

Skagit County Planning Commission
Deliberations: 2008 Comprehensive Plan Amendments
November 17, 2009

Commissioners: **Jason Easton, Chairman**
 Jerry Jewett
 Carol Ehlers
 Kristen Ohlson-Kiehn
 Mary McGoffin
 Dave Hughes
 Elinor Nakis
 Matt Mahaffie
 Annie Lohman (absent)

Staff: **Will Honea, Chief Civil Deputy Attorney**
 Gary Christensen, Planning Director
 Carly Ruacho, Senior Planner

Others: **Aaron Leslie, Fire District 15 Commissioner**
 Andre Pomeroy, Applicant
 Jim Miller, Consultant to Mr. Pomeroy
 William Stiles III, Applicant's son

(Note: The recording began a few seconds after the meeting began.)

Chairman Jason Easton: ...our newest member, Elinor Nakis. Thank you for joining us. We appreciate your willingness to serve. Once you find out what it is we exactly do we hope you stay with us.

(laughter)

Chairman Easton: They always tell you good things in the interview. Things get a little bit more challenging as we go, though.

So due to the fact that Elinor wasn't present at the time that we did our public hearing, she will sit at the dais tonight but she will not be making – she will not be voting on any of the decisions that we have tonight.

We do have a quorum. We are – I'm asking the Commission to consider a minor change to our agenda for staffing reasons. I'd like to, with your blessing, move Sanfi Acres to the first deliberations. Is there any objection to that? Okay, and with that in mind, due to the fact that Sanfi does include a settlement agreement,

under advice of counsel we've decided to go into executive session for what I don't expect to be very long. Would that be the case, Mr. Attorney? We don't expect it to be prolonged? So being a short session of executive session, we're going to go ahead and leave the room. So at this time I call us into executive session (gavel). All right, with that we're going to go ahead and step out for a briefing on the legal side of this.

Jerry Jewett: (inaudible)

Chairman Easton: I'm sorry?

Mr. Jewett: I have a –

Chairman Easton: Oh, do you need to disclose that now?

Mr. Jewett: Yes, probably.

Chairman Easton: Okay. Let me read those first. Let me read that rule first, because I was going to do that later.

We are required – we have conflict of interest issues that we have to disclose, so at this time go ahead, Jerry.

Mr. Jewett: Okay. Since our previous deliberations we had, my granddaughter's gone to work for Janicki Industries.

Chairman Easton: Okay, and so for that reason do you feel like you need to just disclose or do you feel like you want to recuse yourself?

Mr. Jewett: Well, I want to disclose it. I don't feel it would make any difference in how I would vote.

Chairman Easton: Okay.

Mr. Jewett: But some people may think so.

Chairman Easton: Right, and so our policy is to let the rest of the Commission consider that as a – from there. So is there any objection from any of you to have Jerry sit in on – to actually rule on this case?

Carol Ehlers: No. Is there any objection from anyone else?

Chairman Easton: I was going to start here and then I was going to go to staff. Okay. We have counsel in the room and we have the public and staff. So any

objection from the Commission? Okay, hearing none – counsel, do you have any objection for Jerry's sitting on the Sanfi?

Will Honea: No.

Chairman Easton: All right. Staff?

Gary Christensen: No.

Chairman Easton: All right. Now the public: Is there any member of the public who wishes to speak against Jerry being a part of this one? All right, hearing none, we will go ahead and move into that session. I will go through the ethics –

(inaudible female voice)

Chairman Easton: Yeah, let's do this. Sorry, you guys; I'm a little out of order. Let me read my opening statements about the bylaws as it relates to that, and then we'll take different people's disclosures, *then* we'll go into executive session.

The following are paraphrased excerpts of our bylaws from Article IX:

Each Planning Commission member has a responsibility to uphold and work within the law and to respect the responsibility of others to do the same. Planning Commission members must refrain from any conditions which create suspicion or misinterpretation, appearance of partiality, impropriety, conflict of interest or prejudgment over any proceedings. Planning members shall recuse themselves from acting on any proposal with which they have a personal business relationship relating to – directly or indirectly – to that proposal.

At each hearing I will give you – and I won't reread these – but at each hearing I'll give you an opportunity to tell us whether you need something to be disclosed or to recuse yourself.

So these are the questions that you need to bear in mind. Again, I'll only read these once tonight.

Does any member have a personal interest in the property included in tonight's deliberations?

Is there a member that cannot hear or/and consider these in a fair and objective manner?

If any Planning Commission member has any outside communication with opponents or proponents on the amendment, please – to be heard tonight – please state the substance for the record.

And does anyone object to the participation of the Planning Commission member's participation? If so, we need to state that now.

So with that, I think – Kristen, did you have something you need to disclose?

Kristen Ohlson-Kiehn: Yeah, I work for the Department of Natural Resources and so does my husband, and DNR parcels lie in the immediate vicinity of this proposal; however, neither of us stand to gain or lose financially or professionally from the decision we make tonight. So I also do not represent the DNR on the Planning Commission. I'm on as a citizen. So I feel like I can engage in these deliberations with objectivity and fairness.

Chairman Easton: Is there any objection from the Commission? Staff or counsel? The public? All right, Kristen, you'll be fine to stay with us then.

All right, anyone else who needs to make any disclosures just on Sanfi? We'll – Mary?

Mary McGoffin: Yes, I wish to recuse myself from this issue. It's a family-related matter.

Chairman Easton: All right, so we will – we'll accept that – we'll go into executive session now and return shortly (gavel).

Public meeting resumes.

Chairman Easton: I call this session of the Skagit County Planning Commission back to order. We were in an executive session concerning this application which we are working on, which is the Comprehensive Plan amendment Sanfi Acres – known as Sanfi Acres – CPA05-14. At my request, along with the rest of the Commissioners, I've asked counsel to share with us why – in public – why we were in executive session. Mr. Honea?

Mr. Honea: Will Honea, Chief Civil Deputy, Skagit County Prosecuting Attorney. The purpose of an executive session is to provide attorney-client privileged advice. That's an exemption to the Open Public Meetings Act. What we discussed in the executive session and the reason for the executive session was that this Comprehensive Plan application – or amendment application – was remanded to the Planning Commission pursuant to a settlement agreement resolving litigation. And so the purpose of the executive session was to simply

explain the litigation and the settlement agreement and how it was brought back. There was no discussion of the application itself or the policies surrounding it.

Was that adequate, Mr. Chairman?

Chairman Easton: That's adequate. Thank you, sir. All right, we've already done our disclosures so, with that, we're going to go ahead and move to a brief report from staff (to) just sort of refresh your memories. From there we will – I want to ask the Commission: You can ask staff a few brief questions. I want you to bear in mind I do not – we're not going to deliberate during the question period. And you can ask the applicant, too, or the applicant's representative that's here. And I want to remind anyone who speaks throughout the night who are applicants or applicants' representatives that it's not intended for you to give new testimony. It's for clarification purposes for our part.

But I want to remind the Commission that we will wait to deliberate until we have a – we're done with staff, we have a motion, and then we will move from that point of view.

All right, with that being said, Carly, we'll turn this over to you.

Carly Ruacho: Thanks, Chairman. Good evening, Planning Commission members. We are – I'm a little bit out of order. Jason threw me off a little bit with the change, so bear with me.

Chairman Easton: I apologize.

Ms. Ruacho: That's okay. So I'll kind of do my general opening remarks later about kind of the dates and things like that, because they are not on this page! So we'll just go with the general overview of the history on Sanfi.

This has been previously before you, as Mr. Honea was discussing. This came before you during the 2005 GMA Update, and then, based on a settlement agreement, is back before you today. You had an additional public hearing on this following the remand and now we're here tonight to deliberate on the matter and hopefully come to a determination of your recommendation in order to forward that recommendation on to the County Commissioners for final action prior to the end of the year.

Sanfi Acres – we've got a general map here on the screen; it's outlined in the red – is an approximately 1120-acre area between the Lake Cavanaugh Road and the Snohomish County line generally. The current designation on the Comprehensive Plan is Industrial Forest, as you can see, for all but one of the 20-acre lots. The area is comprised of fifty-six individual 20-acre lots of which currently twenty-two are buildable.

So the current proposal in front of you would be to re-designate the area – again, shown in red on the screen – of the fifty-six 20-acre lots to Secondary Forest, which would have a change in the density from the twenty-two lots that are currently buildable. And I do have a schematic here – if I can come to it quickly – to kind of give you an idea. This schematic shows again the entire area outlined in red. The inner area outlined in black comprises the twenty-two currently buildable parcels, and so the request to change to Secondary Forest would make all the parcels out to the red outline buildable parcels. The key factor in that density change is that there is a requirement in the Industrial Forest zoning designation that requires that any building in the Industrial Forest designation – whether or not the lot is what we call a “lot of record,” which means eligible for development permits – must be within 200 feet of a public road. So in this case we have some of these lots within that 200 feet, which are identified by the black boundary, and then several which are not. And all of these lots have gone through the lot certification process through the County, and this has been the determination. And so what we have now is the applicant seeking to re-designate to get the buildable status for all fifty-six lots.

