Skagit County Planning Commission
Deliberations, continued: Annual Code Amendments
April 19, 2011

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

Staff: **Gary Christensen, Planning Director**
Carly Ruacho, Senior Planner
Ryan Walters, Civil Deputy Prosecuting Attorney
Jill Dvorkin, Civil Deputy Prosecuting Attorney

Chairman Jason Easton: Good evening and welcome to the Skagit County Planning Commission meeting. I call this meeting to order (gavel). Tonight's agenda is before you. We'll be deliberating – continuing our deliberations on the annual code amendments. Just so you know, after discussion with legal staff we decided – and with the Planning Department – that this is just a continuation of what we deliberated on, so we have, you know, an open record. So any additional findings you want to add, or anything like that – if there's something from the meeting in the – from these deliberations we did in the past that you want to talk about, I will make sure we make time for that after we've gone through the staff memo.

There will also be some general business at the end. And my goal here is to just take just enough time to do what we need to do, but not too much. So that's my plan.

The following is our opening statement. The following are paraphrased excerpts from Article IX of the Planning Commission bylaws:

- Each Planning Commission member has a responsibility to uphold and work within the law and to respect the responsibilities of others to do the same.
- Planning Commission members must refrain from any conditions which create suspicion or misinterpretation, appearance of

partiality, impropriety, conflicts of interest or pre-judgment over any proceedings.

- Planning Commission members shall recuse themselves for acting on any proposal with which they have a personal business relationship relating directly or indirectly to that proposal.

The full context of Article IX, Section 1, is attached to the document you have in front of you on the reverse side. Planning Commission members, at this time please indicate by a show of hands if you have reviewed this section in its entirety.

Seeing that you all have, we will call the meeting to order. Is there anyone who has reason to recuse themselves or needs to make any disclosures? Let me just remind the Commission that if we're changing anything in code that directly affects a project that you have or a situation that you're involved in, it's best that we err on the side of disclosure.

Carol Ehlers: Well, we did last time.

Chairman Easton: And we have in the past and we will continue. All right.

Ms. Ehlers: I said I was on that water board that appreciated the law being changed.

Chairman Easton: Right. Any other additional – Annie?

Annie Lohman: My husband is a manager of a branch of Edison Water.

Chairman Easton: Okay. I don't think that raises any concerns. Okay, Mary?

Mary McGoffin: I am involved on a plat that probably will be one of the many who will be looking for an extension, but it's not in particular that that plat we're discussing.

Chairman Easton: Okay. So does anyone have any concerns about Mary's sitting on the Commission for this?

(silence)

Chairman Easton: All right. Seeing none – no concerns from legal staff? All right, we'll move forward then.

Dave Hughes: I've got a –

Chairman Easton: Oh – Dave?

Mr. Hughes: I'd like for legal staff to comment. You know, there's a few issues with Ag-NRL and even though it's just – there's no names or, you know, as far as what's written is – you know, I mean we all know the six or seven industrial Ag in the county. Because we know someone in one or all of those, is that a concern?

Chairman Easton: And staff's indicating that it is not. All right.

Mr. Hughes: Okay.

Chairman Easton: We'll move forward then. All right, there's a document that was transmitted to you, oh, probably a week ago that's titled the "Planning Commission Remaining Code Issues." You should have all received – you've all received that? Some of you have a copy of it in front of you. My plan for this evening is to take issues from this eight-page document, as opposed to bouncing through the color-coded amendments, and then at the end, after dealing with/disposing of these issues as they come up in the staff memo then I'll open it up to anything that needs to be added that we may have over – missed. All right?

With that, we'll take the first one under the code section. This would be under Definitions, 14.04.020: Accessory use, residential. You have five different comments that were addressed either by Friends of Skagit's letter or SCARP's letter, and you have in front of you the Department's response. Unless I am told – unless someone requests otherwise, we'll take these up one at a time and try to work from consensus to consensus. If there's a need for us to take – if there's not consensus, we'll have some discussion and then a motion where we'll vote if a change is not viewed as by consensus.

So, Carly, do you want to take any time before we go forward here to explain anything on this particular section?

Carly Ruacho: It would really just be reiterating what it says. In this particular one, maybe just for the viewing public – for their benefit – what we were proposing to do here to this – this is an existing definition – we were proposing to add net metering systems, which would allow one wind tower or a solar powered generating facility as a residential use with specific criteria.

The comments, as you can see, you know, coming forward are – there are some concerns with some siting criteria and those types of things. I think we've clarified, you know, where we can in our response. And then our current position would be we have – currently we're operating on an Administrative Official Interpretation regarding these, the placement of these types of things. So they are currently permitted through let's call it a policy-type decision that's not in the code. And so if it's the Planning Commission's desire to recommend that these, you know, be tabled for further work and if the Board agrees with that, it won't

prohibit the placement of these because, like I say, they are currently permitted through this Administrative Official Interpretation.

So I just want folks, you know, to be aware of that – that this isn't allowing them for the first time. Even if we don't move forward with these codes they would still be allowed through that. It's our belief that codifying these types of things is always preferred over operating via policies. We try to make the policies available where we can. They're available on our website, we hand them out in hard copy, but it's not as user friendly and accessible as having it right in the code language where it's clear, where people are normally accustomed to looking as to what's allowed and what the restrictions are. So it would be our recommendation that we move forward with the proposal we have and if there are desires by the Planning Commission and/or the Board to include specific criteria for setbacks or siting or height or those types of things, that we make those findings and then move forward on that at a later time.

Chairman Easton: Okay. Any Commission members with questions on this one? Commissioner Hughes?

Mr. Hughes: One comment – you took away my line there, but –

Ms. Ehlers: You took away our code.

Ryan Walters: Sorry, ___.

Mr. Hughes: Since I was just going through my property tax statements and getting ready to pay –

Chairman Easton: We appreciate that.

Mr. Hughes: – I noticed, you know, one farm we bought as one farm – it's approximately 80 acres. I don't know whether it has a lot cert or not; it's not an issue – but there's seven or eight parcel numbers, so I get seven or eight windmills?

Ms. Ehlers: Mm-hmm.

Mr. Hughes: I think that's one thing that's – this thing needs maybe a little – just, that really jumped out at me.

Chairman Easton: Commissioner Ehlers.

Ms. Ehlers: I agree very much. I have most of my heartburn on this residential thing. A residential lot in this county can be as small as 12,500 square feet. There is on page 8 of 25 a reference to the zones as a permitted use and it includes Rural Intermediate. And when you get someplace in here it says, Rural

Intermediate businesses. It doesn't say whether that's a home-based business or what kind of thing.

But if you look at Rural Intermediate, from Avon west it's not 2-1/2 acres; it's smaller – half-acre, quarter-acre. As far as I can tell, from Avon east it really is the 2-1/2 acres that you think of when you're writing code for Rural Intermediate. Looking at Avon – I've driven around there several times lately – there are a large number of parcels that look like they are associated with one kind of business or another. And if you do this, you could have a nice wind farm, completely unpermitted, uncoordinated, unplanned. Then if you add to it, then I get disagreement in the Department as to what requirements you have for installing one of these things. One of you says that there's no permit required. Someone else says that there's a building permit required. It has to do with the setbacks. Again I'll use the Avon small lots as my illustration for my concern. It isn't limited there, but it's the best, clearest illustration.

In the Rural Intermediate areas, there is a tradition in this county for planting things right next to the lot line. Houses can be built three feet from the lot line. Trees are often built right on the lot line. And without any side setbacks this windmill can be places right on the lot line, which I think is entirely unfair to anyone next door. It's one thing to have a tree half over your property. It's another thing to have a bunch of blades whirling over the property.

Chairman Easton: Let me see if I can step in and – let me see if I can step in and help here.

Ms. Ehlers: So what I'm interested in is a set of criteria to approve, to permit, whether it's – I don't want it special use. I think that's too much. But a permit process with real criteria that deal with the difference between the concerns that Dave Hughes brought up and I'm bringing up before we willy-nilly permit it everywhere.

Chairman Easton: Commissioners, let me see if I have some consensus on this. Given the fact that through what Carly just said about the Administrative ability to have – that we would not be precluding anyone from having one of these if we choose not to act on this – this has risen to the area of concern, not just the comments here but my own personal reading of this. I'm a little uncomfortable moving forward without a public hearing and some more meat on the bones here about this particular issue. Because I want to set a positive precedent for renewable energy in the county and I want to make sure that we give it its appropriate amount of time. And I'm not sure that in a batch of what I would consider for the most part code amendments in style should be minor. You know, "minor" is probably – is a really vague term, but I'm not comfortable with necessarily moving this forward. Would it be all right with you all if we asked staff to reconsider and have this pulled from the batch? Are you comfortable with that? For those grounds?

(sounds of assent)

Chairman Easton: I don't think it precludes anyone from moving forward on any projects, which I would be concerned about.

Ms. Ehlers: Well, we did approve the solar, which is the one – I went to the Home Show. There's a man from Arlington who sells both wind and solar. He says the interest in solar is ten or better to one for the wind, and the wind often backs off because there isn't enough.

Chairman Easton: There's a significant – obviously there's a significantly different impact –

Ms. Ehlers: Yes.

Chairman Easton: – to the community, to their neighbors when you deal with wind than when you deal with solar in general. So, I mean, I feel comfortable with what we moved forward with on solar, but… Is there any concern from the Director if we take that approach?

Gary Christensen: I certainly understand your concerns and issues, and if in essence you're tabling this, and if you would like to be able to come back and readdress this at some later date, certainly that's an option.

Chairman Easton: I think the Commissioners need to weigh in on how much they want to direct the Department's time towards developing a policy. But I'm concerned by just adding this that we're only doing this halfway. And I think this needs – I think it deserves a full hearing on its own. Commissioner McGoffin?

Mary McGoffin: Well, it just says that you *are* developing criteria – the Planning Department's developing some criteria.

Ms. Ruacho: Right, so it's just a matter of, you know, do we – we're acknowledging that we're taking this in steps.

Chairman Easton: Right.

Ms. Ruacho: That's intentional. And if you're saying you don't want to take it in steps and your recommendation would be not to move forward with this – what we acknowledge to be the first step – and then we plan to and are in the process of developing more of an ordinance-type with more substantial criteria and it would address more factors, if you want to address it all together, we – I just would want to be clear. Do you want to just hold a public hearing on what's proposed? Would you like to see something more comprehensive first and take it, rather than in steps?

Chairman Easton: I think – my thought would be, and I think – disagree with me if I'm not catching the rest of the head nodding here, but we need to develop criteria and then add it to the code.

Ms. Lohman: Right.

(several other sounds of assent)

Chairman Easton: And we – I appreciate the fact that you're trying to do this incrementally, but I think it raises – it concerns me more in relationship to this issue if we don't have criteria in place first. And we're not – again, there's still – people still have the opportunity to get this accomplished. It'll be smoother once there's something in code that's clearer, and I would strongly encourage and I'd like it to be a finding of ours that we would encourage the Commissioners to allow for staff time to develop – finish the development of this criteria and bring it back before us as soon as possible. You know, I mean it's not a – from our point of view, it's definitely not – I don't get the sense it's that we're trying to stop anything. It's about how we handle this administratively, and I think it makes it – I think it's going to make it more effective. Director?

Mr. Christensen: Yeah, let me provide a process, which I think is very complementary to what I think your goal and objectives are. A bit of history, though. We have – the Department has for a year or more worked with industry who is interested in being able to provide this form of alternative energy. And, of course, with prices of fuel today and such, you know, we're wanting to become more green, we're wanting to look at alternative forms of energy. Industry has felt they're somewhat hampered from being able to meet the needs of a few who would like to explore these options.

We've had the benefit of talking to industry who have done this in other jurisdictions. We've also met with local legislators who are down in Olympia trying to draft, propose and adopt legislation which is more alternative energy friendly. I think it would be useful for all if we're able to bring in industry representatives who can talk about this issue and educate us and better inform us about what some of their challenges are, what they've done elsewhere, what we would like to try to do here to meet their needs as well as their clients' needs, and just get a better comprehensive understanding of the issue. And then I think we're better able then to talk about the code, criteria and what it is that we want to achieve. So kind of as a future study session/work session, we could certainly set up something and proceed with that, if that's to your liking.

Chairman Easton: My only concern is that this gets buried in my least favorite phrase within the Department, which is "trailing issues." And you know, as Chair, that's a big pet peeve of mine. But I don't want to see our decision to not take

action here slow down the process, but I think it needs to be more – it needs to be more vetted.

Mr. Walters: We were actively working on this until we reached the deadline for the miscellaneous code amendments and weren't ready.

Chairman Easton: Okay.

Mr. Walters: So I wouldn't say that we're – that these were just pushed off into a random trailing issue.

Mr. Hughes: It seems to me that this could piggyback on any of the public hearings we have coming up.

Mr. Christensen: Yes.

Chairman Easton: Right.

Mr. Hughes: I can't see more than a half-hour of public hearing, a half-hour of deliberations.

Chairman Easton: Yeah. Well, let's finish it.

Mr. Hughes: With a little education so that we're ready to vote on it.

Elinor Nakis: Let's do it.

Chairman Easton: Yeah. We need to move on. But I just encourage you on one part: In trying to keep costs down in relationship to the County, if we can use our technology to bring some of that testimony from other people to bear – you know, a five-minute presentation from some expert – that would help us understand it, then I think this needs to be a stand-alone issue. We're in agreement, so this will now be removed with this finding – with the finding being that we will move forward with this in the near – you know, we recommend to the Commissioners that this is moved forward in a timely manner. Is that clear?

Ms. Ehlers: And I suggest that when you talk to these industry experts that you ask them to bring the criteria with them that has been effective in other counties.

Chairman Easton: We want you guys to draw up the criteria that you think is effective in using other counties and, you know, other jurisdictions to help you, obviously. It's part of what you do in the past. Carly, did you have something?

Ms. Ruacho: Just to clarify: So do you guys want to move forward in a kind of general procedural here consensus on basically everything and then one vote at the end?

Chairman Easton: That's my goal.

Ms. Ruacho: Okay. So we'll just write up something in your recorded motion that that's the way you're going to move through these. So this isn't going to have – this is obviously going to have a different recommendation than other ones, and then just one vote that you want to forward your recommendations –

Chairman Easton: Right.

Ms. Ruacho: – whatever they were. So on this one we have several related items, so we might just want to take it –

Chairman Easton: Let's do that.

Ms. Ruacho: – right now. So your recommendation on number 1 would be to table it. Your recommendation on number 3 then would be as these relate to an agriculture accessory use.

Chairman Easton: Definitely.

Ms. Lohman: Table.

Ms. Ruacho: Table it there too, as well? It was different concerns so I don't know – Dave's concern probably still relates, but less so Carol's because hers was residentially. But if you still want to –

Chairman Easton: No, but I don't want to adopt it piecemeal. So I don't believe it's appropriate to take Ag – take it in the Ag use and not take it in the residential. So I think we keep those together.

Ms. Lohman: I think in every zone you're going to find where somebody might have building lots where the underlying zoning says one in 40. Like, for example, me. I don't have any building lots on my 40, so I would, if we went with your recommendation, have one, whereas Dave on his 80 could have seven or eight.

Chairman Easton: I think you're going – I think –

Ms. Lohman: You know, even in the Ag zone you're going to have an uneven application of this.

Chairman Easton: What other ones do you think we should __?

Ms. Ruacho: Yeah, I don't – I think there's a misunderstanding that, I mean, we're not going to, you know, talk about the substance. But if we looked at the definition of "net metering systems," which these are, it clearly lines out that it has

to be located at your premises and it's to be accessory to your premises. So Dave's concern that you could have seven – you know, you can't have seven because you're going to have one residence, if any. You don't have any residence, you don't have it. But, anyway, we'll deal with that then.

Chairman Easton: Let me back up for a second and just say this. I recognize I haven't given staff a chance to respond to either of the Commissioners' questions, but, as the Chair, and now with the consensus of the Commission, it rises to the level of needing its own separate – I think its own separate criteria that you already worked on finished before we address it.

Ms. Ruacho: Right.

Chairman Easton: So where else, other than number 1 and number 3, do you recommend that we extend tabling this issue.

Ms. Ruacho: Okay, well –

Ms. Ehlers: I have them all identified, if it would save time.

Ms. Ruacho: On number 14 –

Chairman Easton: Let's stay with Carly for now.

Ms. Ruacho: – I think what we would recommend is – this is the definition, and this is where solar and wind are linked. So on the two that we've just addressed, number 1 and number 3, we're just addressing wind. But now in the definition this is how we define what we meant by "solar," that you guys have already passed, and then wind is linked here. And so I just conferred with Jill – and Ryan, you know, can maybe weigh in here – but I think what we would recommend is leaving this definition, adopting this definition as is – leaving wind there – but then as we get to the next one where we identify it, it wouldn't be listed as a use anywhere. So it would be defined but not listed as a use anywhere.

