210 (3) (b)

300 feet ignores well-head protection laws. Since it has been made complex and difficult for the public to contact the Environmental Health section since they were moved, please go down the hall and ask Lorna, Corinne or Ron what the current well-head protection zone is for public water systems. It is either 700', 900' or 1,000'.

7a memo 2/4/13

5 of 5 items

To: Board of County Commissioners and Planning Department of Skagit County

From: Carol Ehlers *C Ehlers*

Date: January 30, 2013

Re: Land Use Legislative Reform Ordinance of 2013
Public Comment 14.08.220

Where is the "Reform" here? The process is the same pretence of opportunity to review and comment that was inflicted upon the PC and the public for the 2000 Code and Plan -- a whole 10-14 days to get and read hundreds of pages, to get background laws about issues affecting your use and rights to preserve that use of your land, to learn the implications of, and to write accurate, thorough comments to establish standing in the only opportunity that exists for the creation of the Open Record. These documents, which are the way for the County to implement state and federal laws (which it appears to do selectively) and often become the subjects of lawsuits that alter them, without notice to the public or the PC, are so basic to the prosperity of the zones, the landowners and via taxes, the County, that we must have a month to read them before a hearing.

So Ed Stauffer was correct when he told the PC there was to be a 10 day review and comment period for the Shoreline Management Plan. That is unacceptable. There needs to be a process like that for the 1997 Comp Plan, which had two iterations with the PC and public after a lengthy CAC period involving numerous people. Why the County legal department became so secretive in 1999, 2 years later, I never heard.