Just a quick history: The lots were created by declaration of segregation in November of 1990. GMA established our Natural Resource Lands ordinance and passed that for the first time in September of 1996, which was the first time this area changed from a pre-GMA designation of Forestry to our current designation of Industrial Forest. In September of 2001, the current owner, Sanfi Acres, purchased the property. In May of 2004, Sanfi Acres approached the County, indicating that it had discovered that the County maps did not reflect the 20-acre lots on its Comprehensive Plan; instead it was reflected as the three parent parcels that were the subject of the record of segregations back in 1990. The Assessor tax account parcels had not been assigned, the taxing had not changed on it, and therefore it was not reflected on the County map. At that time Sanfi Acres requested the Skagit County Auditor to – or the Treasurer – to assign P-numbers and the Assessor to reflect it on the map, and that has been done and is reflected in what you see here. And so it did appear on the map in March, 2005.

They submitted through – as we talked about – part of the GMA Update an application. Originally the Department recommended denial of Sanfi Acres, stating that the parcels met the Industrial Forest designation and Secondary Forest designation was intended as a buffer and there was no buffer needed on the subject parcels.

In December of 2006 the Department issued a memorandum and reversed its recommendation and recommended approval. In July of 2007 the Planning Commission deliberated on the matter and recommended denial by a seven-two vote.

The Board of County Commissioners adopted the Planning Commission recommendation, which included denial of the Sanfi Acres project. Sanfi Acres then sought a petition for review before the Western Washington Growth Management Hearings Board to – seeking to reverse the County’s denial of their Secondary Forest designation. Sanfi Acres and Skagit County entered into a settlement agreement to remand the matter back to the Planning Commission. And we’ve gone over kind of how we got where we are from there.

So unless there’s any questions, that’s my brief explanation of the request and the history on the project.

Chairman Easton: Carol?

Ms. Ehlers: Is declaration of segregation still permitted?

Ms. Ruacho: It is permitted for lots over 80 acres in size, and that’s an exemption granted to landowners by state law. It has changed over the years. Basically what it means is that they’re exempt from the County plat process. Whether it be a short plat or a long plat, they are not required to go through a County process. Instead it’s merely a legal description creation exercise where a legal description is created for a lot and that is recorded with the County Auditor. Then the owner has to take a secondary step to approach the Assessor’s office to get parcel numbers assigned, and then taxation is changed from there. That is still allowed for the creation of parcels over 80 acres in size.

Ms. Ehlers: And when was the process denied for 20-acre?

Ms. Ruacho: Removed as an exemption?

Ms. Ehlers: Yes, removed is the better term.

Ms. Ruacho: I don’t have that in front of me and I wouldn’t want to give you the wrong date. I do have – and we *have* to keep – a thorough calendar of how the laws have changed in Skagit County since 1965, which was the first time we began requiring any type of review. When we do the lot certification process, that is what is reviewed: Were the lots created legally for the rules that were in effect at the time of creation? So when these lots were created by Trillium on November 8, 1990, that was a legal action at that time. So I couldn’t give you the exact date between 1990 and the present where the segregation maximum has risen from. It actually started at 5 acres – if you did anything over 5 acres you were exempt from a plat – and it’s moved through time up to the point we are now, which is an 80-acre minimum.

Ms. Ehlers: Thank you.

Chairman Easton: And I have one question. Is there anybody else? Okay. The last time you all analyzed this you recommended approval. You haven't done any other work since then so I would assume then that the Department continues to stand by their recommendation to the Planning Commission of approval?

Ms. Ruacho: I would say just at this point we have no recommendation. We have the record before you that includes a previous recommendation for approval, a recommendation for denial prior to that, and at this – during this process we are not making a recommendation.

Chairman Easton: Okay. Director Christensen, so the application did not change significantly? I mean, they added additional testimony about – I mean, it's clearly not the *exact* same thing we had before – I mean, what's in the record and obviously the comments are different. But there's no reason for us to look at this any differently than the Department had – the Department that chose not – why did the Department choose *not* to make a recommendation on this one, which is a little out of the ordinary, and can we interpret that to mean that the Department still believes that this one should be approved?

Mr. Christensen: The Department's position on this is that we have not made a recommendation. We simply refer you to the record so that you can consider all of the record as part of your deliberations in forwarding a recommendation to the Board of County Commissioners. So certainly the Department at one time recommended denial; it also recommended approval. You need to take all of that into account, as well as the Commission's previous deliberations and your previous findings of fact, and consider that along with the new information and testimony which was presented before you more recently.

Chairman Easton: Okay.

Dave Hughes: Mr. Chair, may I follow that up?

Chairman Easton: Yes.

Mr. Hughes: If we were to go ahead and approve this, I think we can go – Carol probably knows the dates better than I do – but the biggest heartburn that we had the first go-around, whenever that was, was creating a peninsula of Secondary Forest. Would it be the Department's plans if we were to approve this to look at other properties, as far as – because now we have a peninsula and a small peninsula of Industrial Forest in between to the west there. And I believe that was the major heartburn the first time around is – was that reason.

Mr. Christensen: I think certainly your recommendations to the Commissioners will affect future land use decisions. So there *is* a cumulative effect. So what's

decided today or this evening in the form of a recommendation – and ultimately the Board will consider that and act on that – and whatever decision the County makes will certainly have a bearing on future land use decisions.

Chairman Easton: Okay. All right, any other questions – remembering we're not deliberating – but just questions?

Ms. Ehlers: No, but I was going to add to what Dave said. The peninsula was an essential element of the discussion. The other was Secondary Forest as a buffer and the assumption that there needed to be something to buffer against.

Chairman Easton: Okay. All right, with that the Chair will entertain a motion. All right, there's a – we're not taking public testimony. This is –

(inaudible male voice from the audience)

Chairman Easton: Can you come to the – we're recording this, so I guess I'm going to make an exception here and let you speak very – tell me why you think you have the right to speak at a hearing that is not – where we're not taking public testimony – really briefly. And tell us who you are.

Aaron Leslie: My name is Aaron Leslie. I'm a Commissioner with Skagit County Fire District 15 and that's the reason why I feel that I should be given a chance to make a comment on this. I've been given very little time –

Chairman Easton: Okay, let's stop right there.

Mr. Leslie: Sure.

Chairman Easton: So a little bit different than just a member of the public in that he's a public official. Do you feel comfortable and your staff – under the staff window – to do this? Or should we just stick to our regular – I mean, I'm going to need some – I'd like some additional thoughts from the Director.

Mr. Christensen: Your public hearing is closed. As meaningful or as beneficial as the comments might be, I think it's difficult to allow one and not others.

Chairman Easton: I agree. All right, well that goes with – that's sort of my first reaction. So, sir, we're going to have to thank you for your coming and sorry that you weren't able to join us at our public hearing.

Ms. Ehlers: May I ask staff a question?

Chairman Easton: Sure.

Ms. Ehlers: One of the reasons declaration of segregation ended was because of an uproar created by Fire District 8, who found that the Bacchus Hill subdivision, which you knew nothing about because there was no way of finding anything about it, had established a parcel within the fire district that he was legally obligated to protect, and there was no way for him to get access to it with a full truck of water because he couldn't even take a jeep up there. It was one of my earliest sets of experiences. The study session went on for weeks.

Chairman Easton: Can we get to the question?

Ms. Ehlers: The one thing I would like to know is where there is a fire district in this – that is in these parcels, if any.

Chairman Easton: So are they in a fire district?

Ms. Ehlers: Are any of them in a fire district?

Ms. Ruacho: All of them are.

Chairman Easton: And that would be – is it 15?

Ms. Ruacho: It is.

Chairman Easton: Okay, great. All right, with that this is – two things I need to point out before we go into – did you have a question, Elinor?

Elinor Nakis: I did. I just wanted to know how far Fire District 15 was from their main headquarters – would be from this property?

Chairman Easton: A rough idea?

Mr. Christensen: That may be a question that you want to direct to the Fire District Commissioner.

Chairman Easton: Which again gets me back to the whole – (laughs) – all right, well, it's a *fact* so I'm going to go ahead and allow it. Do you want to give me a quick number?

Mr. Leslie: Yes, to the far ends of the district it's eleven miles' response to – from the fire station.

Chairman Easton: All right, so for those that couldn't pick it up on the mic, he said eleven miles from the furthest point for response.

All right, there's two things I need to point out before we go into the next part of deliberations. Number one, due to a – according to our bylaws, for our recommendations to be forwarded to the County Commissioners, five of us, no matter what size our group is at the time, have to vote in favor of a recommendation. So given tonight that there's only six members who are going to vote on this particular one – obviously it's going to change as we move – I just wanted you to keep that in mind. The Department and I discussed today that if we don't reach five votes on any particular recommendation, our transcript and our – you know, and the rest of the record will be forwarded to the Commissioners for their consideration. But when it comes to actual findings and an actual thing – an actual process – that's forwarded to the Commissioners, that wouldn't happen unless there's five votes. So any questions about that?