So I think that would address your concerns and make it less complicated, if we just leave this one, which you've already addressed and seem to be agreeable to, as far as it relates to solar.

Chairman Easton: Everyone all right with that?

Ms. Ehlers: Yeah.

Chairman Easton: All right. That's fine.

Ms. Ruacho: So we leave that one. And so you might want to mark down that number 14 is addressed then.

Chairman Easton: Number 14's been addressed and is passed with consensus then.

Ms. Ruacho: And then so the next one is number 32 – number 31 and 32, yeah. Right, so as it relates to a height exemption – that metering system – wind, on number 31, it's kind of the second – there's two things on 31.

Chairman Easton: So we'll table that.

Ms. Ruacho: So that one would be recommend to be tabled. And then on number 32, again the second one, adding it to new uses to the zoning designations would be tabling that one.

Chairman Easton: Okay. I just want to add –

Ms. Ehlers: And there's a third one.

Chairman Easton: Okay.

Ms. Ruacho: Okay.

Ms. Ehlers: On page 8 of 25, going to the text that went to the hearing.

Chairman Easton: Okay, what document are you in?

Ms. Ehlers: The document we're discussing.

Ms. Ruacho: The one that's on the screen.

Chairman Easton: Oh, okay.

Ms. Ehlers: On page 8 of 25 is the one that gave me the most heartburn. Page 8 of 25 –

Chairman Easton: What line are you at?

Ms. Ehlers: Line 37, 38, 39, 40.

Ms. Ruacho: Right, and we just addressed that with number 32.

Ms. Ehlers: Did we?

Ms. Ruacho: Mm-hmm. So that's – number 32 is adding to the various zoning designations at various permitting levels, net metering system, wind.

Chairman Easton: Okay. I just want to clarify language that – you're using the word "tabling." I believe it's the will of the Commission to do a separate hearing. I think this rises to the level that it needs to be addressed with an option for the public to respond.

Ms. Ehlers: Mm-hmm.

Ms. Ruacho: Right. I mean, what –

Chairman Easton: Because in my mind if you use the word "tabled" then we're saying we're going to extend our deliberations so that we could review this again without a public hearing. And I would prefer that we – that staff understand our desire – I think everyone agrees – that this be addressed in a public hearing.

Ms. Ruacho: Right. That's not what I intended "table" meaning. "Table" it: Do further work, bring it back before you later.

Chairman Easton: Yeah. Okay. As long as –

Ms. Ruacho: Jill had one comment here.

Chairman Easton: Yes, Jill?

Jill Dvorkin: Just that I think that Carol's pointing out, that _____ -

Chairman Easton: You're going to get me in trouble with the Director, Jill.

Ms. Ehlers: Jill, I can't hear you.

Ms. Ruacho: She's just saying we need to maybe modify, okay?

Ms. Dvorkin: The definition –

Chairman Easton: You better go to a microphone before I get in trouble.

Ms. Dvorkin: This one?

Chairman Easton: Thank you, Jill.

Ms. Dvorkin: Sure. This is Jill Dvorkin. The definitions throughout the 14.16 chapter vary a little bit from zone to zone because they might be accessory to the public and institutional use, and just to say that all net metering systems, wind – regardless of how they're modified – will be tabled, or will be withdrawn.

Chairman Easton: Withdrawn. All right. All right, so then is there any disagreement with what we just – that staff just laid out for us? All right. Yeah, Ryan?

Mr. Walters: Why don't you say that you are moving to remove this provision from the document that you forward to the Commissioners? That eliminates the confusion about what does "table" mean in this context.

Ms. Ehlers: So moved.

Chairman Easton: Second?

Ms. Lohman: Second.

Chairman Easton: It's been moved that we remove the sections that relate to net metering as defined – in definition – in relationship to the definition of "wind." Is that clear? That we remove those from this deliberations, with a finding that we request that the Commissioners instruct staff to continue to develop criteria with the idea that we have a public hearing in the near future to address this issue. All right. So it's been moved and seconded. Any discussion?

(silence)

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

Ms. Lohman, Ms. Ehlers, Ms. Nakis, Mr. Hughes, Ms. McGoffin, Josh Axthelm and Matt Mahaffie: Aye.

Chairman Easton: Aye. Any opposed?

(silence)

Chairman Easton: Abstentions?

(silence)

Chairman Easton: Let the record show it passes eight-zero. All right, let's go back then to number 2. So is everybody clear on what documents we're working from right now? If I lose you, let me know.

All right, number 2: The definition of an adult group care facility. There wasn't a comment letter that addressed this that's noted here that was addressed. The definition was – this is for the benefit of the audience at home – the definition was modified for consisting with – consistency – excuse me – with state and federal law. Any Commissioners with concerns about that? Speak now.

(silence)

Chairman Easton: All right, hearing no comments, then I'll take this on assumption then that we have consensus on number 2, to go with the staff recommendation for the change?

Ms. Ehlers: We haven't much choice.

Chairman Easton: Oh, we always have choices. It's always the consequences that aren't the same. Shall we move to number 9? Carly, am I going too fast for you? Are you all right?

Ms. Ruacho: Nope, I'm good.

Chairman Easton: All right. Number 9: Institutional camps and retreats. The letter from SCARP recommended limiting overnight stays to two nights, and staff's response is that enforcing such a small number of nights that campers may stay at a site is beyond the capacity of the Department. "Amending the language as accepted would create an un-enforceable" exception. "The Department does not – what did I say?

Ms. McGoffin: Expectation.

Chairman Easton: Oh, excuse me – "… un-enforceable expectation. The Department" then "does not recommend this modification." So let's limit our comments to this definition. And concerns? Commissioner Ehlers?

Ms. Ehlers: I would like to back the Department in this case. There are at least two camps in this county, a Boy Scout camp and a camp out on Samish Island, where people come for a week or two and have done so for decades.

Chairman Easton: Right. Any other –

Ms. Ehlers: The county is an ideal place for summer camps, now and in the future to be developed. And while I do think you need to define eventually what you mean by "temporary," because it wanders in the code here and there and we're never quite sure what you think you mean by it, that we shouldn't change it here.

Chairman Easton: Anyone disagreeing with staff's recommendation?

(silence)

Chairman Easton: All right, then by consensus we approve the staff's definition and we move forward. We'll move to number 10, Interpretive/Information

centers. Again from referring to the SCARP letter, it suggests replacing two words within the definition. It's "the Department's interpretation that both the originally proposed language and the suggested language achieve the same result. The" change does "not appear to be necessary, but the Planning Commission could consider the" amendment – to amend this "if so desired."

I concur with staff. I felt like the definition was clear. Does anyone have any concerns?

(silence)

Chairman Easton: All right. Then by consensus we'll go ahead and go with the Department's recommendation.

Everybody's favorite topic at 6:30 in the evening: manure. Manure digestion – definition of a new use.

Ms. Ruacho: We're not quite to manure yet!

Chairman Easton: Oh, I'm sorry! I skipped ahead. I was so excited about getting to manure.

Ms. Ruacho: Let's just hold – yeah, let's hold back the excitement for manure!

Chairman Easton: Driving forward, here we go. Number 11, Lot size. Modifications to exclude tidelands for the purpose of calculating acreage. From the SCARP letter, staff's responding to the suggestion changing the word "may" to "shall" with regard to include ROW portions in lot size calculations. Remind me what "ROW" stands for.

Ms. Ruacho: Right-of-way.

Chairman Easton: Right-of-way. Thank you. The Department does not recommend this suggested change. Mandating that a landowner include right-of-way areas in the lot size calculation could be detrimental to them for a number of reasons. Namely, within shorelines, if the right-of-way area is counted, so also would be the impervious surface of the road. The Department supports the language as it reads, that the landowner "may" include the right-of-way area if they choose. Any –

Ms. Ehlers: I don't know why you would require it.

Chairman Easton: Yeah, I don't see the benefit of requiring it.

Ms. Ruacho: Right.

Ms. Ehlers: I would be – after the passage of Substitute Senate Bill 5451, which talks about eminent domain if a house on the shoreline burns, that is one of the touchiest issues in terms of property rights I can think of, and I think we need to be careful.

Chairman Easton: Yeah. Using "shall" here seems too strong. Did you have something to add?

Ms. Ruacho: Well, just a general comment that Jill had reminded me of. It may be confusing to you or to folks watching, but I think what you'll find when you read the code section that we're proposing and you read what it was – and it was to exclude tidelands for the purpose of calculating acreage – and then the comment regards right-of-way and including it in calculations, so there are several times throughout that you'll find that the comments are to a portion of the code that we didn't propose to amend.

Chairman Easton: Right.

Ms. Ruacho: Is as-existing and they're just kind of general comments but, you know, for the sake of trying to, you know, be responsive –

Chairman Easton: And I appreciate the Department's ability to try to match these up as best they could to some sort of issue that relates to the code as it relates to these. Commissioner Nakis?

Ms. Nakis: So I understand this – I think I understand why they're asking for this. It's because – for myself, if I'm buying property in this county I want to be able to compare apples to apples. And if this landowner here says this property is, you know, 150 by 200, and he's including the tidelands and he's including, you know, the roadway to the centerline, that's – that could be very misleading. If the – perhaps if the first person that you, you know, had a discussion with said, you know, this property is, you know, 150 by 200 feet and it doesn't include. I mean, I think that that language is important. If they're not going to – if they're not including it or if they're including it, that needs to be part of the description when they're selling it.

Chairman Easton: Okay.

Ms. Ruacho: Well, and the only way – just in response, just for clarification – the only way that you would – quote/unquote – "include" this area of a right-of-way, which is a separate issue than tidelands, but the tidelands we're proposing to exclude so that you *can't* include that in your area, and then the right-of-way issue is the exact opposite, which is *to* include it. The way our code reads is that you may include it when it comes to calculating your lot size for the purposes of subdivision. So if your lot was in the past larger and then a right-of-way came through and, you know, made your lot smaller you can calculate to the centerline

of the road or centerline of the right-of-way for the purposes of subdivision. So it wouldn't ever be reflected on your legal description, so it should be the apples to apples. Regardless of what this says, it's really a land use, you know, determination that we make. And what we're trying to clarify here is we've had in recent past some folks wanting to include their tideland acreage for the purpose of subdivision, and that's not what we want to see. We don't want some, you know, some underwater land, you know –

Ms. Ehlers: That makes sense.

Chairman Easton: That does make sense.

Ms. Ruacho: – being calculated to this little, tiny shoreline lot for the right-of-way.

Ms. Ehlers: No.

Ms. Ruacho: We do feel that you should be *able* to include the right-of-way area in your calculation for the purposes of subdivision. But there are other places in the code where including the right-of-way where they recommend a "shall." If we made it a "shall" and you *have* to include it, then we start getting into areas of shorelines where impervious surfaces – you know, people run right up against their impervious surface. And if you have to include the road, which was no control of yours, that's really going to have a negative effect on folks.

So we think it's workable now with the "may." And, you know, again, it's only for purposes of subdivision. So you should, when you're searching for property, be able to compare legals and be able to know what size it is and what you're being taxed on comparatively.

Chairman Easton: Commissioner Axthelm?

Mr. Axthelm: I have a question there. The dike: I live on the dike road and I actually own property on both sides of the dike, which is all basically one parcel. But the dike itself is considered the ordinary high water mark, from my understanding of it. So would that mean – as a lot size, I have 4-1/2 acres but I only have 1 acre on the landward side of the dike. So how is that applied?

Ms. Ruacho: Well, I don't think we would consider land on the other side of the dike tidelands, but –

Mr. Axthelm: But the way you put it here is "ordinary high water mark."

Ms. Ruacho: Yeah, let me take a look. Let me get to that.

Chairman Easton: Under line 41 on page 2 of 25.

Mr. Axthelm: And I believe that the Shoreline Master Plan –

Ms. Lohman: But it's *waterward*.

Mr. Axthelm: – that refers to that is the ordinary high water mark.

Ms. Lohman: But it's *waterward*, it says, in front of that.

Mr. Axthelm: "Excluding land waterward" of that. So in my case I have 4.3 acres but I only have I think it's an acre-and-a-half on the landward side.

Ms. Ehlers: Yes, but you see, you're okay.

Mr. Axthelm: No, no, no.

Ms. Ruacho: No, he's talking about the land waterward of the dike.

Mr. Axthelm: Yes.

Ms. Ehlers: Well, if he's got –

Chairman Easton: Let's let staff respond.

Ms. Ruacho: Yeah, no, I think he *is* talking about the land that's between the dike and the river, and that is what we would consider waterward.

Ms. Ehlers: Well, wait a minute. There's a whole section of the flood plan which has rearranged the levee so that there is land which is supposed to be farmable under certain circumstances on the river side of that levee. And if you can't count that acreage as part of your parcel, then you can't count it for all sorts of things.

Ms. Ruacho: We're not saying it's not part of – I mean, obviously Josh would own it and he would be able to do things with it. We're just talking about considering it for land use purposes, mostly for subdivisional purposes and some uses that require a certain lot size. That specific land would not be able to be counted toward that, because for all intents and purposes it is separate. It is not part of your 1 acre and how you use your 1 acre. It doesn't mean you can't farm it. It doesn't mean you don't own it and can't do certain things with it. But it is separated by this feature. In your case – you know, the dike – it is a little bit different than being on a shoreline and having that be submerged.

Mr. Axthelm: Mine isn't in the situation to develop, but you might have another parcel that has the ability to develop. Now they'd have so much landscaping requirements or so much open space requirements. If you do this, it seems to me that you couldn't include that in, which means you'd be required to have even

more open space. But, yeah, your parcel's bigger. So that would be a concern to me.

Ms. Ruacho: Mm-hmm, and I think –

Mr. Axthelm: Not in my case, but in – I would assume for other people.

Ms. Ruacho: Right. I think our intention was specific to tidelands, and so if there's, you know, some wording that would make a distinction between –

Chairman Easton: Okay.

Ms. Ruacho: – saltwater and fresh water –

Chairman Easton: Let's come back to whether we want to tweak the wording but we'll come back.

Mr. Axthelm: It may be an issue, though, onsite on people with tidelands, as well – the same situation.

Chairman Easton: Dikes in relationship to tidelands?

Mr. Axthelm: No, no, no, no. As far as somebody owning pieces of property that neighbors tidelands. The same situation that I have, but…

Chairman Easton: Well, it seems to me that we've just – we're clarifying the fact no one's been able to use their tidelands before for this calculation. We're just putting a clarification. Is that right? Legal staff? We're clarifying that you can't use tidelands. My concern is the lack of the word "tidelands" in our clarification, which I'll come back to in a second. Commissioner Mahaffie?

Mr. Mahaffie: First of my concern was the issue of tidelands versus __.

Chairman Easton: The fact that tidelands isn't mentioned?

Mr. Mahaffie: But ordinary high water marks change is kind of another issue I have, and sometimes drastically and sometimes very quickly. So I can see a project being done – you know, an addition or a remodel and, you know, all of a sudden your areas aren't there.

Chairman Easton: Yeah, I don't know how we'd address that.

Ms. Ehlers: Well, that's one of the reasons you have to be able to include the road right-of-way.

Chairman Easton: If you want to.

Ms. Ehlers: If you want to.

Chairman Easton: All right, let's consider – let's consider some ideas on what we could do to bring some clarification. I'm open to either one of the attorneys or any member of the Commission or staff giving a suggestion right now. But I'm uncomfortable with the fact that although we *believe* we're addressing issues in relationship to the tidelands, the phrase doesn't exist in what we're describing.

Ms. Ehlers: Well, then put the word "tide" in front of "land" – excluding "tidelands waterward."

Chairman Easton: Are you comfortable with that? Legal staff?

Ms. Ruacho: Can you say that one more time?

Chairman Easton: If we add the word "tide" before – in between the words "excluding" and "land"?

Mr. Hughes: Well, what if –

Chairman Easton: Ryan?

Mr. Hughes: River – tide affects the river to Mount Vernon.

Mr. Walters: Why do you feel the need to have tideland? Just so it's a little clearer what we're talking about?

Chairman Easton: Yeah, it seems to lack clarity, that this could –

Mr. Walters: How about –

Chairman Easton: Okay, one meeting, please. Ryan?

Mr. Walters: We're thinking off the top of our heads here. What if it said, "…excluding land waterward of the ordinary high water mark, e.g., tidelands"?

Ms. Ruacho: So because Marianne is saying that there's these situations that occur on lakes where there's land that is submerged, so maybe it should be something about land that's submerged. I mean, that's what we mean. "Submerged land that's waterward of the ordinary high water mark"?