With that, we have the choice to take action to approve this; we don't *need* to take action to disapprove this, okay? So that's my understanding. Is that correct?

Mr. Christensen: Yes.

Chairman Easton: Okay, so we have an application in front of us. Our only – the only – according to the Department – I guess we're going to confer here for a second.

Do you want to vote to approve or disapprove?

Mr. Christensen: You may.

Chairman Easton: Okay. So is there a motion in either direction?

Mr. Jewett: I'll make a motion to approve the Sanfi Acres.

Chairman Easton: Okay, is there a second?

Matt Mahaffie: Second.

Chairman Easton: Okay, so it's been moved and seconded to approve Sanfi Acres CPA, 05-14. Mr. Jewett, seconded by my good friend Matt – because I couldn't remember his last name. Any – okay, let's take discussion. Let's keep our comments brief.

Ms. Ohlson-Kiehn: I think the previous discussion that the Planning Commission had about this with regard to creating a peninsula of Secondary Forest is just as pertinent in this discussion as it was in the previous one. And that's a concern, a huge concern.

Chairman Easton: Okay. Jerry, do you want to speak to your motion?

Mr. Jewett: No, I just changed my mind since the last time.

Chairman Easton: Okay. Matt, do you have anything to add?

Mr. Mahaffie: Sure. Regardless of the zoning, it's buildable from top to bottom. It's kind of to me a relevant fact. You're going to have either a cluster –

Chairman Easton: Mm-hmm.

Mr. Mahaffie: – or you're going to have a row of building top to bottom, if they so choose to go that route.

Chairman Easton: You mean like north to south?

Mr. Mahaffie: North to south, yes.

Chairman Easton: Okay. Mrs. Ehlers or Mr. Hughes?

Ms. Ehlers: Well, yes. If we don't change the zoning, they still have the right to build those twenty-two parcels. And those are next to the road. So the fire department has a hope of being able to protect the houses. I dislike intensely a value that seems to occur sometimes which says that you can subdivide property and you can build houses, and the hell with the person who lives in it. If their house burns up because it depends on the DNR for fire protection, well, that's a problem. And I don't agree with that. I've seen it happen too often.

Chairman Easton: Okay.

Ms. Ehlers: My second comment is that the peninsula issue still exists. The concept that Secondary Forest was *designed* to buffer – well, there's nothing here to buffer.

The third is, as far as I'm concerned if we give this privilege to these people then we give it to everybody. We don't run a county in which some people who have managed to do something at one time get privileges that other people are denied. I've seen too much of that. I do understand that there are zoning problems. I have seen and heard of a number of things since we did these – made these decisions in the early '90s based on entirely inadequate maps. There are places that need to be Rural Villages. There are places in the Industrial Forest which probably do need to be rezoned. I'm not questioning any of that. That, I think, is a very valid issue, and time-consuming for the Department but valid. But I don't think that it applies here since they can get a lot of money out of the 22 acres once the market decides to recover.

Chairman Easton: All right. Mr. Hughes?

Mr. Hughes: Boy, I've been listening to everyone and still trying to make my mind up. I'm going to have to go back and vote the way I believe I voted in the past and not – which would be not in favor of the motion. It just – until – I just think until the County can figure out what to do with the 60 – 40- to 60-acre owners that are stuck in Industrial Forest and can't get out, maybe this will put a hammer over their head a little bit. There again, the peninsula – sure, if the applicant was going to say they'd cluster all fifty-six up in the north end, you know, maybe it'd be something, but that's not on the table. And so I'm going to vote against the motion.

Chairman Easton: Okay. I just want to clarify that anyone would have the right to apply for a Comp Plan amendment. I mean, I recognize that you have concerns, Carol, about that, but anyone would have the – everyone has the same ability to apply for one. Granted, there is a cost involved, but there's nothing – there's no – we can disagree, but there's nothing – and if I'm incorrect about policy, please correct me, staff – but there isn't any exception for anyone. This is not a special scenario. This was something *they* chose to apply for. We make allowances for Comp Plan amendments within the Comp Plan.

Ms. Ehlers: The night we made this decision there was – or the time before – there was an application for something almost the same for lots that had already been platted that went deep into the – into the forest – and we turned them down.

Chairman Easton: Okay. All right, with that, are there any other questions? Elinor?

Ms. Nakis: I do have a question. Approximately how many acres of Industrial Forestry do we have in Skagit County now? Is there a number on that?

Chairman Easton: Someone will probably have to get back to you on that.

Mr. Christensen: It's under the Land Use chapter.

Ms. Ruacho: You have a Comp Plan, Elinor. You're probably the only one who does right now.

Ms. Nakis: Oh, okay.

Ms. Ruacho: So you might – Carol, next to you, might be able to help you show you where it is in your Comp Plan. There's a table.

Ms. Nakis: Okay. You know, it seems to me that in one of the classes I took they said 100,000 acres?

Mr. Christensen: Several hundred thousand of Industrial Forest designated – yes.

Chairman Easton: Okay. Why don't we research that general question later? We're going to go ahead and call for the question.

Ms. Nakis: Okay.

Chairman Easton: All those in favor of the motion, signify by saying "aye."

Mr. Jewett, Mr. Mahaffie and Chairman Easton: Aye.

Chairman Easton: All those opposed?

Mr. Hughes and Ms. Ehlers: Aye.

Ms. Ohlson-Kiehn: Nay.

Chairman Easton: All right, so Easton –

Ms. Ehlers: Maybe you better have a hand.

Chairman Easton: Yeah, okay. So those for? Make sure Carly gets it. Those against?

All right, seeing that there is no majority, there will be no need for the staff to file – for us to deal with findings. We will remand – this will get, obviously, passed up to the Commissioners to make their decision on their own and our portions of the transcript we pass to them.

So at this point I'm going to call this public hearing – or this deliberations – closed, unless there's anything else to come forth on this? (gavel) All right, this public hearing is now closed. We will now enter into – can someone seek our member? Here she comes.

All right, we will go back to the same – to the order we had on the original agenda. So at this time I want you to prepare yourselves for Pomeroy, and we will get to the ___ on Pomeroy too, in just a second. All right, I call the public hearing of the – the Skagit County Planning Commission back into order for the public hearing concerning Pomeroy's application, PL08-0462 (gavel). And the purpose of this is to deliberate on the application as currently stated. At this time would any Planning Commission members need to disclose or recuse?

Okay, and for the record, Ms. Nakis will not be joining us on this one so we have – now we have seven that are voting – or six, excuse me – *seven* that are voting. So, again, five-two would have to be the case for there to be a recommendation passed to the County Commissioners.

At this point, we'd like to open this up to a brief explanation from staff and then potentially, if Commissioners have questions of the applicant or staff, then we'll move in that direction.

Thank you, Carly.

Ms. Ruacho: Just give me one second to get the map up on the overhead. All right, so this next one – we are taking, again, a Comprehensive Plan amendment request that's in our – we're now moving on to our 2008-2009 docket cycle, kind of a separate batch from Sanfi.

So in this – included in this docket cycle, there'll be three individual citizen-initiated map amendment proposals, this first one being referred to as "Pomeroy." You held a public hearing on all three of these map amendments on October 20th, including this one we're about to discuss.

What I've got here on the projector is a zoning look at the area. I'll just point out a couple of features. The area of the subject property is highlighted in the red boundary. It is an approximately 80-acre parcel currently designated Industrial Forest-Natural Resource Land, southeast of Marblemount near the Cascade River Park development. And that's another feature I'd like to point out right here on the map in this whitish color. You can kind of see the lines in red. Those lines depict parcel lines. Those are – that's a recreational lot subdivision that's in the area.

And then the last feature I'd like to point out is the current MRO, which is this hatched pattern here. You can kind of see it here in the area and then again here. That's what the MRO, which is our Mineral Resource Overlay, looks like when it's applied to the map.

So this proposal had been put forward by Mr. Pomeroy, who is the owner of the property, to add the Mineral Resource Overlay to his current zoning designation. So, again, different from the one we were discussing previously in that he is not looking to change his underlying Comprehensive Plan designation. That would remain Industrial Forest. But what he is asking to do is to include on top of that, if you will, a designation that indicates that there are minerals of commercially significant amounts available on the property.

The policy establishes criteria based on geologic and environmental and economic factors for designating mineral resources of long term commercial significance. That's required by GMA and we do have policies in the Comprehensive Plan to reflect that. In this specific case a licensed geologist from Skagit County investigated the parcel in question, from both geologic maps and field verification. And I'll go ahead and put up an aerial photo. There is no outline so it's a little bit hard, and that's why I start with the other one. It'll give you a little bit of an indication. What do you think, Andre? Pretty close?

Andre Pomeroy: Move up to the house. _____ specifically?

Ms. Ruacho: Just your piece in general.

Mr. Pomeroy: Okay, my piece would be where the decks are by – about the bottom, _____ the north – the north side. And then go into the corner where the tree – that's where the tree line goes – right there. Go all the way down, then you can follow that on up to – a little higher - _____ across the top to there. And then right over farther – over farther – right there. That's your 80.

Ms. Ruacho: Okay, so from the expert in the audience about what we're looking at here. Very schematic – for schematic purposes only – just about this general area while we talk about what the geologist found. His investigation confirmed the presence of hard rock minerals – and I'm sure I will completely slaughter this – metadarite?

Mr. Pomeroy: Metadiorite.

Ms. Ruacho: – metadiorite, and other rock sources having what he considered aesthetic qualities, including shape, texture and color suitable for decorative landscaping purposes, and commercial quality serpentine and soapstone suitable for carving or sculpture.

And it is the opinion of the County's professional geologist that commercially significant quantities of these minerals sufficient to meet the criteria are present on the parcel. And further analysis concluded that both the map review and field verification indicated that failure to designate this parcel earlier was an oversight on the part of the consultant that was retained to do the mineral overlay review that we undertook in 2005.

Chairman Easton: I think we're at the point where we have enough information from staff.

Ms. Ruacho: Okay.

Chairman Easton: Are there any questions for staff or the proponent?

Ms. Ehlers: Yes.

Chairman Easton: Okay.

Ms. Ehlers: Which way does the land slope? Does it slope due north or –

Chairman Easton: We need – please come to the microphone. Please state your name and your address and, in your case, state your relationship to the property.

Jim Miller: Okay. My name is Jim Miller. My address is 299 Mackenzie Drive, Camano Island 98282, and I'm here tonight as a planning consultant representing Andre Pomeroy.

Chairman Easton: Okay.

Mr. Miller: The topography of this site slopes downward from the south to the north.

Chairman Easton: Okay. Thank you.

Mr. Miller: It's – all of that is draining down towards the Cascade River.

Chairman Easton: Okay, any other questions? All right, the Chair will entertain a motion.

Mr. Hughes: Mr. Chair, I move that we approve Pomeroy, PL08-0462.

Chairman Easton: Is there a second?

Ms. Ohlson-Kiehn: I second.

Chairman Easton: Okay, let me get that noted. All right, and any discussion?

(silence)

Chairman Easton: I've got to tell you, of all the Comp Plan amendments I've ever voted for, this one seems the easiest.

Ms. Ehlers: Well –

Chairman Easton: So I'll be voting in favor.

Mr. Hughes: Well, it just seems we've got a chunk of Industrial Forest, it looks like at least 40 acres in from any other zoning, that if we can't put a Mineral Resource Overlay on something that deserves it, then –

Chairman Easton: – where would you put one?

Mr. Hughes: – where are we going to? Yeah.

Chairman Easton: All right, hearing no other comments I'll call for the question. All those in favor, signify by saying "aye."

Mr. Jewett, Mr. Hughes, Ms. McGoffin, Ms. Ehlers, Chairman Easton, Ms. Ohlson-Kiehn and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Okay, let the record show one abstention and seven votes in favor.

Ms. Ehlers: Who abstained?

Chairman Easton: Elinor.

Ms. Ehlers: Oh, of course.

Chairman Easton: I just wanted – yeah, make sure we know that. All right, so this public hearing is closed (gavel).

Ms. Ruacho: It's not a public hearing.

Chairman Easton: Excuse me. This deliberation is closed (gavel). We will set up now for Stockinger.

Good luck to you, Andre.

Mr. Pomeroy: Oh, thank you. _____.

Chairman Easton: You're welcome.

Mr. Pomeroy: (inaudible)

Chairman Easton: You bet. All right, I'd like to call the deliberations to order of the Skagit County Planning Commission to deliberate on the file known as

“Stockinger,” PL08-0460. We’re going to ask the staff for a *brief* report on Stockinger. The majority of – oh, I have disclosures; right – the majority of the report was contained in our current – the documents that we received. At this time I’ll take any disclosures or reclusions (sic).

Ms. Ohlson-Kiehn: Mr. Chair, I have a disclosure.

Chairman Easton: Go ahead.

Ms. Ohlson-Kiehn: So similar to the previous proposal – the one before the one we just voted on – DNR parcels lie in the immediate vicinity of this proposal. I work for the DNR; so does my husband. Neither of us stand to gain or lose financially or professionally from the Planning Commission’s decision on this proposal. I do not represent DNR. I am on the Planning Commission as a citizen and feel I can engage in these deliberations with objectivity and fairness.

Chairman Easton: Is there any objection to her participation either from the Commission or staff, or the audience?

(silence)

Chairman Easton: All right, hearing none – we have another disclosure?

Mr. Mahaffie: Yes, Mr. Chair. I will be recusing myself on this one. _____ on this property.

Chairman Easton: Okay. Thanks, Matt. All right, at this time a brief report from staff.

Ms. Ruacho: Thank you. I’ll just give Matt just a few minutes to exit the room.

Chairman Easton: Oh, yeah.

Ms. Ruacho: I’ve put the zoning map up on the screen so that hopefully you can get kind of a general idea of where this is located. On the side of Lake Cavanaugh here is where we are generally, near the Rural Village.

What I’d like to do is put down the applicant’s schematic that was turned in with the application so that you can, as I speak, kind of visualize what he’s asking for here. And this, again, is the original application materials – not been interpreted by the Department or modified.

So the Stockinger proposal seeks to shift approximately 4.3 acres of existing Rural Village Residential – and just for the audience to make it a little clearer, this area of his property is currently designated Rural Village Residential in

approximately 7 acres total. And he seeks to in effect swap some zoning acre-for-acre to move a portion of the 7 acres of Rural Village Residential to this location on the property in the side of the 2.5 acres, and then this location on the property in a 1.81-acre-sized lot. And this results in the 30-acre parcel of Secondary Forest in the middle here. Again, acre-for-acre, swapping where these are located.

The applicant does have a cabin on a separate parcel located approximately here off the map that is currently designated Rural Village Residential on a platted – a pre-GMA platted lot. And the proposal, although seeking to swap acre-per-acre, does result in the creation of one additional lot in that the 7 acres all total on the top portion of his lot could be subdivided, if he so chose, in increments of 2.5 acres, and which would result in two lots in that location and then the one development right on the 30-acre lot. As you can see here, the effect – the residual effect – if this change were to occur, would be one 2.69 Rural Village Residential lot here, one 2.5-acre Residential Village lot here, and one 1.81-acre Rural Village lot here, and then the 30-acre Secondary Forest lot in the middle as before.

So the Department's analysis is that due to the critical areas in the vicinity and on the site, there is extremely steep slopes in this area, steeper than most. I won't go into all the technicalities of it in order to remain brief, per the Chair's request, but there are some unique situations here regarding slopes. The lake is severely degraded, currently 303D-listed. And this is a unique situation around the lake in that it is forested along the lake, which is unique for the shoreline of Lake Cavanaugh. And the Department believes that to bring more residential development down toward the lake would be – create the possibility for more harm in the way of slope erosion and failure possibly, and contamination of the lake in both the loss of vegetation and/or just further residential use in that regard. This property has always been zoned in a unique manner from the other platted lots around the lake in that it was Forestry even pre-GMA, not Residential as the platted lots were.

So the Department recommendation in this case, based on the increase in development rights that this proposal would create and for the critical areas factors that are known on the property, and the potential for further degradation, the Department does recommend denial of this request.

Chairman Easton: Commissioners, any questions of staff? Okay.

Ms. Ehlers: How many CaRD lots could he put on that Secondary Forest?

Ms. Ruacho: He could just put one, whether he CaRDed it or –

Ms. Ehlers: Just one?

Ms. Ruacho: Yes, it's a – it needs in Secondary Forest 20-acre increments and he only has 30 acres, so it doesn't get him to the next increment, which would be 40, which would give him two. So he just has the one right.

Ms. Ehlers: Okay. My next question: There was in the information that was turned in was a picture of where the road has started to fall in, with the implication that it was near/below one of his parcels. Can you show us where the road is now fourteen feet wide?

Ms. Ruacho: Sure. So what Commissioner Ehlers is referring to is a comment letter – actually a series of comment letters – that came in from Lake Cavanaugh property owners indicating some serious concerns over the current roadway conditions that pertain to a driveway that is currently existing on Stockinger's cabin property, which is this triangular piece I've indicated on the map. There is currently a driveway that's been placed in this general area that has been placed without the benefit of permits. The permits have been applied for at the County but are unable to be issued at this time due to the driveway not meeting the standards necessary for – regarding slope. And there are some drainage issues that the County has had to respond to in that area, and the neighbors turned in comment letters and photos to that – to that end.