Chairman Easton: Does "submerged land" – say that again. "…submerged land…"

Ms. Ruacho: "…submerged…" "excluding submerged land waterward of the ordinary high water mark."

Ms. Lohman: Yeah.

Chairman Easton: Yeah, I'm comfortable with that. That brings more clarity to it to me.

Ms. Ehlers: Well, I have a question. I went up on the Skagit once when it was – it was just at the crest but not over, and on the South Skagit Highway I saw a parcel for sale that was clearly under water.

Chairman Easton: Yeah, we don't need anymore examples, Carol. We're trying to make – we're trying to make this clarification at this point.

Ms. Ehlers: But what I think you just did would –

Chairman Easton: You don't think that's clarifying? You think it makes it worse?

Ms. Ehlers: Uh-huh.

Chairman Easton: All right. Then make a suggestion – do you have a suggestion for a way to clarify?

Ms. Ehlers: Well, that's why I said "tide."

Mr. Hughes: What's ordinary high water mark on lakes, river and/or tidal bays, et cetera? I'm sure there's a – yeah. I mean –

Chairman Easton: I'm a little concerned we're getting kind of deep in the woods here on this one.

Mr. Mahaffie: Maybe I can clarify a little bit. Ordinary high water mark has different definitions.

Mr. Hughes: Right.

Mr. Mahaffie: It has different definitions based on whether it's residential land or commercial land, from my understanding of it.

Ms. Ehlers: Not in the tidelands.

Mr. Walters: Well, there's a definition in the code.

Mr. Mahaffie: Not in the tidelands.

Chairman Easton: Commissioners, I want to remind you, please: We're in one meeting, one conversation and everyone needs to be recognized by the Chair, including staff, so we kind of stay on the same page here. Okay? Ryan, can you re-say what you said because I didn't hear?

Mr. Walters: There's a definition in code.

Ms. McGoffin: Here it is.

Chairman Easton: All right. So the ordinary high water mark definition is before you on the screen. I'll give you a second to review it.

Mr. Walters: Maybe that highlighting makes it harder to read?

Ms. Ehlers: Ah, much better now.

Mr. Walters: There's also a definition of "tideland."

Chairman Easton: Does the Commission want to see the definition of "tideland"?

Ms. Lohman: Mm-hmm.

Ms. Ehlers: That's the usual one.

Chairman Easton: All right, Commissioners. What's your pleasure here? I need a motion.

Mr. Mahaffie: May I?

Chairman Easton: If you want to make a suggestion or make a change here, yeah. We're past the discussion point.

Mr. Mahaffie: One additional thing on that definition: I had a project – I work as a contractor, and I had one project that addressed this and had a different definition that said the ordinary high water mark on the river is the waterward side of the dike, the top of the dike. It didn't refer to it here, but that refers to it in the Shoreline Master Plan. And that was a major factor in our project.

Ms. Ruacho: Okay, so maybe your concern – according to our definition that we use in the code – maybe your concern is not – would not be affected by this. So, I mean, maybe it's okay as written then, now that Ryan has shown us the ordinary high water mark definition, and it would push that line out from the dike and actually to where the water is, the water's edge as it's defined there, it seems to me. So maybe we've come full circle back to, in our specific case, using our definition, which is what would apply, as Ryan showed. It wouldn't exclude that land that Josh was talking about and it would meet what Marianne was raising. If

we change it just to "tidelands" then we would have this lake issue. So I think maybe we're back to being okay.

Chairman Easton: Yeah, I suggest we're that we are back to being okay from – after reading the definitions, that's my sense. And I would suggest, Josh, and ask that the Director direct Betsy Stevenson to note this section of our meeting so that it's addressed during the Shorelines Management update. I think it might be a better place for us to work on this issue.

Mr. Walters: Well, there is a definition –

Chairman Easton: Just a second. I'll come back to you.

Mr. Walters: – of ordinary high water in the Shoreline Master Plan. It's the same definition, fortunately, as is here, and when we redo the Shoreline Master Plan it'll all be integrated so you'll use the one set of definitions. So there shouldn't be a conflict in our – between our definitions in Title 14 –

Chairman Easton: When the update's finished, there won't be conflict.

Mr. Walters: Already. Already there is not a conflict. The definition appears to be the same.

Chairman Easton: Are you – okay.

Mr. Walters: I'm looking at one here and –

Ms. Ruacho: But we can notice _____.

Mr. Mahaffie: If that's the one that was in place two years ago, there was a conflict somewhat with the state.

Ms. Ehlers: Mm-hmm.

Mr. Walters: It should be the same one since 1973.

Chairman Easton: Okay, I don't want to get – again, I'm trying to manage us through this, but…

Ms. Ruacho: Let's talk some manure.

Chairman Easton: Okay.

(laughter)

Ms. Ehlers: I'd be glad to get _____.

Chairman Easton: It's not fair. It's not fair for you to get the funny line there!

Ms. Ruacho: Sorry!

Chairman Easton: Okay, so the bottom line here is do we have consensus? We're moving. We're moving forward. Do we have consensus on this issue to leave this as it's worded? I need to hear – I can't deal with head shaking.

Mr. Hughes: I'm unclear.

Ms. Ehlers: I'm okay.

Chairman Easton: We don't have consensus because Commissioner Hughes isn't – yeah, Commissioner?

Ms. Lohman: It is a two-part question as it's addressed here, because the concern talks about the right-of-way. Maybe what you ought to ask is do we have consensus on the right-of-way part and then the next part.

Chairman Easton: All right. Yeah, that's a good point. Thank you. All right, so do we have – let's do that. Let's just dispense with the right-of-way issue. As suggested by SCARP that they change the word from "may" to "shall" in relationship to the right-of-way portions in lot calculations, do we agree to go with staff's – are we in consensus to go with staff's recommendation?

Several voices: Yes.

Chairman Easton: All right. As to the definition as it's been re – as to the changes in the definition on line 40 , page 2, lines 40 through 42 on page 2 of 25, which is in front of you on the screen, we don't have consensus so I'm going to ask for a motion to approve – a motion so that we can move forward. Would someone please consider making a motion to approve the wording as the staff has recommended? And then we'll have discussion.

Ms. Nakis: I will make a motion that we approve the wording as the staff has recommended for lot size.

Chairman Easton: In relationship to line 40 through 42, okay? It's been moved. Is there a second?

Ms. Ehlers: I'll second.

Chairman Easton: Okay, it's been moved and seconded that we approve the staff's recommendation for the changes in the definition of "lot size," lines 40

through 42 on page 2. Discussion? This is where you voice your concerns if you're still confused.

Ms. Ehlers: I make my second because it's clear the definition is the same in the Shoreline Management Act and in this, in Title 14. I acknowledge the fact that Josh indicates that people in the County did not interpret that – in his case, in his problem – did not interpret it according to this. And I raise the issue with the County that under the new levee arrangements you may need to look at this definition because there is land outside the levee that is expected to be used as part of a lot size.

Chairman Easton: Okay, let's – in this part of our discussion, let's keep ourselves to whether you're speaking for or against the motion. Anybody want to speak for or against the motion? Josh?

Mr. Axthelm: I still feel against and I – just because of this project. It was a major factor that was affecting it. And if this applied to my property or somebody else that might have property in that situation, I wouldn't agree to that. I believe it's a state definition that was in conflict.

Chairman Easton: Commissioner Mahaffie?

Mr. Mahaffie: I'm going to have to agree with Josh on this, and it's not just the definition in here. It's how Ecology is interpreting the definition of "ordinary high water mark," especially in relation to levees.

Chairman Easton: So would those who just – who are in either confusion or dissent, are you more comfortable with keeping the current definition that's in law now? Or do you want to – I mean, I need – you recognize if you vote against this we could entertain a motion to modify the language, but I want you to consider that and I don't want you to comment on it yet. Consider that. Any other Commissioners want to comment?

Ms. Ehlers: You really don't just want to limit it to tidelands?

Chairman Easton: I'm concerned about how that affects – from what I'm hearing from legal staff, I'm concerned about how that affects lakes and rivers. All right, I'm going to call the question – Commissioner Nakis?

Ms. Nakis: Do you want to align it with the state and Ecology definitions? I mean, is that something that…

Chairman Easton: Well, I'm…

Ms. Nakis: Align the definition of "lot size" with the state and Ecology's definition of "tidelands"? If that's where the conflict is?

Ms. Mahaffie: Can I?

Chairman Easton: Yes.

Mr. Mahaffie: It's not a definition issue. It's an interpretation issue.

Chairman Easton: All right. For the – all right, let's – Commissioner, did you have something?

Ms. Lohman: No, I was going to say that's getting a little far afield from –

Chairman Easton: I agree.

Ms. Lohman: – lot size in this context.

Chairman Easton: We're not going to – just a general rule of thumb; my short history plus the history of my predecessors – we're not going to be able to deliberate on how staff interprets. We can deliberate on how – what they get to interpret, but we don't get to deliberate on how they interpret.

Ms. Ehlers: But we *can* request that six people in the Department interpret something the same way.

Chairman Easton: Well, that would be a – I'll go as far as saying that's my *standing* request for all of us! How's that?

All right, to the question then. All those in favor of the motion to accept staff's recommendations, signify by saying "aye."

Ms. Ehlers and Ms. Nakis: Aye.

Chairman Easton: All those opposed?

Mr. Axthelm, Chairman Easton, Mr. Mahaffie, Ms. Lohman, Mr. Hughes and Ms. McGoffin: Aye.

Ms. Ehlers: Better have hands.

Chairman Easton: All right, let's go with hands then. Hands for? Two. And against? All right, the motion fails. If we don't take any other action, what's currently in the code would stay in code? We would put this issue to bed. Is there someone who wants to make an alternative motion to change the language? The Chair will briefly – is briefly open to this. Commissioner Mahaffie?

Mr. Mahaffie: Well, I agree with the principle but I don't know what the wording should be. I know what the goal is here and I agree with it, with it as far as tidelands and lakes, but I just don't know how to make the wording.

Ms. Ruacho: I think we could – if I might, Chairman Easton?

Chairman Easton: Yes.

Ms. Ruacho: Just for the sake of moving forward and for what the original intent was, although maybe there are some additional issues raised if we do limit it specifically to tidelands, but I think what I'm hearing is that we're all in agreement as it relates to saltwater tidelands, and then maybe it needs some additional thinking, you know, for these other areas – lakes and rivers. So maybe something similar to what Ryan was proposing earlier: Rather than just saying "e.g.," just say "excluding the land waterward of the ordinary high water mark." And you could parentheses "tidelands" behind that, indicating that that's what – the only thing you mean is tidelands.

Chairman Easton: Here's where I am on that. Is there anything about this that's pressing enough that we can't move this to the next time we come through?

Ms. Ruacho: I would say yeah, it is pressing.

Chairman Easton: Okay.

Ms. Ruacho: We have issues where folks want to include these tidelands in their lot size calculation, so it would be our preference that we take some sort of action to address the issue.

Chairman Easton: Well, all right. Commissioner, go ahead.

Ms. McGoffin: What I don't understand is you can't do anything with the tidelands but let them be tidelands anyway. And by including them in the lot size, you know – I mean they *are* paying taxes on that land. I feel like they're not going to get to build on it, they're not going to put anything – so, to me, I would just let them include the tidelands as part of their lot size. They're so restricted from what they can do on it.

Mr. Christensen: If I may respond, let's assume that you're in a Rural Intermediate zone along the shoreline, 2-1/2-acre minimum lot size. So you've got 2-1/2 acres of upland acreage and you've got 5 acres of tideland. So you've got 7-1/2 acres total. If they're including the 5 acres of tideland, that's giving them two more development rights. They then are taking three development rights and doing a cluster development on the upland acres.

Ms. McGoffin: Then maybe it needs to say "buildable" or some other restriction on the tideland that you can't count it. I mean if you had a wetland on your property, you can't count that as, you know, a buildable lot.

Mr. Christensen: They do get to include that as acreage for purposes of calculating development rights.

Ms. Ruacho: That's exactly what we're addressing, is the calculation of those lands, not – we're not speaking of building on them or anything to that effect. It's the ability to calculate that acreage for subdivisional purposes or for uses. And I think what Jill is recommending, and maybe what Ryan would speak to, is we could just even replace the underlined language excluding "the land waterward of the ordinary high water mark" with the word "tidelands," as we have a definition for it. If that clarifies it.

Ms. Ehlers: Maybe we should say "except for subdivisional purposes."

Chairman Easton: Commissioner Axthelm?

Ms. McGoffin: Maybe that should be the exception.

Mr. Axthelm: On any given piece of property, even in town – or not in town; out in the country – are wetlands included in that calculation?

Ms. Ruacho: Yes, they are.

Mr. Axthelm: Then it seems to me that tidelands –

Chairman Easton: So legal staff is recommending then – do I understand that legal staff is recommending that they – that – can you go back to the – I don't know – the split screen, or just show me – show me the code again.

Mr. Walters: (inaudible)

Chairman Easton: So you want to take the word – everything that's underlined, from "excluding" through "mark," and replace it with "tidelands"?

Mr. Walters: I'm not recommending that. That would be different than what we have written here.

Chairman Easton: What are you – what are we recommending?

Ms. Dvorkin: Tidelands.

Chairman Easton: That's what the –

Mr. Walters: I'm not sure if you –

Ms. Dvorkin: Tidelands.

Mr. Walters: – if you have a problem with Ecology's interpretation of the word or the term "ordinary high water mark"?

Chairman Easton: That's not what this Board – that's not what this Commission's – I'm not letting the – I don't believe that's the direction the Commission's going in and I'm not leading the Commission in that direction.

Ms. Ehlers: Besides, Ecology is – has an argument with DNR.

Chairman Easton: Please wait till you're called upon. Ryan, I need a suggestion from you and Jill about how to address this language, or I'm about to say, Sorry, Carly. It doesn't rise to being important enough for this Commission to have consensus to move forward on a change in the code. We've lived with it like it is for as long as we have. So I need a suggestion to consider or I need to move on. Jill?

Ms. Dvorkin: I would say to preserve the intent of this proposed code amendment, which is before you, by just writing "area within property line excluding tidelands" – you know, and removing "land waterward of the ordinary high water mark."

Chairman Easton: That would deal with the river and that would deal with the lakes.

Ms. Dvorkin: The situation came up only in terms of tidelands. There may be other scenarios where it does come up, but we're not addressing that tonight.

Chairman Easton: All right. So in the form of a – is there anyone who's willing to make that in the form of a motion?

Ms. Ehlers: Excluding tidelands, period?

Ms. Dvorkin: And I guess it would be "some __." There is some – there is an additional sentence, but it's not –

Chairman Easton: Doesn't apply.

Ms. Dvorkin: Pertain, yeah.

Chairman Easton: Yes. Okay.

Ms. Ehlers: We've already agreed on the second sentence.

Chairman Easton: Do you want to make that in the form of a motion?

Ms. Ehlers: So you want to say, "excluding tidelands" period?

Ms. Ruacho: Yes.

Ms. Ehlers: I so move.

Chairman Easton: It's been moved. Is there a second?

Mr. Axthelm: Second.

Chairman Easton: It's been moved and seconded to change the definition of "lot size" in line 40 to read as the following: "The total horizontal square footage area within property lines, excluding the tidelands" period.

Ms. Ruacho: "excluding tidelands."

Ms. Ehlers: Take the word "the" out.

Chairman Easton: No, "excluding tidelands" period. Any discussion?

(silence)

Chairman Easton: Seeing none, I'll call for the question. All those in favor, signify by saying "aye." Aye.

Ms. Ehlers, Mr. Axthelm, Ms. Nakis, Ms. McGoffin, Mr. Hughes, Mr. Mahaffie and Ms. Lohman: Aye.

Chairman Easton: All those opposed, same sign.

(silence)

Chairman Easton: Any abstentions?

(silence)

Chairman Easton: Motion carries, eight-zero. Thank you.

Ms. Dvorkin: Thanks.

Chairman Easton: Thank you for your patience. Now we can move onto manure digester.

Ms. Ruacho: *Now* we get to talk about it.

Chairman Easton: Manure digester's definition of a new use. We have comment letters from both the Friends of Skagit and SCARP that brought up two concerns, and we're paraphrasing their concerns. One of them is – on the Friends of Skagit it was "suggest that manure digesters only be allowed in" the Ag-NRL> Meaning they'd *have* to be an accessory to a farm?

Ms. Ruacho: Correct.

Chairman Easton: And SCARP suggests changing the title use to "anaerobic digester." Also suggests definition changes to include references to the RCWs. And staff's response: "The proposal allows for manure digesters to be permitted outright when accessory to a farm. Other than in Bayview Ridge Heavy Industrial" an administrative or HE process – Hearing Examiner process – "will be required. The Department does not support restricting manure digesters to" the "Ag-NRL zone or as strictly" an accessory use. "The one permitted manure digester in the County is not accessory to" a "farm, but relies on several operations" – several *farming* operations – "for input."