Chairman Easton: Any other questions? The Chair will entertain a motion.

Ms. Ehlers: I'm going to move to deny until the slope and the drainage issues are settled because that road's clearly very narrow – getting narrower. I watched a road do that –

Chairman Easton: Okay, hold –

Mr. Hughes: Is there a second?

Chairman Easton: – hold on a second. We need a motion that doesn't include your justification. So if you want to move to deny –

Ms. Ehlers: I move –

Chairman Easton: I appreciate that, but I don't want to put that into the motion.

Ms. Ehlers: I move to deny it this time.

Chairman Easton: Okay. Is there a second?

Ms. Ohlson-Kiehn and Ms. McGoffin: I second it.

Chairman Easton: All right, we'll give it to Kristen.

Ms. McGoffin: That's fine.

Chairman Easton: Okay, moved and seconded then. Discussion? Carol?

Ms. Ehlers: When I say "this time," that road is clearly narrow and getting narrower. It is true we've had testimony over the years about the fact the Cavanaugh Road goes around in a circle. There's a fire issue. The school bus issue was not brought up but it's just as real. The school bus goes around that road four times a day, according to what has been available in the paper. And I know what it's like on Fidalgo Island when you have steep slopes and you have two roads that are in the process of disintegrating. I think that ought to be dealt with before this is – comes to final decision, because if it cannot be dealt with then this can't be decided for what he wants. If it *can* be dealt with, that's another issue.

Chairman Easton: Okay.

Ms. Ehlers: In my mind.

Chairman Easton: All right, any other discussion? Go ahead, Mary.

Ms. McGoffin: It just looks very apparent to me that since even pre-GMA this area was not platted – tells me that a very long time ago they realized this was not suitable for, you know, developing in any manner. So that tells me there's been a long-standing appreciation for how fragile that area is.

Mr. Easton: Yeah. Kristen?

Ms. Ohlson-Kiehn: I guess in this application the proposed configuration of the lots – increasing the number of residential lots abutting the Secondary Forest – is a concern to me. The County pointed that out in their report, but I want to reiterate it.

Chairman Easton: Okay. I think to me the biggest issue from my decision is based on looking at the history, combined with the slopes. And I can just say that if – I tend to look at what we'd change in light of whether it should have been done the first time. And I don't see any compelling evidence that this was a mistake. I think in my – I try to consistently vote in a way that says I want to correct where we made mistakes or new information has come into play, but I don't see anything here that compels those two arguments to move forward. And I have significant concerns about the way in which this would end up getting managed from a slope point of view.

I appreciated the testimony on both sides. It was very – this one was very helpful to have all the folks who came and testified before us. Is that more comment?

Ms. Ehlers: Yes, I would like to back up your comment about management. There was an extensive letter – documents – in here that illustrate how badly the County sometimes does not relate slope, drainage, rainfall and septic. That has nothing to do with Mr. Stockinger but it's a comment on the County's operations that the County should pay attention to.

Chairman Easton: All right, well, we'll move on at this point and I'll call for the question. All those in favor of *denying* this application, please signify by saying "aye."

Mr. Jewett, Chairman Easton, Mr. Hughes, Ms. Ohlson-Kiehn, Ms. McGoffin and Ms. Ehlers : Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: All right. We have six for – six for the opposition and two abstentions. Or, I guess, you know, recuse and abstention is basically the same thing. Okay, we'll close this public hearing (gavel) – or deliberation (gavel).

All right – he told me I had to open and close each one! All right, we'll go ahead and open the next one – Stiles. We'll wait for Matt to join us. All right.

All right, we'll call this deliberations of the Skagit County Planning Commission to order – concerning the William A. Stiles application, PL08-0455. At this time the Chair will entertain those who need to make comments or recuse themselves.

(silence)

Chairman Easton: All right, hearing none we will move to staff's report, recognizing that, like Sanfi, this has been reviewed multiple times and that a number of us – we've had a chance – I just want the public to know – we've had a chance to review all the documents that pertain to a number of these deliberations, plus the new documents. So, with that, we'll turn it over to staff for a brief report.

Ms. Ruacho: Okay, and please do bear with me. Due to the lengthy history on this one, the presentation is a little longer but I will try to keep it as brief as possible.

Chairman Easton: Okay – take what you need, but let's keep it under twelve.

Ms. Ruacho: I see! I think I can. So what I've got in front of you here is a map of the area showing the zoning currently and, again, we've got the subject parcel outlined in the red outline. And, again, this proposal is part of the 2008-2009 Comprehensive Plan amendment requests. The public hearing (was) held October 20th. Here tonight to deliberate on the issue.

This proposal seeks to re-designate approximately 6.2 acres north of Burlington, west of Sedro-Woolley, near the Cook Road and I-5 interchange, from Rural Reserve to Rural Freeway service. And this proposal is similar to one that was submitted as part of the 2005 GMA Update process which was considered and denied; however, this proposal has been modified in that an approximately 10-acre parcel – the parcel indicated here on the map, slightly triangular in shape – was included in that earlier proposal and has been removed for the proposal that you're currently deliberating on.

The earlier amendment relied largely on an argument that the Limited Area of More Intensive Rural Development, which we call a "LAMIRD" for short, may include certain undeveloped lands provided that those LAMIRD areas are designated based on logical outer boundaries. And in that argument, the instant that they asked for the 16 ½-acre parcels they indicated that the railroad tracks were a logical outer boundary for that LAMIRD – and, again, the LAMIRD indicated here in blue currently. It is a commercial LAMIRD.

And, again, that was considered and rejected by the Planning Commission and the Board of Skagit County Commissioners.

Just a little bit of history on this portion of the property and of that earlier proposal: The Stiles property is part of a commercial short plat done in 1982. The majority of the land for the short plat was designated as RFS – again, the blue portion to the south – and that occurred in 2000. And there was a subsequent compliance action before the Growth Management Hearings Board that argued the sufficiency of the logical outer boundaries and specifically the built environment. And it was determined through that action that primarily in the form of pre-1990 paid sewer service commitments that that had been established for the properties that were designated RFS – again, shown on the map in blue – but had not been established for any other properties outside of what you see there.

With this application the applicant has presented documentation seeking to show how the subject property had been established similar – had established similar sewer service connection for commercial use from Samish Water District Number 12 before June 1, 1990, which is that key Growth Management Act date. And when the western portion of the Stiles property was conveyed from Regency, which was the previous owner, and Mr. Stiles retained an easement that included

pro rata share costs for future utilities including sewer service to his property – and this was conveyed through a deed. The Department, including legal counsel consultation, has reviewed that and determined that an easement is not the same, as far as legal authority as a commitment to quasi-governmental agencies such as the Samish Water District.

The Department finds that the subject property is currently undeveloped and predominantly rural in nature. I'll go ahead and put up the aerial photo. The area here with my pen, it's kind of the grassy area between what looks cultivated to the north and the area that's clearly developed and commercial to the south.

The applicant also is seeking in this application the correction of a claimed split-zoning error in that portion of his property. It's debatable where the line is as far as what the County has determined where the Rural Freeway Service line is and where the applicant believes the line should be. At a maximum, given the most conservative view, it would be a hundred feet on the applicant's property.

As you can see on the map, there is no built environment in the above-ground structures on the property; however, built environment can be in the ground as well. But again, in this case, separate from the other cases, the questions were asked: Did the applicant have an agreement with the Samish Water District to provide sewer service to the property? And that answer was found to be No. In your packet we do have a map that outlines – and I'll show it just for the public – again I apologize for the redundancy; I know you guys have all seen this, but just for the benefit for the viewing public who hasn't had the benefit of the documents – this is a schematic showing the mapping of the sewer service agreement that was submitted with the application and it includes, as you can see, this large piece here, this small piece, and this piece here, and the Stiles property is located to the north of anything included in that – in that agreement.

The next question analyzed by staff was: Has the property owner, either current or previous, made payments to the Samish Water District for the future sewer service? And staff did not find any evidence in the record that this happened and statements at the public hearing confirmed that no payments specifically had been made with this regard.

And then the next question: Did the staff analyze/contend this mapping error and, you know, is there a mapping error constituted in this case? Let me give you a little bit better map. I apologize for the switching. I don't want to get anybody sea sick! In this map – hopefully you can identify here – this is the current zoning line that runs this way; this is the drainage swale that is contended in the application; and this yellow line here is the Stiles property line. And there is argument that the zoning line is in an incorrect boundary. Staff originally indicated that the line was placed at the center of the swale. There – again – can be arguments where that may be.

At a request from the Planning Commission following the public hearing we did review the transcripts quite thoroughly and we contend from the beginning and now are clearer in our contention that the line is placed in the correct area for the location that the Planning Commission at the time indicated that it should be. It switched from what was a 1000-foot radial arc from the intersection of I-5 and Cook Road in a pre-GMA determination that was maybe, one could argue, a bit arbitrary to have a 1000-foot arc. And through GMA, you need to have what they consider a logical outer boundary, maybe something a little more logical that other folks would pick, which can be a topographic feature. So in this case, trying to keep what was the majority of the pre-GMA Commercial, as well as adhere to the laws in effect – as they had changed – the Planning Commission picked the swale as the boundary for the Commercial district.

So just trying to hit the highlights here – just bear with me.

Chairman Easton: You're doing fine.

Ms. Ruacho: Am I doing okay? Okay.

Ms. Ehlers: Do we have this picture?

Ms. Ruacho: Yes. It was –

Ms. Ehlers: Maybe somebody can help me later find out where it is.

Mr. Christensen: It's Attachment 2 of the memorandum from the Department to you dated September 30th.

Ms. Ehlers: Gary, what we have at this point is a lump of paper.

Chairman Easton: Maybe you can look at Carly's later.

Ms. Ehlers: Yes. And if I don't have it, Carly can give me one. And leave one in the record.

Ms. Ruacho: Yes, but yes, you do have that.

Ms. Ehlers: Okay, good. It's a black and white picture.

Ms. Ruacho: Could be, yes.

So just to wrap up – just to point out what happened on the piece to the south, that there was the sewer service agreement which included a pipe in the ground and paid sewer service commitment to the sewer service, and that was very

specific in both the area that it covered as well as the uses that it allowed. And, as you can see on this map below here, those uses have all been realized in their totality, including a hotel, a gas station, a commercial facility and a restaurant. There's actually maybe arguably a little more than that located there now, but for what the sewer district had approved originally has been recognized on those parcels.

So the Department finds no evidence in the record to indicate that there is sufficient built environment when you look at the criteria set by the Growth Management Hearings Board in a case contending with the two parcels to the south in a previous time. So the Department, based on the factors in the staff report and just basically just quickly highlighted here, does recommend denial of this proposal.

Chairman Easton: Okay, questions for staff and/or after that for proponents. Yes, go ahead.

Ms. McGoffin: Does anybody know when that culvert was put in?

Chairman Easton: I think that was part of the record.

Ms. McGoffin: The culvert that fills the swale with water.

Chairman Easton: Can you go ahead and go to the mic, Mr. Stiles? I'm sorry.

Ms. Ehlers: Oh, leave it up.

Ms. Ruacho: You want that one?

Ms. Ehlers: It illustrates – then he can point to it and we can keep track.

Bill Stiles: The culvert here under the freeway was put in when the freeway was put in in 1959 or '60, I believe. I don't know about the time the one on this end under the railroad tracks, though it was probably done even before that. Because that's railroad; that stuff's been there for a lot longer.

Chairman Easton: Could you, just for the record, go ahead and tell us who you are?

Mr. Stiles: I'm Bill Stiles the Third. I'm here representing my parents who are the property owners. I live in Sedro-Woolley.

Chairman Easton: Okay, thanks. Mr. Hayden, did you want to add anything to that answer? Okay. Any other – I have questions; does anybody else have a question?

Ms. Ehlers: I have a question for staff, but –

Chairman Easton: Yeah, go ahead and ask that.

Ms. Ehlers: You go ahead.

Chairman Easton: No, I'm – my question is this is the first time I recall any comment sort of – well, I'm sort of – I was sort of taken back by your comment about sewer and the sewer district. It seemed beyond – it seemed a little bit beyond a staff sort of point of view, so I would like you to clarify what your source is and why you made the comments about the sewer that's currently serving the properties in the vicinity being overloaded – or past beyond what the district said they would give them.

Ms. Ruacho: There is a –

Chairman Easton: Maybe I missed it.

Ms. Ruacho: – a sewer service agreement. I believe you guys have been transmitted a copy of that.

Chairman Easton: I've seen the one in relationship to *their* property. The question I had was – I thought you made – maybe I misunderstood. Did you make a comment to the effect that what's currently in the built environment has gone beyond what the sewer district committed to?

Ms. Ruacho: The sewer district committed to – and I can – if you give me just a second, I can try to find that for you –

Chairman Easton: Sure.

Ms. Ruacho: – a commercial building, 25,000 square feet; a restaurant; a gas station; and a hotel. And that development has been recognized on the property to the south. My comment to clarify was there's a little more than that there. There's an espresso stand and a –

Mr. Jewett: Jack-in-the-Box.

Ms. Ruacho: – a fast food restaurant there as well.

Chairman Easton: And how does that relate to the applicants? How does that relate to the applicants' issues?

Ms. Ruacho: This is –

Chairman Easton: Because they have an agreement.

Ms. Ruacho: This is the sewer service agreement that was submitted with the application. Here are the – let me point to it this way – the commercial services that were committed to. And then we'll go back to – I'll give you a second to take a look at that and I can put it back up – again, Regency, the prior owner of the property and the property to the south. This is the mapped reflection of the legal description contained in that agreement and this is what was submitted with the application for this proposal as evidence of the built environment and sewer service provided to this property, but this agreement does not provide sewer service agreement to this property in that the property that we're discussing tonight is here and is therefore outside the boundary of the sewer service agreement provided with the application.

Chairman Easton: But they're applying for the piece that's within, correct? They're – when you look –

Ms. Ruacho: No. They're applying for the piece – I apologize I don't have a better pen to outline, but this is the property line for the piece they're applying for – again, over here, the property line.

Ms. Ehlers: But part of that *is* within.

Chairman Easton: Part of that's within that, Carly.

Ms. Ruacho: No. The part of it is within – I know it's confusing and I apologize – but part of it is within the *zoning* designation of RFS.

Chairman Easton: So you believe the evidence that was presented to us concerning the sewer which was not for this Commission to consider whether they have the right to sewer; it was for us to consider whether they had a built environment pre-GM – whether they're qualified under GMA to be compliant to having something pre-dating GMA. But you're making a judgment on whether they're eligible for sewer service and I'm kind of calling that into question because I think that's beyond the scope of what we're responsible for at the Commission level.

Ms. Ruacho: Well, I think you're misunderstanding. In order to determine whether a person is eligible to be considered included in a LAMIRD, the built environment is the factor, is the question. And so being included in a sewer service agreement and having paid commitment is what the Hearings Board determined.

Chairman Easton: No, I understand that. Whether that agreement – whether the other properties that are not connected to this application has used that all up or not is not a decision, I don't think, that's for this Commission to make. I thought that was for us to decide, based on – this was part of the merits that we were using to decide whether this was, in fact, a miss-mapping, per se. Because that's basically what the applicants asked for. I think I'm clarified now, so I appreciate it.

Are there other questions for staff or for the proponent? Carol?

Ms. Ehlers: We certainly never were given anything about sewer capacity when we studied/talked about the Alger Subarea Plan.

Ms. Ruacho: No, it's not sewer capacity. It's about the agreement that you were provided and what the agreement says.

Ms. Ehlers: We didn't talk about the agreement in the Alger Plan, either.

Chairman Easton: So I guess we're clarified now, Carly, that you didn't mean to make a comment about capacity.

Ms. Ruacho: No, it's not about capacity; it's about the agreement.

Chairman Easton: Okay, because your earlier comments came across to me like you were discussing capacity and I just wanted to clarify that to the Commission we're not to make a decision based on capacity –

Ms. Ruacho: No.

Chairman Easton: it – and that that wasn't what you meant to comment on.

Ms. Ruacho: No.

Chairman Easton: All right. Well, that puts the sewer issue, in my opinion, to bed. Are there other questions outside of sewer? Carol?

Ms. Ehlers: I took a good look at Rural Reserve zoning. What do you expect somebody to do with that piece of property?

Chairman Easton: That's a good question.

Ms. Ehlers: A campground? A trailhead? I mean, it's – I said at the end of one of these hearings some time ago that we need to look at Rural Reserve because this is a perfect example for it. The only thing that you can do in Rural Reserve that makes any sense in this property is open a retail greenhouse. And he can

have it – if it's 6.2 acres, he can have more than a 2-acre greenhouse there. So it isn't a question of whether we're going to preserve what looks like rural plowed land or hayfield or something like that. He's got full right to do things which will have a built environment. And if he has full right to build – to do built environment and he has to pull back from the drainage swales, which he would have to do because that's the way the rules are, then how does the LAMIRD fit? Does it mean that you never can do anything at all with that piece of property because in 1990 it wasn't part of the discussion?

Ms. Ruacho: If it doesn't meet the criteria to be included in the LAMIRD, it means he would need to develop according to what is given to him under Rural Reserve, which is fifty-six uses. Whichever one he might choose –

Ms. Ehlers: Most of those uses are totally useless in that piece of property. And that, I think, is –

Chairman Easton: Okay. Okay, we're going to move on. I appreciate your – I don't want to get too down the road of defining zoning, but I appreciate your comments.

Ms. Ehlers: Well, you see, I'm changing my position from what it has been in past years.