The Chair would entertain a motion to approve the staff's recommendations.

Ms. Nakis: I'd like to ask a question.

Chairman Easton: Okay. Question, Commissioner Nakis?

Ms. Nakis: To me, I mean I don't know if it's – I'll make the comment, I guess. I would suggest that these manure digesters be put in the Ag area just because they should be close to the source.

Ms. Ruacho: They *are* permitted in Ag. They're outright permitted when they're accessory and then they're permitted at a higher permit level, but they are permitted elsewhere. So they're *allowed* elsewhere. If somebody –

Chairman Easton: But at a higher permit level.

Ms. Ruacho: Right. If someone wanted to put one of these in Bayview Ridge Heavy Industrial, then we would allow them the opportunity to ask for that land use permit and move through the process. We would want to leave that to those, you know, folks who are coming in for a permit to decide whether that location suits their needs for proximity to their inputs or not.

Chairman Easton: But as the staff report points out – correct me if I'm wrong – that would require them to go through a Hearing Examiner process.

Ms. Ruacho: Not at Bayview Ridge. The two exceptions are if it's –

Chairman Easton: Oh, right.

Ms. Ruacho: – accessory to a farm on Ag, or if it's in the Bayview Ridge Heavy Industrial. Those are the two times where we're proposing to permit them outright.

Chairman Easton: Okay.

Ms. Ruacho: Anywhere else we're permitting to put them – there's a few other zones that are listed there –

Chairman Easton: Now it's only a suggestion from – I mean, it's a staff suggestion. We don't have to approve it this way. If you choose, you can change that around. So, you know, I'm trying to move discussion forward by asking for a motion but I'm not proposing that we necessarily do exactly what the staff has recommended. Annie? I'm sorry – did you have a question? I was *anticipating* that you were about to ask a question.

Ms. Lohman: Well, I did have a thought.

Chairman Easton: Okay.

Ms. Lohman: I didn't think I transmitted it quite like that, but we are being asked to kind of try to look as far forward as we can.

Chairman Easton: Right.

Ms. Lohman: And the title alone limits – suggests a limitation that this is a manure-only digester when, in fact, it is – there's other materials that get added into it to increase its efficiency. I could see the potential of having a different type of anaerobic digester that maybe isn't manure predominantly. Maybe it's restaurant waste or maybe it's, you know, other kinds of organic matter.

Chairman Easton: Sure.

Ms. Lohman: And so I don't – I'm questioning just saying it can only be in the Ag-NRL or in Bayview Ridge outright, and then I guess I'm disagreeing with the letter suggestion that we limit it only to the Ag-NRL.

Chairman Easton: Okay.

Ms. Ehlers: Well, the –

Chairman Easton: Comm – first here, then we'll go there. Commissioner?

Ms. McGoffin: I think it's okay to leave "manure digester," though, because that is a specific thing. And if something else comes up in the future that requires a new definition it can be a *new* definition. But I would leave it like it is and not try to cover every potential way of composting.

Ms. Lohman: I guess I don't want to get us into debating amongst Commissioners, but you don't want to limit the use and have somebody come and complain and say, This is only supposed to be a manure digester and you're putting these materials.

Chairman Easton: So are you suggesting then that you'd like to change it to "anaerobic" digester then?

Ms. Lohman: I want the definition to be inclusive so that we don't create a problem for the operator by calling it something when, in fact, it's probably not really quite right.

Chairman Easton: Technically.

Ms. Ruacho: Right, and I think the definition allows it to be not manure. So it may be by calling it a "manure" digester we may be putting out an expectation to folks that it will be used for that. But per the definition, just because we call it that the definition allows it to be primarily plant and animal waste. It doesn't have to be manure. It can be plant-based. So, as you see – you haven't gotten to it, Jason; we're kind of mixing number 1 and number 2 here – but our recommendation, if the Planning Commission, you know, wants to entertain it, would be to change the name.

Chairman Easton: Okay.

Ms. Ruacho: Because we think that's –

Chairman Easton: Let's deal with – let's come back to that – let's – I want to get to Commissioner Ehlers, but if your comment is on point 1, is it concerning the manure digesters being allowed in Ag-NRL? Because I want – let's limit our conversation to just that and then we'll come back to what Annie brought up.

Ms. Ehlers: It is.

Chairman Easton: Okay.

Ms. Ehlers: We have – when Skagitonians had the farm tour that went to the manure digester I went, and they made it clear that that one is working – the first one – is working so well because it's dairy manure and they have pipes that go from the two farms that lead to it. There are dairy farms on land other than Ag-NRL, and I would not wish to say that a dairy farm that's on resource land, of

which there's a large amount, and there's some on Rural Reserve. We have some on Fidalgo. I would not want them to be kept from being able to do something or having to bring the manure a long distance, which would eliminate its efficiency.

Chairman Easton: So you disagree with the Friends of Skagit's letter?

Ms. Ehlers: In that case.

Chairman Easton: Okay.

Ms. Ehlers: I do like the anaerobic, but you asked me to speak to the –

Chairman Easton: Yeah, we're – we'll come back to anaerobic in just a second. Can I get a motion on – just on point 1? That we dispense with that. Let's deal with that.

Mr. Axthelm: It seems to be – oh, I have a motion – it seems to me that the definition itself says "anaerobic digestion," which would include the other options that we're talking about. So I would –

Chairman Easton: Okay, I want – you're jumping ahead of me again. I just want to deal with –

Mr. Axthelm: Oh, sorry.

Chairman Easton: I'm going to get there. I'm going to get to the manure digester definition in just a second. That's under point 2. What I – I want to know if I – is there a consensus to go with staff's recommendation that this – that the proposed – that is written there under number 1 –

Ms. Lohman: (inaudible)

Chairman Easton: All right. So do we have consensus, then, that we're okay with what is described in point – in the staff's response to point 1?

Several voices: Yes.

Chairman Easton: Okay. So we've dispensed with that. Now to the anaerobic versus manure digester. I didn't get to the point of reading staff's response on that, but if this staff's response appears to be in agreement with a number of the Commissioners who have already spoke, which is that if the Planning Commission concurs with SCARP the title should be changed, then the Department would support the modification. I don't think there's any reason for me to read the rest of that.

Ms. Ruacho: Then we move on – this one, there's two. There's number 1 and number 2 and then within 2 there's kind of two parts, based on the comments. There was the change-the-title comment.

Chairman Easton: Right. I'm going to deal with that first.

Ms. Ruacho: Okay, and then there's –

Chairman Easton: And then I'll deal with the RCWs.

Ms. Ruacho: Perfect.

Chairman Easton: Is there a consensus to change the title to "Anaerobic digester"?

(several people start to speak)

Chairman Easton: Well, just a second. I've got a couple questions here. Commissioner?

Ms. Lohman: Carly, what is the official – what is the proper verbiage for that?

Chairman Easton: Isn't that what's on your screen?

Ms. Lohman: Is it "Anaerobic digester"? Is that the proper name?

Ms. Ruacho: Like in the RCW?

Ms. Lohman: Yeah.

Ms. Ruacho: Or –

Ms. Lohman: Because we're using a common name.

Ms. Ruacho: Right, and that's how we wrote it. Everybody refers to these things as –

Ms. Lohman: Right.

Ms. Ruacho: – manure digesters so that's how we put it in, but then after the comment and then after thinking about it, you know, when you do look at the definition, even the definition itself, even though we've termed it "manure digester," allows it to be broader.

Chairman Easton: Commissioner Mahaffie?

Mr. Mahaffie: I really like "manure digester." The problem with "anaerobic digester" is you can put anything in them. They use them in waste water treatment plants –

Ms Lohman: Mm-hmm.

Mr. Mahaffie: – human bodily waste. You know, literally you can put garbage in them. It's a very broad _____.

Chairman Easton: But in our case, if we did use the word – if we use the word "anaerobic digester," it would read, "A facility that generates power from the anaerobic digestion of primarily plant and animal waste." I mean, we could strengthen the language there if you're concerned about it being too broad.

Ms. Lohman: But, Jason?

Chairman Easton: Yeah?

Ms. Lohman: Sorry to interrupt you. It does say, "…from agricultural activities," so it does limit it and it would exclude some of the things that you were concerned with. Right, Matt?

Chairman Easton: Ryan Walters? Mr. Walters?

Mr. Walters: The definition here says that the item has to meet the requirements of 70.95.330. So, if you go to that, it says it's an anaerobic digester and it calls it an anaerobic digester. It says that it must process at least 50% livestock manure by volume. So, do you want to see that on the screen?

Chairman Easton: No, that's – okay, yes, we do. I'm a little concerned. I'm trying to deal with naming it before I get to the RCWs, but –

Ms. Ruacho: I think what Ryan –

Chairman Easton: Is this letter suggesting additional RCWs than the one that was already in the definition? Because you already reference an RCW.

Ms. Ruacho: They are – they want it to read differently.

Chairman Easton: Yeah, I'm not so concerned about that.

Ms. Ruacho: I'll find the page again.

Chairman Easton: Commissioner Hughes?

Mr. Hughes: One of the issues out here was that there was a – that for that thing to work the best they need – I think it's just some food waste added. And I know Ecology put up a stink for a while and I think some of the legislators, you know, got them to change that. So I just want to make sure that these things are going to be able to operate functionally.

Chairman Easton: Right. It would look – I mean, now looking at RCW 70.95.330 that's on your screen, it would appear that that's been addressed now.

Mr. Hughes: Right.

Mr. Walters: Is that big enough?

Chairman Easton: Yeah. Is there – is there any – do we have consensus or do we need to vote about the definition? I think we don't have consensus. We don't? Are you okay with changing it to anaerobic digester in our code?

Mr. Mahaffie: If it's referenced to this, yeah.

Chairman Easton: And we're going to tie the reference to what is already – we don't need to add that language, right? Ryan, can you put the code back up, please? It's already referencing that same RCW.

Ms. Lohman: Mm-hmm.

Ms. Ehlers: Mm-hmm.

Chairman Easton: All right, then we have consensus then to move forward with staff's – with the change to – to changing to "anaerobic."

Ms. Ehlers: The name of it, you mean?

Chairman Easton: Yeah, to change the definition to "anaerobic digester."

Ms. Ehlers: So that it corresponds with the RCW.

Mr. Hughes: Yeah.

Chairman Easton: Exactly. All right?

Ms. Ehlers: Mm-hmm.

Chairman Easton: Okay. Well, we have – we've dealt with the waste. Let's move on.

Ms. Ruacho: So –

Chairman Easton: Are we agreed to not work on 13, right? Was that one of the ones that we decided to remove? 13 wasn't part of the –

Mr. Axthelm: It was 14.

Ms. Ruacho: No.

Chairman Easton: Oh, it was 14. I'm sorry.

Ms. Ruacho: So we're recommending changing the name but keeping the definition the same. Is that correct?

Chairman Easton: Yes, the definition will remain the same; the name will change. Everyone agrees?

Ms. Ehlers: Mm-hmm.

Chairman Easton: So moved.

Ms. Ruacho: Okay.

Chairman Easton: Number 13, Meteorological towers. Friends of Skagit requested adding – that must be "siting," right? Yeah, adding siting criteria and performance standards to the definition or don't adopt it. And then the Department recommends that a definition be limited to defining a term. "If the Planning Commission agrees that criteria should be introduced at the same time as the definition, the Department recommends" that "this be tabled until later this year." Do you agree with the Department's recommendation to table this, or does anyone have a passion to want to approve this right now?

Ms. Ruacho: We're not recommending to table it. We're saying if you feel –

Chairman Easton: Oh, it's necessary?

Ms. Ruacho: – a strong urgency that these towers – and if you take a look at the definition, these are *temporary* towers that are designed to measure wind speed and directions and data over wind that would be helpful in siting a wind energy system. So they can't be erected for longer than twenty-four months, so it's twenty-four months or less. And they have one of these little, kind of spindly doo-hickeys at the top that measure wind speed and those types of things.

Chairman Easton: A "spindly doo-hickey"?

Ms. Ruacho: Yes! It's a very technical term!

Chairman Easton: I'm sure your college professors are very proud of you. That's all right: Speak simple terms to us.

Ms. Ruacho: So just so we're clear that these are not the, you know, wind towers that we've been talking about with blades. These are a measuring tool that are temporary in nature, per the definition.

Chairman Easton: All right. Commissioners, considering the letter from Friends, in addition to staff's – what staff just said, plus what they've written – what's your pleasure here? I mean, these *are* temporary.

Mr. Hughes: Approve it.

Ms. Ehlers: Well, at this point they're under the special use process. There's one that's ongoing right now. There was a legal notice in the paper a couple of days ago. And under the special use process, you see, there was always an implied requirement for criteria.

Mr. Axthelm: I move that we approve it as it stands in the definition.

Chairman Easton: Is there a second?

Mr. Hughes: Second.

Chairman Easton: All those in favor?

Mr. Hughes, Mr. Axthelm, Ms. McGoffin, Ms. Lohman, Ms. Nakis, Mr. Mahaffie and Chairman Easton: Aye.

Chairman Easton: Any opposed?

Ms. Ehlers: Aye.

Chairman Easton: That motion carries. Oh, any abstentions?

(silence)

Chairman Easton: Motion carries, seven-one. Number 14, we have dispensed with already. Number 18, the Unclassified – number 18 on the staff memo? It should be on page 3 of 8.

Ms. Ehlers: Oh.

Chairman Easton: Are you with me?

Ms. Ehlers: Unclassified – yes.

Chairman Easton: The Unclassified use – Modify definition for consistency. The "definition has been amended to avoid a conflict with the definition for 'essential public facilities.' As set out in the Planning Commission's Recorded Motion dated June 14, 2000, which supported the adoption of the Unified Development Code, the county needed a category of" intense land use "that needed a more intensive review process. The proposed definition clarifies that not all…public facilities need a more intensive review. It also provides" the specific use that has been classified as "permitted, special or accessory uses do not need to be permitted under the more intensive review process."

Are there any concerns with a consensus for approving the staff's recommendation there?

Ms. Ehlers: I think we should go to 14.16.600(2) and see what it reads as.

Chairman Easton: 14.16 – did you say 14.16.200?

Several voices: 600(2).

Ms. Ehlers: That's what's in the definition.

Chairman Easton: And there it is before you. Can you scroll up a little bit, please?

Mr. Walters: Scroll up? Down?

Ms. Ehlers: So we can read the whole thing.

Chairman Easton: Move it up. Yeah, there you go.

Mr. Walters: Jill just mentioned that we are also proposing to amend this section, so do you want to look at the proposed amendment to this section or do you want to look at it as it is now?

Chairman Easton: Oh, well, that adds a new wrinkle, doesn't it? So the code that you actually reference in the definition is actually something we're considering changing?

Ms. Ruacho: Yeah, it's number 80 on your list to come later tonight.

Ms. Ehlers: We ought to do those together.

Chairman Easton: Yeah, we're going to hold off on 18 and do it when we do 80. We'll do them at the same time. Let's move to 19. Thank you, Jill. Utility development – so we're on number 19. SCARP suggests that the County further

modify the definition of "minor utility development" by adding a list. And the staff's response was that SCARP's proposed changes would unnecessarily complicate the permitting process by eliminating the present latitude from determining and imposing conditions.

Ms. Ehlers: Well, one of the things which nobody had at the time this went to hearing was that AOI regarding renewable energy systems and major utility developments from July 1, 2008.

Ms. Ruacho: I provided that to you at the public hearing for your deliberations.

Chairman Easton: Let me read further – read the rest of the Department's response. "However, should the Planning Commission feel that SCARP's proposed" change merits "consideration, the Department suggests that they be tabled for another annual review. And that would allow time for a full review of SCARP's proposal. "The Department continues to recommend adopting its ;proposed amendment, which is an integral part of the changes needed to close a loophole in the application of" an "unclassified use…" I'm uncomfortable with not – with tabling this due to the concerns that staff has about the loophole.

Mr. Hughes: Well, considering what was before the public hearing just talks about major and nothing about minor. For us to change a minor is kind of off the table anyway.

Chairman Easton: Seems outside of our scope, right?

Ms. Ruacho: Right. It's one of those that we talked about earlier where the comment is commenting on something we're not proposing to change.

Chairman Easton: Right.

Ms. Ehlers: Right. I agree.

Chairman Easton: All right, so do we agree to dispense with this and go with the staff's recommendation on this and to *not* address the issues of minor development of utilities?

Ms. Lohman: Yes.

Several other voices: Yes.

Chairman Easton: All right, we have consensus.