Chairman Easton: Okay, well, we'll get to that in just a minute. Elinor, do you have a question?

Ms. Nakis: Yeah, I mean, I looked at the topography and the elevation there. It does look questionable as to if anybody *could* use that property and the access to the property is not –

Chairman Easton: Well, that's not something we have to be – we don't have to be concerned about that in this case because this isn't an application to change any of the things that relate to that. This is do they have the right to get in different zoning.

Matt?

Mr. Mahaffie: I'm looking at this map. Where – what are the outside boundaries of the drainage swale – how was that identified? What was the procedure on that?

Chairman Easton: Well, there's a debate over where the drainage swale is. I mean, that's a – there's a debate amongst the two sides of this.

Mr. Mahaffie: But what's – where did the Department arrive at the outside boundaries of that?

Ms. Ruacho: The GIS Department performed the analysis. It now – that's an older aerial photo; this is the current aerial photo.

Chairman Easton: Okay, did GIS review – or staff – re-review this after the significant amount of new testimony about the location of the drainage swale?

Ms. Ruacho: Yes.

Chairman Easton: And after reviewing all of that data, the Department still stands by the current – the definitions of the drainage swale at the marks that were here – that are here?

Ms. Ruacho: Due to our lengthy review of the Planning Commission deliberations that you received transcripts of, where it was not identified that the line would specifically go to the centerline of the swale, it was decided that the swale itself was the northern boundary of the commercial zoning and that line was indicated and was given to you on maps, as drawn in by the Planning Commission, as to where they wanted the zoning line placed, and the zoning line today reflects the zoning line as *they* drew it in on the map.

Chairman Easton: Okay, I guess I didn't – so I guess the answer to the question is no. The GIS Department didn't review it and has not reaffirmed that's the line – that that's the interpretation of the deliberation where the word "swale" came up from the former Planning Commission – the current Planning Commission at that time – and then that – and then decided that that would be on the north end of that.

So when you say it was done by GIS –

Ms. Ruacho: These maps were produced by GIS.

Chairman Easton: Yeah, that's not where the line – the line wasn't produced by GIS.

Ms. Ruacho: It was put on the County zoning maps as given to them by the adopted mechanism signed by the Board of County Commissioners that indicated where the zoning line was.

Chairman Easton: That first came through the Planning Commission?

Ms. Ruacho: Mm-hmm.

Chairman Easton: More questions for staff? All right, any questions for the proponent? All right. So, with that, the Chair will entertain a motion. What's your pleasure? We need one way or the other.

Mr. Jewett: I'll make a motion to approve.

Chairman Easton: Okay, the motion is to approve William A. Stiles' application for Comp Plan amendment PL08-0455. Is there a second?

Ms. Ehlers: I'll second it.

Chairman Easton: Okay, it's been moved and seconded. Discussion.

Mr. Jewett: Okay, I –

Chairman Easton: Jerry?

Mr. Jewett: The reason I feel it should be approved, when I first got on the Planning Commission I asked Carol one night – I said, How do you make up your mind how to go on a certain situation? And she said, Well, you have to go by what the law is. And in this particular case I – probably if we followed the law, we'd deny it. But I think the way they've allowed the other development to go in there, they've got that property boxed in, and if that railroad track and the freeway aren't boundaries I don't know what ever will be a boundary. And it isn't good for anything except more commercial. You sure wouldn't move plows and discs and stuff in there, you know, to till the soil and grow some kind of crop. You wouldn't move cattle in and let them graze on the property. It isn't any good for anything except commercial use. And in this case the law is wrong and I think it should be passed and it should go all – if somebody wants to challenge it, let it go to the Growth Management Board.

Chairman Easton: Okay. Anyone else want to make a comment?

Ms. Ehlers: Yes. I'm glad Jerry said what he did so I don't, but there are a couple of other things.

Chairman Easton: Okay.

Ms. Ehlers: When we first started this there was an enormous effort to preserve every square inch of farm land. And it was valid. But this intersection's no longer farm land. It's commercial. It's a major intersection for the county. When somebody finally figures out how to negotiate with the railroad, they will widen the rest of Cook Road, which is now from Green Road through into Sedro-Woolley. They'll do it from Green Road west to Old 99 for a real major highway going east that allows the traffic that doesn't want to go through all the byways

and the subdivisions and the rest of it in Burlington to bypass it. That's what it was designed for. That road was built, according to Ann Marie Gutwein, somewhere around 2000, 2001, and it cost the County ten million dollars to do it. It would have been a four-lane highway, she says, except the County didn't want to use up that much farm land.

Chairman Easton: I trust you're going to circle back to this application.

Ms. Ehlers: I am. That is a change of circumstance. And one of the things we have to do is figure out within the law and within the rules how changes of circumstance allow changes in things to happen. In this particular case, what was existing in 1990 is not existing now – and you can read the transcript of one of our more interesting hearings on that one. The road is different. The significance of the intersection for individual cars – not for trucks because the turning lane isn't right – but for vehicles that are the kind of vehicles that use gas stations and restaurants and motels. And that is something that I think we should recognize when –

Chairman Easton: Okay.

Ms. Ehlers: – a change is there. And that's why I've changed my mind from previous votes.

Chairman Easton: All right, other comments? Mary?

Ms. McGoffin: I'd like to just comment. They asked us to look for the *logical* outer boundary and I read through this whole packet and I'm trying to find the logic in it. It seems to me that – I was reading "Before the Western Washington Growth Management Hearing Board" – this little excerpt – "does not mandate that a county use any one particular feature in setting a logical outer boundary," which in my case here would be the swale. To me, in a hundred years that swale will move randomly. Now we have – you know, we have points that we can measure it more carefully, but to guide a decision on a swale doesn't seem logical to me. Under Section X, Rural Freeway Service Designations, it says it's permissible to include some property that does not currently have man-made improvements as long as the boundaries are logical. I'm questioning whether the culvert that was put in constitutes a man-made element and would suffice to meet that criteria if needed. So to me the horizontal line that the applicant has put in on the northern boundary appears the most logical thing to do, and that is why it's my opinion.

Chairman Easton: Anyone who hasn't spoke to this who would like to? Kristen?

Ms. Ohlson-Kiehn: I guess I think that that is a valid point that the choices that this landowner has with this parcel are very few. But I guess my concern is that it

seems that the Growth Management Hearings Board has been pretty explicit about the definition of “built environment” – that it needs to be a sewer pipe with a connection paid for – and in this case – in order to expand the boundaries of a LAMIRD – and in this case for this particular parcel it doesn’t fulfill that criteria. And I’m afraid that by making a special exception in this case there will be more possibilities for special exceptions made.

Chairman Easton: Okay. Matt or Dave?

Mr. Hughes: Yeah. I guess, looking back at the history of what we’ve tried to accomplish here, is the previous two applications included the property to the north, which, I think, in the Planning Commission’s mind – or at least in my mind – that that was maybe way too large of a parcel to include in this zoning, which was fairly cut and dried when it was – when it was hatched. I think, you know, if we worry about – or not worry – but I think the proponents, if this is approved and then if it’s appealed, I think the proponents in their mind feel that they can justify it as being in the built environment, as I believe the Hearings Board made some mention of it in some previous decisions. Even though it wasn’t above-ground, maybe they can – they feel ___ was underground.

And also, whether anyone knows, but the first go-around this land to the north, you know, we always talk about – and I’m proud of this Planning Commission as far as their stance on trying to preserve farm ground – but the first go-round, was this ground ever zoned Ag? Whether it’s the proponents’ or the property to the north, and maybe – I don’t recall, but that’s – I feel that the reason I’m switching mine on this is just because we have a lot more information this go-around than we had the first two. There is – you know – there is a question, you know. I mean, obviously there’s always questions that someone is going to decide down the road – there is a question of built environment, and plus I just – I feel the smaller nature of the property – and it’s not, you know, if it’s not zoned Ag – that that’s enough for me to change my decision.

Chairman Easton: Okay. Matt, do you want to make any comments? You don’t have to.

Mr. Mahaffie: No, most of it’s been said that I would think of.

Chairman Easton: Okay.

Mr. Mahaffie: I just would like to say as far as – possibly it’s a little irrelevant – the centerline of the swale, as the GIS Department, is, to me, completely in error. I mean, that would be my professional opinion.

Chairman Easton: Okay.

Mr. Mahaffie: I realize sometimes on computerized aerial photo it's not a substitute for an actual aerial photo on a stereoscope.

Chairman Easton: Right. All right, anything else?

Mr. Mahaffie: Nope.

Chairman Easton: All right. I'm going to make some comments on this one. First of all, the last time this was considered I was under a totally different impression about the workload of the Planning Department, and probably out of being naïve – followed by a significant reduction in staff and a – in my opinion – a trailing issues process that was very flawed. As you remember in the transcripts, this was identified by us during – in a very lengthy discussion by us about our concerns about RFS, that it had – that we ran into this when we were dealing with the south end of the county – and we had a clear understanding, I felt like, between the staff and us about how important it was to us – in the trailing issues that we recommended, two of them were pointedly dealing with – and were rated highly, in my recollection about these issues. Then when staff went with their work orders, even before staff was dramatically reduced, these did not rise to being important enough or they felt they didn't have the resources to do it.

So now I'm in the position where I'm going to make spot-by-spot decisions around intersections with the freeway point-blank. And I don't see anything on the horizon where the Department's going to have the staff time or consulting money to do an overall RFS. This is clearly an RFS decision to me. This is clearly about the best interest of the service of the area. I think one of the things I read in the testimony that makes so much sense is you want to avoid sprawl, give people someplace to drive to to get the things they need. That, to me, is the bigger issue that the County's got to wrestle with. Where do you locate – and this is the kind of property that makes sense to locate things that serve the people. Whether you like Bob's or not, whether you like that hotel or not, those are both – or Jack-in-the-Box – they are all serving the needs of the community that don't have people driving all the way in on Cook Road into Sedro-Woolley or down I-5 back to Burlington. We have to find ways to avoid sprawl in *that* way, in my opinion. It's not just about where you locate it.

I'll be blunt. I think the regional – the boundary issues – or not the boundary issues but the issues about built environment – are not going to be decided by this group. They're gray enough that I feel comfortable voting for them. I agree with Kristen: I don't want to set the precedent that we vote for these and disregard what GMA says. But I can tell you that, in my opinion – my professional opinion – this will not be defined by this body. This will end up in front of people who have a lot more say over that particular issue most likely.

So, with that, I'm going to vote in favor of this and, you know, I'm disappointed that we couldn't get into a work order position and understand all the issues we had, where we could do this countywide, because I do believe we need this in Alger, we need this in – we need this in a number of places. But because it's not in the future as much as this is sort of a hodgepodge decision in that sense, I'm going to vote in favor of it.

So, with that, if there's – I don't think we need to add anything more. I'm going to go ahead and call for the question. All those in favor of the motion to approve –

Mr. Hughes: There hasn't been a motion.

Ms. Ehlers: Yes, there was.

Chairman Easton: Yeah, there was a motion and it was seconded. Jerry made a motion and –

Mr. Hughes: Oh, sorry, Jerry.

Ms. Ehlers: Carol seconded.

Chairman Easton: – Carol seconded. All those in favor –

Mr. Hughes: It was so long ago.

Chairman Easton: Hey, this is briefer than some! All those in favor of the motion concerning the Stiles property, please vote by saying "aye."

Ms. Ehlers, Ms. McGoffin, Chairman Easton, Mr. Jewett, Mr. Hughes and Mr. Mahaffie: Aye.

Chairman Easton: And all those opposed?

Ms. Ohlson-Kiehn: Nay.

Chairman Easton: Nay? Kristen votes no. One abstention. It passes six-one. So under my recollection, we have three of the four of these that we did tonight. Actually I'll do this after I close the hearing. So it passes and we will close (gavel) this hearing – this deliberation.

We'll go into just a general session of the meeting now. We had three out of the four that we need actual findings, correct? And we'd like – I'd like – you to add to what you collect for us for the next meeting to include what section you're going to send to the Commissioners about the one where we didn't make a – we

weren't at the level we made a recommendation. So carve out whatever transcript pieces and whatever you plan to send up.

I'd also like to remind the Commission these are controversial. It's no way to get around these. A number of these are controversial. We have not – we have dealt with a track record where especially when we disagree with staff, that we need to make sure that we're available – I think we need to make ourselves available, and we agreed during our bylaws discussion that we will all be notified when staff will be making their presentation to the Commissioners.

I'm under the impression from the Commissioners that they will welcome us to speak at those – at those deliberations. And so if these are issues – you know, I want to remind you we haven't since we went through our bylaws discussion had much that's gone before the Commissioners. I just want to remind you whether you were for one of these or against it, make yourself available to the Commissioners, you know, one way or the other, if you want to be heard, recognizing that we have disagreed with staff on some of these and that, you know, doesn't leave – leave some room for them to – to need to consider our issues. So I'll take the Chair's privilege to say that.

Yeah, if you have something brief for us? We're going to go over next week's –

Ms. Ehlers: Annie Lohman is deeply concerned that we are to get the findings that are to be sent. I think it's particularly important when we disagree that we get the findings so that we agree on the findings before they go to the County Commissioners.

Chairman Easton: Yes. Okay, let me review how we're going to handle findings. These are my new – this is the way in which I've instructed the Department on your behalf: Findings will be – in this case, because of how long they will take to write – they won't be written live. In some cases in the future we will write findings on the spot when they're simple, with the pre – the ones that can be done ahead of time done. In this case, because of the complications of each one of these individual projects, we will be sent prior to the – prior to the meeting a copy of the findings. If you have any issues with those findings, do not send me notes on them – or staff. Bring them to the hearing we'll have on December 1st. We will work out those differences with live editing so – because we have a deadline on these. We will adjust. And I've also requested that counsel's present at the next meeting for a number of reasons, so if there's any issues about these findings in relationship to counsel, they'll be available to us, too. All right?

So that's – and that's going to be the standing policy from now on about findings. You'll get them prior and you'll get to approve them, or you will approve them in person during the deliberations. All right?

Ms. Ehlers: Agreed.

Chairman Easton: And we're on the same page, right? Okay, great.

Let's go over the plan for the agenda on December 1st, and then we'll go ahead and go home before eight o'clock. Outstanding.

Okay, so the first ones are obvious: The recorded motion review of the Comp Plan amendments. Hopefully you all read your packet and saw that there's been a glitch in our bylaws, and there's two issues that are going to come up about the bylaws. One is we approved a version that wasn't the version that had been edited, so we're going to have to go through that process one more time.

And now another issue has come up and this touches on Annie's not being here tonight. There's been a request from Annie – and I know in the past others have wanted to have this discussion – about remote attendance. Annie got stuck on the wrong side of the – has issues with getting across the pass in both ways. I'm going to ask – and I've asked to be on the – to put on the agenda – that we discuss whether we want to add to our bylaws some sort of option for people to attend remotely, either – to any type of meeting that we have. And we may even consider those type of meeting by type of meeting or we may need to have – or we may decide to have one general. So the option would be to be able to teleconference in or eventually – if we have the capability – to videoconference in.

I want to make sure that whatever we leave – whatever we decide and put into the bylaws – since they're still open – and it's easy for everyone to understand. Annie has asked me to make a decision about it just for this meeting, and I didn't feel comfortable making that – as the Chair – and she understood why I didn't, so I decided to turn down her offer to be here by phone, although it was real important for her to be here.

I think it brings up an important issue that we need to deal with, agreed? We should at least have a conversation? So that will be on our agenda.

Quarterly mileage; and then, obviously, setting our holiday calendar, so make sure you bring your calendars with you – and obviously have them in all of our meetings. Are there any questions?

Ms. Ehlers: Yes. It would be nice if we heard from the Planning Department in December what was happening to the Planning Department.

Mr. Hughes: It'll probably be in tomorrow's paper.

Chairman Easton: It'll be in the paper. There's one more thing on tonight's agenda. Thank you, Mary, for bringing that to my attention. Under "General Issues," there're some things there that you need to talk to us about, staff?

Ms. Ruacho: You're going over one of them right now.

Chairman Easton: Okay.

Ms. Ruacho: And then the next thing – if you're done – I would just like to clarify what we had proposed on your agenda for December 1st wasn't a holiday *schedule*; that was a holiday *social*.

Chairman Easton: Yeah. Oh, I meant the holiday social.

Ms. Ruacho: Okay. All right. And it was that night.

Chairman Easton: We're adjusting the policy too a little bit about how we're doing the agendas, because I'd like to get those out to the –

Ms. Ruacho: Right.

Chairman Easton: – the members sooner than we have been. So I'm going to be looking at them probably – you know, the final agenda – the week before. Or if we can do some of this before the meeting prior, that would be good. But I at least want them out about the same time you get your packet so we're all – because – and posted, because Annie was trying to get to it and it wasn't posted.

Are there any questions or anything else that needs to come before the Commission?

Ms. Ruacho: We have one more item then, if you're done with that agenda.

Chairman Easton: I am. It's all you.

Ms. Ruacho: Okay. So the next item is that a Notice of Adoption was issued for the Phase II Miscellaneous Code Amendments. There's been requests from the Planning Commission to have information passed to you when the Board acts on recommendations that were sent forward, so I just wanted to bring to your attention and you all have in your packets for tonight the Notice of Adoption of an ordinance. That was the County – the Board of County Commissioners' final action on the codes thing, or the last before you. So if you'd like to see their action, you can just put that number in online and look at the ordinance in its totality.

Chairman Easton: All right. No business – no more business. I call this meeting (gavel) closed.