Ms. Ehlers: That makes sense. The crucial part of a minor is the word "__."

Chairman Easton: Point number 21, Permit Procedures, 14.06.050(1)(a). Let's deal with comment number 1 first. F-O-C – I mean, Friends of Skagit suggest a new subsection and suggest that two subsections are redundant. The staff's response is "The proposed code change is not redundant. Subsection (ii) refers to" a short subdivision extension, "while subsection (xvi) refers to long subdivision extensions. Proposed code changes" in (ii) also include "preliminary, short subdivision approvals which is mistakenly omitted in the current code."

Do we have concerns over whether this is redundant or not?

(silence)

Chairman Easton: I recommend that we have consensus then on the staff's recommendations considering point 21, number 1.

Ms. Lohman: Okay.

Chairman Easton: All right, hearing no objection, we'll move to point 2. SCARP raised concerns in their letter that referring to a – quote – "designee" creates confusion and potential problems. Staff's recommendation: There's "no change proposed to this section adding 'or designee,' but see response to this comment under 14.06.100, below." That's on number 23. The language was added for consistency –

Ms. Dvorkin: Jason, this is another instance where they made kind of a comment in reference to something that wasn't being changed.

Chairman Easton: Okay.

Ms. Dvorkin: So we might just want to deal with that when we – when it comes up in the actual amending language.

Chairman Easton: All right. Concerns about – let's go ahead and take 21 and 23 together then, since they're so linked.

Ms. Dvorkin: Well, and actually the substance of 21 hinges on – I'd have to find the number – on whether the Commission decides to approve an extension for preliminary plats. Because what this does is it mirrors or it makes consistent chapter 14.06 with an amendment that would add an opportunity for a plat extension, which is on number 85.

Ms. Ehlers: Let's talk about all that together.

Chairman Easton: So then do you recommend that we talk about those together then with 85?

Ms. Dvorkin: Yeah, I do.

Chairman Easton: All right, so make a note of it. Then we'll deal with 85, 21 and 23 together.

Ms. Dvorkin: 23 is different. 23 – the comment on number 2 on number 21 is really an aside. It doesn't deal with the substance of these actual code changes.

Chairman Easton: Okay. All right, so then –

Ms. Dvorkin: So we can deal with that one under 23. But the substance of 21 and 85 are linked.

Chairman Easton: All right, we will link 21 to 85. We'll deal with it when we get to 85. Thank you, Jill. We will –

Ms. Ehlers: Did we do 22?

Chairman Easton: Let's just do – let's dispense with 23 and then we'll go back to 22. The language was added for consistency.

Ms. Ehlers: This is 22?

Chairman Easton: 23. I'm going to come back to 22.

Ms. Dvorkin: So, if you want me to explain, the first comment is a rather minor one because we've added some language that says, "Administrative Official or designee…" And this appears other places throughout the code. It just recognizes Gary's ability as the Administrative Official to delegate certain decisions. So we just added it in. And it did generate some comments, one of those comments being you should define "or designee" or just define "Administrative Official" in the Definitions to include a designee. But –

Mr. Christensen: For example – if I may – a real practical example is from time to time I may be out of the office, but as the Administrative Official, the Planning Director, the SEPA responsible official, the flood manager, what I need to do is make sure that if I'm not able to be there to conduct business that I can designate my duties to other staff. And I do so. So it's important that the Administrative Official retain that ability to transfer those duties to other staff in my absence.

Chairman Easton: Does legal staff recommend that – I don't think anyone on this Commission would disagree with his need to do that – but does – do we need to add – as per these suggestions – do we need to add a clarification, or do you believe it's clear?

Ms. Dvorkin: I don't think – I think it's clear. I think that –

Chairman Easton: I just want your opinion, then I'll come back to the Commissioners.

Ms. Dvorkin: I think it's pretty clear. It could be cleaner if, as Ryan and I were talking, if Administrative Official were defined to describe the designee.

Ms. Ehlers: It is.

Ms. Dvorkin: However – does it include that? I don't have the definition before me.

Ms. Ehlers: The definition of "Administrative Official" deals with this. It doesn't call it "designee." It calls it "staff under the supervision and direction of the Administrative Official." It doesn't clarify whether this could or couldn't be a contractor, which is the other issue they're raising, but it's fairly clear to me in 14.04, the definition.

Chairman Easton: So does the Commission have a consensus then on this to go with staff's recommendation, or do you want to make a change? Do you feel like additional language needs to be added? I know you mentioned in passing, Carol, the issue about consultants. Is it legal's – is it legal staff's opinion that that would include consultants?

Ms. Dvorkin: No.

Chairman Easton: So they couldn't designate their authority to a consultant?

Ms. Dvorkin: No. And Carol is correct, and we hadn't discussed this in developing these code amendments. But the definition of "Administrative Official" does refer to the Director's ability to authorize certain staff to act on behalf of the Director for specific decisions. And I guess what this does is clarify one of the types of decisions that the Administrative Official can designate that authority to.

Chairman Easton: Well, I think that the staff – I think the staff, legal, and I believe the Commission are all in agreement that this is clarified already. So it would be an unnecessary change. Is that correct? All right, seeing – no? Carol?

Ms. Ehlers: It's correct. May I go on to another issue in here?

Chairman Easton: Within 23?

Ms. Lohman: Let's finish first.

Ms. Ehlers: Within 14.06.100.

Chairman Easton: Let me dispense with this question and then I'll come back to you.

Ms. Ehlers: Okay.

Chairman Easton: So do we have consensus then concerning the additional – the request for additional language? And points – for both points 1 and 2 we're going to go with staff's recommendation; we have consensus. All right. Carol, you have a *brief* point to raise about .100?

Ms. Ehlers: I do. There are several times in here where it talks about "within 14 days." I think that leaves all parties in a very bad circumstance. I think it should say "14 business days." There are all too many times when you have three- and four-day weekends in the middle of something.

Chairman Easton: Mm-hmm, I understand your concern. Throughout the code, though, we don't have that clarification. There are multiple places in the code where we use the word "days" and we don't say what kind of days. Is there a general definition that legal applies to these issues in relationship to what is a day?

Ms. Dvorkin: If we're talking about court deadlines, for example, like if the Hearing Examiner needs something within 7 days, generally if it's – well, actually Ryan pulled up a definition. Our own code, under 14.04 says, "Unless otherwise specified, the word "days" shall mean calendar days, not business days."

Chairman Easton: And then I believe it's been addressed. Thank you. All right, let's move back to 22. My computer just died. Give me just a second. Number 22, .080(2), Pre-application meetings. SCARP believes that the existing language regarding pre-application meetings as they relate to affected jurisdictions, agencies, special purpose districts and municipalities should be changed from "may" to "shall." And the staff response was that "The Planning Commission could consider recommending that the existing proposed language be amended to reflect the more forceful language suggested by the commenter."

That doesn't seem like much of a recommendation, staff. Mr. Director, is it your preference to comment any further? Do you wish to comment any further?

Mr. Christensen: It's working fine as-is.

Chairman Easton: Is there anyone who feels strongly that we should change the language from "may" to "shall"?

Ms. Ehlers: In 22?

Chairman Easton: In number 22.

Ms. Ehlers: In 22.

Chairman Easton: Yeah, 22.

Mr. Christensen: I think in some – maybe to further elaborate: There are cases where an application, as being represented by the proponent's representative, has gone through the song and dance a number of times and they're just prepared and willing and ready to go, and they choose to not have a pre-application and have maybe had other communications with the Department and they're ready to go. That's at their prerogative, then. By using the word "may" they could choose to do so.

Chairman Easton: I mean, that one word change would be significant in how much work load we'd be talking about. Anyone have concerns? Can we dispense with this or are we still working through it?

Ms. Ehlers: Where is this "may" we're talking about?

Chairman Easton: It's page 5, line –

Ms. Lohman: 10.

Chairman Easton: – 10.

Mr. Axthelm: It's onscreen.

Chairman Easton: I guess onscreen. Actually the first time I see "may" is line 6.

Ms. Ehlers: I think it should be "must" be, because if you're going to – the history – the early history of the Planning Commission around here after Growth Management was complaint after complaint most bitterly from Burlington that all kinds of decisions were made and Burlington – nobody ever bothered to tell Burlington what was going on.

Chairman Easton: What's the net effect of changing this to "shall"? To staff.

Ms. Ruacho: It would just take away – like Gary's saying, in certain circumstances – you know, every project has different circumstances. We would never not notify a City, you know, when notifying them would be what was necessary. If there are certain circumstances where they've already discussed this with the City, maybe there's a letter – I mean, you know, Marianne, who does projects, can probably attest to – you know, there're so many circumstances that

can arise. If notifying the jurisdiction is what is needed for that project, we notify them. That's why there's a "may." If it's not, then we don't. If it changes to "shall" then we would send them a notification no matter what – no matter if there's a letter in the file that says they've already met with them and they are, you know, they support the project; no matter if it's the City itself. You know, we'll send the notice. I mean, you know, it's – it would just be unnecessary, we feel. You know, we do notify them as is appropriate.

Chairman Easton: Seeing that we don't have consensus on this, I need a motion one way or the other.

Mr. Hughes: I – just leave it at "may."

Chairman Easton: Dave moves that we leave it – leave the language as it is currently, with the word "may." Is there a second?

Mr. Axthelm: Second.

Chairman Easton: It's been moved and seconded to leave the language, including the word "may." All those in favor, signify by saying "aye."

Mr. Axthelm, Mr. Hughes, Ms. Lohman, Ms. McGoffin, Ms. Nakis, Mr. Mahaffie and Chairman Easton: Aye.

Chairman Easton: Opposed?

Ms. Ehlers: No.

Chairman Easton: Seven-one.

Ms. Ruacho: Can I get the seconder? Was that Josh or Matt?

Mr. Axthelm: Josh.

Chairman Easton: Josh.

Ms. Ruacho: Thanks.

Chairman Easton: All right.

Ms. Ehlers: May I suggest an addition in line 1? Instead of saying, "Staff comment notes," say "A copy of staff comment notes"? Because staff certainly doesn't want to give the only copy to the applicant.

Ms. Ruacho: Right, and for all intents and purposes obviously it is a copy, but –

Chairman Easton: All right.

Ms. Ehlers: Okay.

Chairman Easton: I think that's implied.

Ms. Ehlers: Okay.

Chairman Easton: All right, let's move on.

Ms. Ehlers: I'm disturbed on 100 again.

Chairman Easton: Let me get – really? You're talking about an area that's not coming up in further comments? You're talking about something outside of the comments we're dealing with?

Ms. Ehlers: 14.06, 14 – it's on page 5, line 35 and 36.

Chairman Easton: And you're addressing a change that the County has recommended?

Ms. Ehlers: Well, there's a little one.

Chairman Easton: Okay, they changed – on line 35 – they changed the words "may be" to "is"?

Ms. Ehlers: Mm-hmm.

Chairman Easton: And your concern is?

Ms. Ehlers: If the County doesn't apply a written determination that the application is incomplete, how many hundred games do people play later on by saying that you never told them?

Chairman Easton: Someone?

Ms. Ruacho: Well, it is – I mean, that's what we're clarifying here is if we don't –

Ms. Ehlers: It's deemed complete if you don't bother to send them a notice.

Ms. Ruacho: Right.

Ms. Ehlers: Boy, is that a good thing for somebody who just doesn't happen to get around to doing it.

Chairman Easton: Do you have a suggestion?

Ms. Ruacho: This is something that we really – you know, this is a Planning Enabling Act reg reform-type thing. We are obligated – this is to obligate the County to, within certain timeframes, issue a notice whether it's complete or not. We do do that; we say one way or another. But if we did not tell them, if we did not inform an applicant that their application was incomplete within our timeframes that are put on us by state law, then they have the right to be deemed complete. It forces the County to act within the timelines specified to us. So we can't just drag on for years and never review their application and then three years later say, Oh, by the way, you're incomplete.

Chairman Easton: All right, do we have consensus?

Ms. Ehlers: Okay, that's – if you explain it that way, it seems fair enough. But how about somebody who says that they've gotten – they've done everything and they come in years and years later and say –

Ms. Ruacho: Yeah, they are complete, you know, but state law protects them.

Chairman Easton: Okay.

Ms. Ehlers: Okay.

Chairman Easton: All right. We're going to move to number 24. Number 24, .105, Expiration and renewal of applications. Skagit Surveyors – yes?

Ms. Ruacho: Yeah, and just before we start, Marianne is sitting here. She's from Skagit Surveyors & Engineers and I just wanted to introduce her to everybody because Louie Requa was here at your previous deliberations and so they've switched because Louie is now out of town. So I just want everybody to know that Skagit Surveyors is represented in case you *do* have questions.

Chairman Easton: All right and we have the right to ask questions of the commenter if they're here, due to our – I mean, our standing rule is, in relationship to deliberations. Those should be limited to what we're discussing, though. SSE's letter requested that there should be exemptions to the timeframes set forth – exceptions to the timelines – timeframes – set forth in proposed .105 to reflect staff time for review and other situations. And, in addition, Friends of Skagit generally had favorable comments about this section.

This section – this is staff's response. "This section was drafted in response to concerns by the department and" the Board of County Commissioners "that very old applications are being processed after sitting dormant for up to several years. There is a desire to expire/slash/deny dormant applications while providing" an "adequate due process. Current code does not have a provision in section 14 – "

Ms. Ehlers: *Does* have.

Chairman Easton: Does have – excuse me – "does have a provision in section 14.06.210(3)(b) that allows the department to return an application without prejudice if additional information is not received within" 121 (sic) "days. This proposed new section replaces that provision and provides more clarity regarding how the process works. It also give an applicant the opportunity to request a written extension of this timeframe (up to three extensions), as well as an appeal right if an applicant's application is denied on this basis. The Planning Commission could request that this be taken up as a trailing issue to develop some exceptions and other criteria. The Department, however, recommends adopting this as currently proposed so it can address the problem of old, dormant applications."

Before you on your screen and for those at home, on your screen is the code in question, 14.06.105. Do the Commissioners – is there any Commissioner who wishes to see this be dealt with as a trailing issue?

(silence)

Chairman Easton: Hearing none, we'll dispense with that idea right off the top. Is there anyone who had wished to comment in relationship to this issue?

Ms. McGoffin: Chair?

Chairman Easton: Commissioner?

Ms. McGoffin: Just to refresh us on Skagit Surveyors' comment, would you mind giving us a few minutes of your time?

Chairman Easton: Brief. We need to – can you probably phrase that more in a question because really we're bound – we're not supposed to be taking more additional public testimony.

Ms. Ruacho: I think Marianne's probably going to read from her letter, which –

Marianne Manville-Ailles: I can just zip through. I can really quickly just –

Chairman Easton: I just want to be careful that we're not taking new testimony.

Ms. Manville-Ailles: Yeah, I understand. And it's not going to be anything new today.

Chairman Easton: Okay.

Ms. Manville-Ailles: The issue is simply about on active projects, which is what we were talking about in our letter, where there are – where you're coordinating with different departments within the County or with different agencies outside of the County, and the requirements that are in the staff reports that we get require more time, and sometimes they require significantly more – more time – than what – than the 120 days. If everybody knows – if everybody, staff included – knows that you are going to be required to get a permit from, say, Ecology and it's going to take you ten months to get that permit that there be a provision in this code that would allow for the time clock to stop while that particular permit is obtained, and not expire the project and have to come back in and pay fees all over again when you're doing the very thing that you're being asked to do in the staff report. That's the issue.

Chairman Easton: That's the issue. All right, please stay there. Do we all believe that that's reasonable?

Several voices: Yes.

Chairman Easton: Okay. And so my reviewing of this is it seemed reasonable. My only concern is I'm not sure staff – legal staff – is prepared to help us address this. Can you – do you have any – I know we're putting you on the spot, but it's definitely the Chair's preference not to make this a trailing issue, so let's try and develop some language to address this that we could inject into the code.

Ms. Dvorkin: Okay. We could add an additional section – subsection (5), say – and we could clean this up later if it didn't work or if it didn't flow well – that provides an exception where in concurrence with staff the applicant seeks or is in the process of obtaining approval from another agency, or something along those lines.

Chairman Easton: Ryan, why don't you come to the screen and type up what Jill's saying so we can see it, and we'll try to clean it up really quick? That captures the essence of it. Right, Marianne?

Ms. Manville-Ailles: Yep, and it lets the departments – other – for example, we have – it's water is oftentimes – we have lengthy, drawn-outs. So it has to be other departments in the County and/or other agencies.

Chairman Easton: Yeah. It needs to be – yeah, it needs to address all potential jurisdictions, both inter-County – County agencies – and other state and local and even national, if necessary.

Mr. Mahaffie: Mr. Chair?

Chairman Easton: Yes. Commissioner Mahaffie?

Mr. Mahaffie: I don't know if it would fall under there or not, but not specifically in this jurisdiction have I had an issue but in other jurisdictions I've had wetland determinations – you know, when wet season review is asked for, yadda, yadda, it depends on how the timeline falls. It could take well over a year. As a private consultant, to see a project –

Chairman Easton: Well, it's definitely a need here.

Ms. Manville-Ailles: And that was in my letter, actually – wet season review was in it.

Chairman Easton: Yeah. Jill?

Ms. Dvorkin: I was just going to say, Is that a situation where you've asked the applicant for something and you're waiting, or is the staff taking that time to do the review? Because this is different than a staff –

Chairman Easton: It's actually you were actually waiting on the agency.

Ms. Dvorkin: So the *agency* is taking that time.

Mr. Mahaffie: The agency has asked for wet season review. If it's August, you've got to – it's –

Chairman Easton: Why does that count against his 120 days if it's August and he's asked for a wet season review? That wouldn't be reasonable. So it's the agency requesting. In this case, it would be the agency requesting a different time of year and that's not something that the applicant has the power to change in the calendar.

Ms. Ehlers: The same thing is true –

Mr. Christensen: Other than in a pre-application meeting. The applicant might be informed to submit a wet season report and –

Chairman Easton: Well, if your pre-app was in May and your app meeting was in July they could still request it and – I mean, you'd still be waiting for a – you'd still be waiting for December, right?

Ms. Manville-Ailles: You don't always know in a pre-app.

Chairman Easton: As long as – you know, I mean as long as we're writing language that doesn't unduly delay these, I think we're dealing with something that's reasonable.

Ms. Dvorkin: Another thing we could do is you guys could look at other amendments.

Chairman Easton: We'll come back to you. Okay.

Ms. Dvorkin: And I could work on some language.

Chairman Easton: Why don't you work on some language and we'll come back to you?

Ms. Ehlers: That's practical.

Chairman Easton: Thank you, Marianne. We will go to number 26 then. 26 clarifies exemptions to the limit for a final decision, and SCARP's letter suggested that there be a provision allowing applicants in the county to agree to different timeframes. They say it lacks sufficient detail.

Staff's response was: This provision was to reflect current practice where the project proponent and the County agree, either tacitly or explicitly, to" extend the review timeless – timelines; excuse me – "review timelines set forth in code. The state subdivision statute, RCW 58.17, reflects the parties' ability to make such an agreement. The timelines are for the benefit of the applicant, and therefore may be waived or extended. SCARP would like to see additional detail." The Planning Department – "The Planning Commission could direct the Department to provide additional criteria; however, the Department recommends adopting as proposed."

Does the Commission feel like it needs additional clarification? Seeing no one interested in additional clarification, well, then I will assume we have consensus on the staff recommendations.

Ms. Lohman: I think you need flexibility.

Chairman Easton: Yeah. I agree. All right, we're going to move then on to number 31, which was – 31 was dispatched with earlier? Or was it 32?

Ms. Lohman: We tabled 31 and 32.

Ms. Ehlers: 31 and 32 are tabled.

Chairman Easton: Well, not tabled. We actually removed them.

Ms. Ruacho: If we could just clarify on 31. There's two parts to 31: There was meteorological towers and then net metering systems, wind.

Chairman Easton: As 31 pertains to meteorological towers, are we in agreement – in consensus – that we approve the staff's recommendations?

Ms. Lohman: Yes.

Ms. Ehlers: 14.16, height exemptions to not have a –

Mr. Christensen: You did above.

Chairman Easton: We did already. I just want to clarify.

Several voices: (inaudible)

Chairman Easton: Alrighty, I just want to clarify.

Ms. Ruacho: We did already. Now this is a height exemption for the use that we ____.

Chairman Easton: Right. Now by asking for your consensus, I'm asking for your consensus on the height exemption, which wasn't included in what we did previously.

Ms. Ruacho: Right.

Chairman Easton: Commissioner?

Ms. Lohman: It's in the temporary context?

Ms. Ruacho: Always.

Ms. Lohman: Okay.

Chairman Easton: Meteorological towers are always in the temporary context? Okay, good to know. All right. We've dispatched with then that little portion of 31. We have dealt with 32. We're now moving to 39.

Mr. Walters: What's your code citation? I'll bring it up.

Chairman Easton: ".140 SSB" is all it says in my notes. You're under 14.16, Ryan.

Ms. Ehlers: Small Scale Business.

Chairman Easton: 14.16.140. The Planning Commission can – Planning is concerned with effects of proposed changes, specifically to one's ability to produce items onsite. And the staff's response was that "The combination of the

proposed revisions will not limit the use currently – uses – currently allowed. Production will be allowed under subsection (d), retail and service businesses will still be allowed through a" consolidation of "subsection (c). The proposed language seeks to be more general in nature allowing for all types of 'retail or service' businesses rather than those currently specifically listed."

Ah, yes, I recall that we had quite the passionate interchange on this here. So now you have the code in front of you and you heard staff's – staff believes basically that our concerns were addressed by the way in which they've actually done this, and this doesn't raise the concerns that we had. Do you concur? Am I going too fast?

Ms. Ehlers: I'm not sure that Business and Professional takes care of repair and servicing of tools and equipment.

Chairman Easton: Would you like to –

Ms. Nakis: That's a service, right?

Chairman Easton: Isn't that a – yeah. I mean, wouldn't that fall under services?

Ms. Ehlers: It could.

Chairman Easton: So are we in agreement with the staff's recommendations or do we propose some different changes? Commissioner?

Ms. Lohman: I guess I'm struggling with the provision that all the items for retail sale are limited to those products produced primarily onsite. So what are you envisioning here? Do you have a scenario you can put boots on this one?

Chairman Easton: Yeah.

Mr. Christensen: Well, you have a business that is, you know, a widget business – building things, assembling things, making things onsite. And they could have a small portion of that business dedicated to retail sales for the products they're making.

Ms. Lohman: What if they were an Avon lady?

Chairman Easton: Why limit it to products – why is it the staff's desire to limit this to just products that are made onsite?

Ms. Lohman: I mean, I'm thinking –

Chairman Easton: If it's small scale, if it's already – it's already limited by code to be small scale, why are we – I'm a little – I guess I concur with my fellow

Commissioner. I'm concerned that we're telling them how to do their business. Are we supposed to be doing that?

Mr. Christensen: Well, I don't – we're not proposing a code change there.

Ms. Ruacho: No. That's as is, has been – that's the – it goes with the purpose of the zone.

Chairman Easton: Yeah, but – when we all get to read the code closer, like Carol, some of us come across things that we'd like to be different. It's not limited to Carol.

Ms. Ruacho: We're not proposing to change the language that the retail sales are limited to products produced primarily onsite or which are accessory to products produced onsite.

Chairman Easton: I'm uncomfortable with the reality of writing or having code that's not enforceable. This doesn't even look enforceable. I mean it seems – like, who's going to go out and determine whether the guy who's got that at his wine shop whether he's – you know, the baskets he's selling were – 50% of them were produced onsite or not? Seems pretty impractical.

Ms. Ruacho: We can back that luxury. It's quite –

Chairman Easton: You get – people request that?

Mr. Christensen: There's not many Small Scale Business zones in the county.

Ms. Ruacho: No.

Mr. Christensen: And so they're primarily probably addressing those that are pre-existing uses. This was part of a larger GMA compliance issue with regard to Rural Commercial uses and our needing to be very limiting in terms of how expansive and how many kind of commercial uses you could have in rural areas.

Chairman Easton: Is there a consensus to leave it as it is? Or do we want to make a change?

(silence)

Chairman Easton: All right, I – did you have something? Okay. We're going to move forward then with the staff's recommendations and I will take my concerns and lower them below my expectations thenm. I look forward to whoever has to go out and try to figure that out.

Ms. Ruacho: Yes.

Chairman Easton: I feel for them. Number 64. We're in .400(6), Ryan. Ag-NRL – siting requirements for wells. The Skagitonians to Protect Farmland –

Ms. Ruacho: Preserve?

Chairman Easton: – Preserve Farmland – excuse me – letter raised concerns that proposed language regarding substantial evidence is too vague, that they recommend a reference to a written report prepared by a licensed specialist.

Staff's response: "If the Planning Commission concurs, the Department recommends incorporating this change with slight modification. The term 'qualified professional' is currently used elsewhere in" the code – in Skagit County Code – "for similar circumstances. For consistency, 'a written report (prepared) by a qualified professional' is the preferred language.

I, for one, concur with what SPF suggested. It seems reasonable. And I like the language that the staff is proposing, so I'll make a motion to that effect. Actually I can't; I'm the Chair.

Ms. McGoffin: I'll make a motion to that effect.

Chairman Easton: It's been moved. Is there a second?

Ms. Nakis: I'll second it.

Chairman Easton: It's been moved and seconded that for consistency and for clarification that we change the language in .400 to read – quote – "a written report prepared by a qualified professional" to replace the words "substantial evidence." Any discussion on that issue?

Ms. Ruacho: Can you just give me one –

Chairman Easton: I didn't expect you to miss this one! You need something?

Ms. Ruacho: I just want to look really quick at the code to make sure.

Chairman Easton: Well, we've got some Commissioners who want to chat anyway.

Ms. Ruacho: Okay.

Chairman Easton: Commissioner Mahaffie? I expected you might want to join us on this one.

Mr. Mahaffie: Well, I just don't understand why a licensed well driller wouldn't be acceptable.

Chairman Easton: Wouldn't that be – a licensed well driller *wouldn't* be considered?

Mr. Mahaffie: It's not a qualified professional.

Chairman Easton: A licensed well driller is not a qualified professional?

Mr. Mahaffie: Not under the definition.

Mr. Walters: Do you want to see that section?

Chairman Easton: Probably not, but I guess we're going to have to.

Mr. Mahaffie: It kind of doesn't fit for this application, I don't think. Quite.

Chairman Easton: So what do you suggest? We don't – you're going to vote against the motion?

Mr. Mahaffie: Or add "licensed well driller" to the list of qualified professionals for this section.

Chairman Easton: Well, I don't think we have the covering from the public hearing to do that.

Ms. Ehlers: Well, not only that. This "qualified professional" is for a specific set of categories of items. But according to the Department of – State Department of Health, a well driller is the *only* qualified professional, if you're going to drill a well.

Chairman Easton: How did we end up with a quality – well, not the *only* one but their one that the Department of Health recognizes? So why did we end up with a – how did we end up with a code here with the definition of a "qualified professional" that doesn't include something that the County already – a qualified professional the County already works with in relationship to the Department of Health and water?

Ms. Ruacho: We don't call them that.

Chairman Easton: What do we call them?

Ms. Ruacho: I don't know if we –

Ms. Ehlers: We call them a licensed well driller.

Ms. Ruacho: – call them anything. We might just require, you know, well logs or – you know, it'd be hard to say without looking at the Health Department sections that require that.

Chairman Easton: Okay, so, to the legal staff, do we have to – under what the public hearing was noticed for and under what we held the public hearing concerning the code changes – do we have room within there to add to the definition of "qualified professional"?

Ms. Ehlers: I don't think we should because this is in –

Chairman Easton: I'm just asking – let me ask first if we *can*, and then we'll deal with other questions.

Mr. Walters: So your question is whether you can without going out for additional notice and stuff like that.

Chairman Easton: Yeah.

Ms. Dvorkin: Relating to specific _____?

Chairman Easton: Jill, you don't like microphones, do you?

Ms. Dvorkin: No. Are you referring to the actual – a definition in code or relating to this specific question you are deliberating on?

Chairman Easton: I guess I'm asking – I'm suggesting that we change the – my first option would be – my first preference would be – and I don't know if the Commission's going to want to do it – but to add "licensed well driller" to the list of qualified professionals.

Ms. Ruacho: I don't think we want to limit it to just well drillers.

Chairman Easton: No, add it as an additional part of the – never mind. Nobody wants to do it anyway.

Ms. Dvorkin: I think if you want to add some specificity to the code amendment being proposed, you could do that without going out for public hearing.

Chairman Easton: What if we did "qualified professionals and/or licensed well drillers"?

Mr. Walters: The question is the *effect* of the change. So we don't know exactly what you're proposing.

Chairman Easton: That makes two of us.

Mr. Walters: So but if the effect of the change is much broader than what was noticed, that's – you know – that's the threshold.

Chairman Easton: I don't believe that it is if we do it within what – if we do it like we just suggested. So the Chair will entertain an amendment, but just a moment. Commissioner Ehlers first.

Ms. Lohman: I'm not sure that we're –

Chairman Easton: No, go ahead. I'm sorry; we'll get to you.

Ms. Lohman: The language says, "Unless substantial evidence is provided indicating the location is not feasible…" Sometimes it's intuitively obvious to an amateur that it's not feasible to put it where the words on the page say that we have to put it. I'm not sure that we have to *always* go out to a professional or to the ends of the earth when something is obvious.

Chairman Easton: I hear you.

Ms. Lohman: And I think that's really what the language is referring to. And I also think that if you start tweaking this definition of a "qualified professional" there's other areas in the code –

Chairman Easton: Well, that died. That died for –

Ms. Lohman: – that that is going to throw a ___.

Chairman Easton: That's dead. Nobody else wants to do that. I've just seen we couldn't. Nobody wants to do it so there's no reason to discuss it.

Mr. Hughes: (inaudible)

Ms. Lohman: I think we need to be able to address the obvious in the code. The code can't be so restrictive that we're bound by the words on the page to be ridiculous.

Chairman Easton: And I understand your concern, which would put you, obviously, in the favor of voting against the motion that's currently on the table. So we'll deal with that in just a second. Commissioner Ehlers.

Ms. Ehlers: This last sentence is an issue not within the geology department, which is what "qualified professional" is.

Chairman Easton: Can you put the code back up, please?

Ms. Ehlers: But it has to do with this Department of Health and the fact that you can't have a well closer than so many hundred feet from your septic system. And if you have a combination of septic system, structures and driveways, you may find that you can't put a well there. So it's a well driller situation, based on the kind of evidence Annie's talking about, and I don't think it's quite as difficult as it might appear if you're not used to thinking about wells in relationship to septic.

Chairman Easton: So both of you are comfortable with going with "substantial evidence" then?

Ms. Ehlers: I am.

Chairman Easton: Annie?

Ms. Lohman: Well –

Ms. Ehlers: Because the well driller has to do the drilling.

Chairman Easton: Does the maker of the motion wish to withdraw the motion?

Ms. McGoffin: I think that was me.

Chairman Easton: Yeah.

Ms. McGoffin: I do.

Chairman Easton: All right, so the motion's been withdrawn and the seconder agrees? You seconded it. Yeah. Mr. Director, yeah?

Mr. Christensen: Not a motion to comment – maybe it'll be a motion.

Chairman Easton: Could be emotional!

Mr. Christensen: To suggest the language remain as proposed, retaining "substantial evidence," I mean that can come from a wide variety of sources.

Chairman Easton: Agreed.

Mr. Christensen: It can be the Health Department, Department of Ecology, licensed engineers.

Chairman Easton: Or it could be the landowner who knows that they don't have 100 – that it's only 80 feet from where they are to –

Mr. Christensen: Yeah, so we just want, you know, a site plan indicating dimensions. I think we're trying to slice and dice here. Just let it be information that can come forward that we can make, then, a determination on whether the information is significant.

Chairman Easton: Well, I've been persuaded. The motion's been rescinded. The Chair would now entertain a motion to approve the language as staff recommended originally, which reads "substantial evidence."

Ms. Ehlers: So moved.

Chairman Easton: It's been moved. Is there a second?

Mr. Mahaffie: Second.

Chairman Easton: It's been moved by Carol and seconded by Matt to go with the original language, which was "substantial evidence." All those in favor?

Ms. Ehlers, Ms. Lohman, Ms. McGoffin, Chairman Easton, Mr. Hughes, Ms. Nakis, Mr. Axthelm and Mr. Mahaffie: Aye.

Chairman Easton: Opposed?

(silence)

Chairman Easton: Abstentions?

(silence)

Chairman Easton: Let it note – let the record show eight-zero. Okay, here we are. We're making progress. I lost track of where we are. What number are we on?

Ms. Dvorkin: Would you like to go back to the 105 at this point or wait until later? I've put together one proposed set of language.

Chairman Easton: Yeah, let's go back to where you were. What number was that again on our sheet?

Ms. Dvorkin: It was number 23?

Chairman Easton: 23.

Ms. Dvorkin: Or, sorry. Number 24.

Ms. Ehlers: What page?

Chairman Easton: 24, page 5 of 8. You want to put it on the screen, what your proposed language is?

Mr. Walters: Sure.

Chairman Easton: Is everybody with me?

Ms. Ehlers: Page 6 of 8.

Chairman Easton: I think we're on page 5.

Ms. Ehlers: Oh, I thought she was going to add it to 105.

Chairman Easton: No, we're on point 24, right? Ryan? .105?

Mr. Walters: Yeah.

Mr. Christensen: Yes.

Chairman Easton: .105 and we're looking at it.

Mr. Hughes: 14.16.105

Chairman Easton: 14.16.105, to add a subsection (5).

Mr. Walters: 14.*0*6.

Ms. Ruacho: Yeah, it's on page 6 of 25.

Chairman Easton: Okay, it's on page 6 of 25 but it's on page 5 of 8. That's the clarification. That's the confusion.

Ms. Ehlers: Ah.

Chairman Easton: Does that make sense?

Ms. Ehlers: Mm-hmm.

Chairman Easton: All right.

Ms. Dvorkin: So this it –

Chairman Easton: Can you bring that back up to the middle of the screen? A little higher on the screen?

Mr. Walters: I'm trying to –

Chairman Easton: Go the other way.

Mr. Walters: – set it there along with the rest of the code.

Chairman Easton: That's okay. We don't need to see it with the rest of the code. This is fine.

Ms. Dvorkin: So the proposed language, it does broaden this quite a bit. But it says, "The Department may at its discretion extend this 120-day timeframe for submitting additional information when the information requested is dependent upon another County department or outside agency review, or under similar circumstances."

Ms. Ehlers: Yes.

Chairman Easton: Marianne?

Ms. Manville-Ailles: I'm okay with that.

Mr. Christensen: A friendly amendment?

Chairman Easton: Sure. Well, it's not – go ahead.

Mr. Christensen: "The Administrative Official or designee may…"

Chairman Easton: Instead of "The Department"?

Ms. Dvorkin: Okay.

Mr. Christensen: Yeah.

Mr. Walters: Apparently we don't really designate.

Ms. Dvorkin: Should we just – "The Administrative Official…"?

Chairman Easton: Let's just do the –

Ms. Ruacho: We ignored designee earlier.

Chairman Easton: Did we use – we *did* use our designee earlier. That's why the whole conversation came up about it.

Ms. Ruacho: In this section, specifically.

Mr. Christensen: That preserved it.

Ms. Ehlers: "may at discretion…"

Mr. Christensen: Just do a Word search.

Ms. Dvorkin: Oh.

Mr. Christensen: I mean, we're going to – it's going to be throughout.

Chairman Easton: Is there a motion? Is there someone willing to make a motion to add this additional language?

Ms. Ehlers: After they get rid of "its."

Ms. Dvorkin: I think it works. I mean –

Ms. Ehlers: "Official or designee" is not an it.

Ms. Dvorkin: Yeah, well.

Chairman Easton: Could it be "at *their* discretion"?

Ms. Dvorkin: No, because that would be plural and it's singular.

Ms. McGoffin: Just "his."

Ms. Ruacho: "his."

(several voices talking at the same time)

Chairman Easton: Could it be "his or hers"?

Mr. Walters: Yes. It could be "his," it could be "his or her," it could be "her," it could be "their." "Their" is now becoming accepted.

Chairman Easton: That's okay. Just pick one!

Ms. Ruacho: Why don't you do "their" then? I mean it's the same as saying "his/slash/her."

Chairman Easton: Can I have a motion to entertain this language change, Commissioners? Someone?

Ms. Nakis: I'll make a motion that we accept the language change on –

Mr. Hughes: Addition.

Chairman Easton: Addition – excuse me. The addition.

Ms. Nakis: …language addition…

Ms. Ehlers: Identified as?

Ms. Nakis: Oh, go ahead.

Ms. Ehlers: Give the place.

Ms. Nakis: I'm lost.

Chairman Easton: It's okay.

Ms. Nakis: On line 5 of 14.06.105.

Ms. Ehlers: Paren (5) paren at the end of the list.

Chairman Easton: It would actually be section (5).

Ms. Nakis: Okay.

Mr. Christensen: Subsection.

Chairman Easton: Subsection (5).

Ms. Nakis: Subsection (5), line 25.

Ms. Ehlers: Okay, now I can second it.

Chairman Easton: It's been moved by Commissioner Nakis and seconded by Commissioner Ehlers that we add, starting at line 5, subsection – or line 25, subsection (5) to 14.06.105 the language that's on the screen. And, for the record, I'll read it in: "The Administrative Official or designee may, at their discretion, extend this 120-day timeframe for submitting additional information when the information requested is dependent upon another County department or outside agency's review, or under similar circumstances."

Any discussion? I like it.

Mr. Mahaffie: Question.

Chairman Easton: Question, clarification? Commissioner Mahaffie.

Mr. Mahaffie: Question for staff, I guess. For example, say Ecology asks for monitoring wells for a set number of time to be done by a private consultant. Would that still be outside agency if Ecology was requesting it?

Chairman Easton: That would fall under this definition, you think?

Ms. Ruacho: Yeah, and I think it's captured by our other "similar circumstances." I mean, if there is like a gray area, if it's something where it's going out and clearly it's, you know, required. I think, you know, by saying at the discretion of the Administrative Official is good, though, in that – I mean some things could take ten years, you know? Well, we want to do this project but we haven't procured a water right, you know, and Ecology is saying they're ten years out. You know, I don't know if we want to be held to, you know, forever keeping a project alive. So within reason, with both in agreement, which I think this captures that. And I like the "similar circumstances," which I think would capture Matt's concern where it's – maybe it's not an agency but it's something that's holding it up that we can both agree we have no control over. I think it captures it.

Ms. Ehlers: Mm-hmm, mm-hmm.

Chairman Easton: Okay. Any –

Ms. Lohman: Sometime it's a coordination amongst agencies that is the bottleneck.

Ms. Ruacho: Right.

Ms. Lohman: And it could be – I'm thinking of a scenario we were involved in and it took three years or four years to finally penetrate that logjam.

Chairman Easton: And the question – we're moving on – yeah, because we're moving on.

Mr. Christensen: Good. Carry on.

Chairman Easton: The question before us is to approve the language as you see on your screen. All those in favor?

Ms. Lohman, Ms. Nakis, Mr. Hughes, Ms. Ehlers, Mr. Axthelm, Chairman Easton, Ms. McGoffin and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Any abstentions?

(silence)

Chairman Easton: Eight-zero. The motion passes. Number 66. We are in 14.16.

Ms. Ruacho: Back to Ag.

Chairman Easton: 14.16.400.

Ms. Ehlers: Page?

Chairman Easton: Ryan, can you pull up 14.16.400, please?

Ms. Ehlers: What page are we on in our text?

Chairman Easton: I don't know.

Mr. Hughes: 6 and 17.

Ms. Ehlers: 17.

Mr. Christensen: 17.

Ms. Ehlers: Thank you.

Chairman Easton: Oh, and my thanks to the attorneys for writing language on the fly.

Mr. Walters: Give us a few more minutes and we could have gotten rid of the "their."

Chairman Easton: That's all right. I'm good. This is considering the expansion provision for existing NRI businesses, which is Natural Resource –

Ms. Ruacho: Industrial.

Chairman Easton: Industrial. Thank you. The Skagitonians' letter, it concerns de facto rezones without normal review. They're concerned about lack of normal review and analysis. Contrary to the GMA. What's the CPPs?

Ms. Ruacho: Countywide Planning Policies.

Chairman Easton: County Planning Policies and the Skagit County Code. Redundant – they believe it's redundant with proposed changes to Skagit County

Code 14.8.020. If the Hearing Examiner process is recommended for approval, additional language requiring a conservation easement should be added.

The Department's response: "The Department does not agree that the proposed" changes will "be internally inconsistent with the County's regulatory framework. The proposal would create a permit avenue for" expansion of an "existing NRI" business on an "Ag-NRL land in certain limited circumstances separate from the legislative process to redesignate property. There is no connection between the proposed amendment in 14.08" and the proposed "amendments to 14.08 relate to the adoption of" the subarea plan. "The Planning Commission could consider recommending additional language regarding conservation easements, as suggested by SPF."

Comments? Concerns? Is there any heartburn over or any concern over consensus? Do we have consensus to go with the staff's recommendations? Commissioner Axthelm.

Mr. Axthelm: I would have a concern that when does a – when does adding a business to agricultural land become a commercial business or become industrial business? When has it gone a little too far?

Chairman Easton: You don't believe that the – you're concerned the Department doesn't address that?

Mr. Hughes: We're talking to six or seven existing businesses. This isn't any new business that may apply down the road. So it's existing as is out there right now that this would apply to.

Mr. Axthelm: Yes.

Chairman Easton: So it only applies to that and then it would only be there reasonable – what is basically a reasonable expansion.

Ms. Ruacho: Right. I would, just so we clarify: If you wanted it to be absolutely that no new business that could be designated NRI and then locate and then at some point in the future be considered existing, we would need to put a date certain in the code, which we have done in other places. Because this – you know, just to clarify; I just don't want anybody misunderstanding what would be allowed and then feel mislead in the future. Currently we have six or seven, as Dave says, existing what we would consider ag support businesses. There's more NRI parcels than six or seven, but on those parcels only six or seven are ag support businesses. So right now this would be limited to that many. If you don't put a date certain, there's other NRI parcels that could – the businesses on those parcels could change to an ag support business. There's always the opportunity to go through a Comp Plan amendment process, get the designation of NRI, and locate an ag business on there.

So this doesn't have a date certain. If that was something you wanted to add, that would be an easy amendment. We could certainly do that – put a date certain, you know, now or a month from now or what have you. Then any businesses that did locate from now until any point in the future would not be allowed to utilize this amendment. But right now, you know, it could expand somewhat.

Chairman Easton: Is there any desire amongst the Commissioners to add a date?

(silence)

Chairman Easton: Hearing none, is it the Commission's – Commissioner?

Mr. Hughes: It doesn't – you know, I mean I don't – if you add a – if you didn't add a date, any new –

Chairman Easton: It's got to go through the process anyway.

Mr. Hughes: – any new business would go through the process, or still has a chance to go through the process, which whether it's more lengthy or not is irrelevant. But, you know, we're talking about – most of these businesses were established in the '50s, '60s and maybe early '70s and, you know, it's hard to foresee, you know, your produce stand selling the same amount of dollars in 1960 as it is in 2012. And it just – it's not like there's going to be all kinds of new ag support businesses come in because, boy, there's just less and less ag to support.

Chairman Easton: It doesn't preclude – as it's written – it doesn't preclude if for good reason – if good enough reason for the process to approve it – that another NRI could exist. So I'm a little – I'd be a little concerned. I would – I don't think we need to go down the path of having – adding a date. I think us sitting here trying to come up with a magic 1990 or whatever the date is that would work –

Mr. Hughes: No, it has to be as of right now.

Chairman Easton: – or as of right now. You know, I just think it's probably more problematic than helpful. Commissioner?

Ms. Ehlers: We'd have to know a lot more about what we were talking about than this.

Chairman Easton: That's what I'm concerned about. All right. Well, do we have consensus then to approve the language as suggested by the staff? Is there anybody – is there – this would be the time to voice your concern because we

can go on the record with a vote, if there's not consensus. Do you want a motion, Commissioner?

Ms. Lohman: It does have the limitation – correct? – that the expansion is for ag-related businesses within that NRI?

Ms. Ruacho: Correct.

Chairman Easton: It says ag support businesses.

Ms. Lohman: So, I mean, if somebody is within the – (has) taken over maybe a structure that's no longer ag support, they don't have the provision under this to just unilaterally expand.

Ms. Ruacho: That's correct.

Ms. Lohman: Okay.

Ms. Ehlers: That's a basic point.

Chairman Easton: Yeah. Okay, then I'm going to move this forward then with consensus. We will move to point 80, with this code section .600: 14.16.600. Friends of Skagit's commented that the Administrative Official should not have the authority to determine whether a novel use should be permitted as an unclassified use.

Mr. Walters: What code section?

Chairman Easton: Yeah, I'm going to need some clarification on this.

Mr. Walters: What code section are we talking about?

Ms. Ruacho: 14.16.600.

Chairman Easton: 14.16.600.

Mr. Walters: 600. Okay.

Ms. Ruacho: And you guys are taking this in conjunction with number 18?

Ms. McGoffin: Right.

Chairman Easton: Joy. Let's see. How are we going to eat this elephant? You know, this is going to be a perfect opportunity for staff to do a shorter summary than the summary I have in front of me. Is that doable?

Ms. Ruacho: Yeah. I mean –

Chairman Easton: What are you try – what are you getting at in response to what Friends is saying? Because from both reading 18's response and reading 80's response, I'm feeling a little hazy.

Ms. Ruacho: Okay.

Chairman Easton: I don't use the word "novel" for – very often, so where are we at here?

Ms. Ruacho: Okay, so on 18 we're talking about amending the definition of "unclassified use" and just, you know, trying to make it more specific. It relates to – that definition, obviously, occurs in 14.16.600 so the two are linked in that regard. The basic, you know, Department position regarding the comment, which is that the Administrative Official should not have the authority to determine whether you should be unclassified or not, is – again – is a very similar theme. That is not something we're proposing to change. The Administrative Official –

Chairman Easton: Has already had that ability.

Ms. Ruacho: – has already had that ability, per the code cite we mark here. It should say 14.16 – or 14.06.020(3). They have that authority. Like he says, it's long-standing. This – if we – what he's saying here in this long – a *lawyer* wrote it – not anyone in the room, though – that's why it's long! – is that even if we remove this provision to satisfy Friends, the Administrative Official would still have that authority, per the code section that applies to the entire code.

Chairman Easton: Enough said. I'll take the definition first and then I'll take 80. Any concerns about the change in the definition? So that would be 18.

(silence)

Chairman Easton: Does the Commission have consensus that the change as suggested by staff is agreeable?

Ms. Ehlers: Um, I like –

Chairman Easton: Commissioner Ehlers.

Ms. Ehlers: I like the addition. I think I would prefer having the struck language in the definition left in because the RCW – the reference to the RCW lists a whole bunch of things people don't want and they have to have.

Ms. Ruacho: Right, and I'll take up – this was written by Arne Denny – and, of course, that was just a joke, you know, to Arne. It's very, you know, perfectly crafted.

Chairman Easton: We appreciate his work. We do.

Ms. Ruacho: But he has a strong concern about leaving the stricken language in and wants us to convey that. It was problematic in an issue in front of the Growth Management Hearings Board – that they took this exact language and misconstrued it as it related to the regulations that fell down below. So they felt that there was an inconsistency between the purpose statement and the regulations below, and he feels very strongly that this needs to come out so that there is no confusion as to what the regulations mean for further processing.

So just to, you know, put that forward, Jill's coming up. She –

Chairman Easton: Jill?

Ms. Dvorkin: Carly, are you – just to clarify, I think Carol is referring to number – the definition with essential public facilities.

Ms. Ruacho: Okay, I may be misspeaking. I was talking about what was on the screen.

Ms. Dvorkin: And then we're – I think you're referring to the purpose.

Ms. Ruacho: Yes.

Chairman Easton: That's my fault. I skipped around.

Ms. Ruacho: Okay. I apologize. I was talking about the stricken language on the screen in the purpose statement. Sorry, Carol.

Ms. Ehlers: I began to think that's what you were and you answered my next question.

Chairman Easton: Which is helpful.

Ms. Ehlers: But let's – yes – but let's go back to the definition.

Chairman Easton: Yes.

Ms. Ehlers: I like having –

Mr. Christensen: What page are you on?

Chairman Easton: Ryan, can you pull that up, please?

Ms. Lohman: 4 of 25.

Ms. Ehlers: 4 of 25.

Chairman Easton: Unclassified use, line 6, starting with line 8, underlined – starting with "Unless…"

Ms. Ehlers: Where it starts it adds, "Unless specifically allowed as a permitted, special, or accessory use," the "unclassified uses include the uses identified in…14.16.600 – paren – (2)." That's what you're adding. You're deleting, "They include most of the more intensive uses considered to be essential public facilities in RCW 36.70A.200."

Ms. Dvorkin: And, as the comment says, it clarifies that not all essential public facilities need a more intensive review – that they're not considered unclassified uses. So it's just streamlining this and attempting – or it's trying to ensure that the two aren't confused. Essential public facilities are not the same as unclassified uses; however, most of the more intensive uses can be considered essential public facilities. That's correct, but it's unnecessary to have in the definition.

Chairman Easton: All right.

Ms. Ehlers: Okay. Is there a definition in our code of "essential public facilities"?

Ms. Dvorkin: Yes, I believe so.

Ms. Ehlers: Perhaps Ryan could find it for us.

Mr. Christensen: Are we saying that essential public facilities and unclassified uses are not necessarily mutually inclusive, so they can be different?

Ms. Ruacho: And I think what we're saying here is we want control over which ones are unclassified uses. So we want to reference our code section that makes this determination, rather than leaving it up to interpretation as to what a more intensive use is, per the RCW. That leaves someone else to say, Well, I think that's a more intensive use.

Chairman Easton: Right.

Ms. Ruacho: And *we* would like to make that determination and alleviate confusion as to who gets to decide.

Chairman Easton: The Chair will entertain a motion to approve the definition as the staff has recommended.

Ms. Ehlers: Well, let's take a look at what's on the screen, just so that we can agree.

Chairman Easton: I'm sorry. I thought we had.

Ms. Ehlers: Essential public facilities. Well, you can see why there's a separate definition for them, can't you?

Chairman Easton: Mm. Mm-hmm.

Ms. Ehlers: Okay. But you see showing those two definitions clarifies why you struck that last sentence. Thank you.

Chairman Easton: So do we – actually, I'm going to back up. Do we have consensus to approve the staff's definition of "unclassified use"? Seeing that we have consensus, we'll move on to number – now we'll jump back to 80, .60. 600 – excuse me. The staff – or the Chair will entertain a motion or some conversation here about these changes. Do we – these proposed changes provide a reference for the long-standing authority that already exists. This is outside of the scope of what is being changed. They're asking for additional change to something. And *if* it was changed here it wouldn't change the authority of the Administrative Official in other locations, correct?

Ms. Ruacho: Correct.

Chairman Easton: Which would create a problematic situation. So is there consensus to leave the language as is?

Ms. McGoffin: Yes.

Chairman Easton: Commissioner Ehlers?

Ms. Ehlers: Yes, except there's a – there's a – on line 14: "Unclassified uses include the following uses." I presume that should be a colon. And then included in parentheses – I don't know where that comes – are the zones – included in the parentheses after each use are the zones. Then you know what you're looking at. Do you follow me?

Mr. Walters: I do.

Chairman Easton: So Commissioner Ehlers is suggesting that we include the – add a colon? Take out a period; add a colon.

Mr. Walters: I don't like the colon part, though. You can't have ___.

Chairman Easton: The attorney's objecting to the colon.

(laughter)

Mr. Walters: I like the other part. I just wanted to clarify there.

Ms. Ehlers: And the other part?

Chairman Easton: I'm sorry. I'm stunned. I just don't know what to do with it. I have a hard time processing where to go forth from here after you've taken out the colon.

Mr. Walters: I think it's pretty clear that "include the following uses" refers to the list below. But she suggested the listing of – or included in parentheses after the use, or after each use, are the zones.

Chairman Easton: Can you go in and live-edit this, please.

Mr. Walters: Nope. I don't have a Word document version of this.

Ms. Ehlers: You add three words between parentheses and "are."

Chairman Easton: Okay, go to the Word document that you have open for the section that we added.

Mr. Walters: I don't have that open either.

Chairman Easton: Did you save it?

Mr. Walters: I saved it. And who moved it?

Chairman Easton: I'm glad you saved it. And then we'll come back to you fixing this, because you're going to take – I'm going to believe we have consensus for Commissioner Ehlers' suggestion. She suggested change, except for the colon. You got it?

Mr. Walters: Yeah.

Chairman Easton: But you need to – all right. All those in favor of this change to include after each use, in addition to the language that was already added by staff, please signify by saying – oh, I didn't have a motion. Do we have consensus.

Ms. McGoffin: Consensus.

(sounds of assent)

Chairman Easton: Now we have consensus. All right, we're moving on.

Ms. Ehlers: Mm-hmm. Okay, good. Thank you.

Chairman Easton: Save that colon for a period debate for later! 14.18 – 9:30 at the bar! – 14.18 dot 100, number 85. Add a new section regarding plat approval expiration. Oh, boy! If you're waiting at home for the big one, here we go.

Skagit Surveyors suggested that (a) one-year, one time only extension is insufficient, won't be meaningful to most developers, and they recommend an ability to make a series of one to two – one two-year – excuse me – one two-year extension.

Ms. Ruacho: One to two.

Chairman Easton: One- or two-year extension with the authority to impose conditions. Obviously that would be with the *Department* having authority to impose conditions. Who's MLT?

Ms. Ruacho: Moon Light Terrace.

Chairman Easton: Moon Light Terrace. Their letter recommends a one-year extension – you know, spoke to the fact that one-year extensions are insufficient for this developer. Given difficult market conditions, the extension should be up to five years.

Now on to the Department's recommendation.

Ms. Dvorkin: Oh, then there's a SCARP one, too.

Ms. Ruacho: SCARP.

Chairman Easton: Oh, I'm sorry. Thank you. The problem with a small computer. SCARP: Current code is sufficient and no extension provision is needed.

So we have three different opinions in our comment letters, and here's staff''s point of view. Staff recommends a one-year, one-time extension of the preliminary plat approval. "This limited extension does provide some relief and flexibility to developers while also maintaining a streamlined process, i.e. administrative rather than Hearing Examiner or" Board of County Commissioner approval.

"If the Planning Commission agrees with some of the comments that additional extension time is appropriate, the Department recommends the Commission nonetheless adopt the current proposal of a one-year extension. With no extension provision, existing applications will expire with no recourse. The Department could develop standards and/or criteria as a trailing issue later in the year."

All right. Who wants to speak to this issue first?

(silence)

Chairman Easton: Okay, I'll go first. First of all, I don't think five years is even in the ballpark as being reasonable, from a commenting letter point of view. I do think one year may be too short. I'm more comfortable with two years. I think that's acceptable, especially if we do it in relationship to them being able to impose conditions. But I think the difference between giving someone relief that actually – potentially looks good on paper but doesn't really make a difference, it really kinds of sits in front of us here, a little one-year extension. So I'm not sure we're really accomplishing what we intended to do. I do believe that's in the scope of what we need to do.

I don't believe it needs to become a trailing issue, although I have my personal issues with trailing issues. But those are my – that's my comment. So I'm not comfortable with staff's recommendation, so I think it needs to be modified. Commissioner Ehlers?

Ms. Ehlers: Well, I have the kinds of questions that somebody has who's not in the business.

Chairman Easton: Fire away.

Ms. Ehlers: If you will indulge me.

Chairman Easton: Please.

Ms. Ehlers: You fill out this preliminary – you go to – under best circumstances, you go to a pre-development meeting and then you find out if you actually can build something on this site. I know it's not required but it's –

Chairman Easton: Highly recommended.

Ms. Ehlers: If it isn't done, you'll end up with government by uproar. Then you go to the pre-application meeting and you find out what you – what staff thinks you really have to do in this particular site, and then you go develop your preliminary plat. And you have this one-month, three months, whatever – the fourteen days – that whole gobbledygook we've just dealt with. And at some

point you have your application complete, only it's complete for *review* process, and only after it's gone through the review process then is it complete. But I understand that doesn't mean that it's approved.

We're talking here about something that has gone through that next step and gotten the approval.

Mr. Christensen: Correct.

Ms. Ehlers: Okay. That means they've already had the one year to deal with Ecology and the year to deal with the water department and all the rest of that has been done, right?

Mr. Christensen: More or less, yeah.

Ms. Ehlers: Now when you get the approval – preliminary approval – at that point you can start construction.

Mr. Christensen: Yes.

Ms. Ehlers: You can start your roads, you can start the rest of the thing.

Mr. Christensen: Yeah.

Ms. Ehlers: What I understand they're bringing up is that, because of the economic system, you may not find that it is financially feasible to finish doing this construction part because maybe your bank says, I'll only give you half the money or a third of the money. And it's clear somewhere in this code that – I found it in the building department – that you have to have evidence that you've got the loan or the bond to cover the construction company. And that, I think, is where the bank comes in and the economic failures that have occurred.

Mr. Christensen: Mm-hmm.

Ms. Ehlers: So you have – not necessarily with this one. I'll take him out. I don't know anything about him. But I have seen in a number of the newspaper foreclosure options where somebody has a – clearly – a plat in process and they can't complete it. So if you say to that person at that point, You've gone through all the – and I'm talking contemporary stuff; I'm not talking twenty years ago – you've gone through all these hoops, you've spent all this money, but because your bank is only loaning you part of what you need and you can't get it done within a year or two years, you've got to stop and do the whole damn thing over. Am I right?

Mr. Christensen: You're close. Let me – pretty good job! – let me back up to the point of preliminary approval. When that is granted, you have five years in which

to get that finished. Okay? So it's not one year, two years or three; you have five years. And, actually – most recently – I think it was the legislature last year changed that five-year period to seven. That sunsets in 2014. So if you get preliminary approval today on a land division, you've got seven years to meet the conditions of approval. You can start tomorrow, you can start next month, you can wait till year six, but you've got seven years to get it done. So what we have proposed is that you can have a one-year additional extension.

Ms. Ehlers: To the seven?

Mr. Christensen: To the seven. So you'd have actually eight years from, You're good to go; now meet those conditions to actually have it completed.

Ms. Ehlers: How would you know from this language that you had eight?

Chairman Easton: Or that you had seven – plus one.

Ms. Ehlers: Or that you had seven.

Mr. Christensen: It all depends on the preliminary approval, some of which go back, I'm sorry to say, decades.

Ms. Ehlers: We've noticed.

Mr. Christensen: And some of which are more recent and some of which, you know, are yet to be applied for. But the seven-year extension is only given or granted to those new land divisions. Old ones have the five-year. I mean, those that have already been granted preliminary approval had five years to do it or were given some extension. We are now proposing that there be a year specified as part of the extension and how many times you can receive an extension, in part because we wanted to just bring some conclusion to lingering plats that just go on and on and on because of either market conditions or the timing was right or partnerships have dissolved – whatever factors, some of which we have no control over. And we don't even know if three years or five years can make a difference.

So you did a good job explaining kind of the process about review and completeness and investing and then obtaining preliminary approval. But it's not like we give them one year to complete it. They get five. Today they get seven. So a new application today would get seven plus potentially one, as we have proposed.

Ms. Ehlers: Okay. Now when you get this plat approval, you know it, the Department knows it. Where is it recorded?

Mr. Christensen: The preliminary approval?

Ms. Ehlers: Mm-hmm.

Mr. Christensen: I believe at the Auditor's office.

Ms. Ehlers: Is it?

(several sounds of assent)

Chairman Easton: Okay.

Ms. Ehlers: Is that true for short plats, too?

Mr. Christensen: Yes.

(several sounds of dissent)

Mr. Christensen: Oh, they're approved. When they're *approved* they're recorded with the Auditor's office.

Ms. Ruacho: Yeah. Not for preliminary ___.

Ms. Ehlers: Well, then if something – let's take some of these that are really grandfathered. How would you – how does this relate to that mess? The 1990, 1991 era.

Chairman Easton: Can I see the proposed code changes?

Mr. Christensen: I'm going to let Jill –

Chairman Easton: Let's let Jill take that.

Mr. Christensen: – address that because there's two issues here, and I'm going to let Jill kind of frame the issues and break them down so that we can all understand them.

Ms. Ehlers: Okay.

Ms. Dvorkin: Thanks, Gary!

Chairman Easton: Heck of an introduction!

Ms. Dvorkin: The proposed changes that you looked at for section 14.06.105, those are the additional requested information, 120-day timeframes. That's primarily intended to address all of these really old applications that are still sitting out there that never even got preliminary approval. They're just pending

applications that vested to the codes at the time. So theoretically someone could walk in and try and have those processed. But those aren't yet subject to the five-year or three-year, depending on whether it's a short plat or a long plat, because they haven't gotten to that stage yet. So this –

Ms. Ehlers: So, okay, they didn't go through the approval stage and that's what triggers it.

Ms. Dvorkin: Yes. And so there are some applications out there – or preliminary approvals – out there now that relate back to the 1990s and they're still in their window of preliminary approval. So there are some out there. But generally this deals with those that are in that five-year window right now or those that will be upon their preliminary approval. So it's just granting a little more flexibility for us to allow more time where needed. And at one point back in the 1990s we did have a provision that did allow extensions, based on Hearing Examiner review. That went away in 2000, and so now we're proposing a limited extension again.

Does that answer?

Chairman Easton: It's just codified. It's not – it's not tied – I just want to clarify it's not tied to the Hearing Examiner. What's being proposed is not tied to the Hearing Examiner.

Ms. Dvorkin: That's correct.

Mr. Christensen: So one question I asked that you might also ask is, How did you arrive at one year?

Chairman Easton: Yeah, there you go.

Mr. Christensen: And Jill did some research.

Ms. Dvorkin: Well, we decided to propose one year based on the fact that we thought that the Administrative Official or designee should be able to make that determination without going to the Hearing Examiner for that approval. We thought if you get further – if you get more time than one year, you know, people are going to be a lot more interested in whether something is alive for two or three more years versus one more year. So we would think it should go to the Hearing Examiner for more review and perhaps imposing additional conditions, if you're allowing more time than that one year. We thought one year was modest enough that the Department could look at it and make that determination.

Chairman Easton: All right. Well, we've heard from staff and –

Mr. Christensen: I'm sorry. One final comment there to add to Jill's is we also looked at other jurisdictions in terms of what kind of time extensions they're

doing. So we didn't want to be out of line or off the mark or not consistent with municipalities and other jurisdictions, so we looked at what others were doing and we arrived at the one-year extension.

Ms. Ehlers: On top of the five or seven.

Mr. Christensen: Yes.

Chairman Easton: At this time, seeing that there's no other questions and appearing that staff has nothing else to add, what's the pleasure of the Commission? Do you have a motion, someone?

(silence)

Chairman Easton: Well, we don't have – I can tell you we don't have consensus on what the staff is going to say because I already voiced my concern that I don't agree. So we don't have consensus, so now I'm going to entertain a motion. We can either move to approve what the staff has recommended or something else.

Ms. Ehlers: I think one year on top of five or seven is quite a bit.

Chairman Easton: Well, I need – what I need to do – what I need to hear next is in the form of a motion.

Ms. Ehlers: All right. I move to –

Chairman Easton: Oh, we have a question before that. Mr. Hughes.

Mr. Hughes: I still don't – maybe just highlight these 1960s-type things, like the one out in Conway.

Mr. Christensen: Yeah.

Mr. Hughes: Where's – does any of this affect that?

Mr. Christensen: It could, yes. Yeah, there are pending – well, let me say that there are County-approved plats that have preliminary approval that certainly would benefit by an extension. To not have an extension may mean that they would lose development rights. Now whether it's one year, two years, three years or however many years should be afforded under an extension, certainly that's open for discussion. But there are existing preliminary plats that would benefit – all of which would benefit by at least a one-year extension.

Chairman Easton: Including those that date considerably back?

Mr. Christensen: Yes.

Chairman Easton: Like MMLT, like Conway – there's a number of examples.

Mr. Christensen: Yeah, there are plats that – there's really kind of two camps. There are preliminary plats that are old that there's certainly earnest attempts to make something happen; they just need more time. There are other older plats that have preliminary approval or were not even deemed complete that just simply are lingering. We don't, quite frankly, even know if the owners are maybe even alive, or if they've gone through probate or estate or been sold, bartered or traded. So we're trying to address with both of these old plats by allowing some to get an extension and simply allowing us to try to resolve or finalize those for which we don't know if there's even any interest in completing.

Chairman Easton: Okay.

Ms. Ehlers: But the word that strikes me as important is where it says "approval" – "has received approval."

Mr. Christensen: Yeah.

Chairman Easton: Yeah. The Chair would now entertain a motion to dispense with this part of our agenda.

Ms. Ehlers: And that's why I would move to accept this language, because it has preliminary – already preliminary approval in it.

Mr. Christensen: Yes.

Ms. Ehlers: We're not talking about something that somebody started and may have abandoned even –

Chairman Easton: Okay, let's make this in the form of a – are you making that in the form of a –

Ms. Ehlers: I'll make it a clear motion.

Chairman Easton: It's not consensus because I'm not going to vote for it.

Ms. Ehlers: I move to accept lines 25 through 32 on page – of 14.18.100, page 22 of 25.

Chairman Easton: It's been moved. Is there a second?

(silence)

Chairman Easton: It dies for a lack of a second. Is there an alternate motion?

Ms. McGoffin: I think we do need to give the Department something to work with, as they've recommended to us here to adopt a current proposal for a one-year extension. I don't want to leave them without anything.

Chairman Easton: Do you have an alternative?

Ms. McGoffin: I think we do – maybe not put it in the code but do a –

Chairman Easton: Finding?

Ms. McGoffin: – a finding, recommendation for, let's say, you know, the next three years that you provide this.

Ms. Dvorkin: If I could speak to that, too. RCW 58.17.140 – it's from the subdivision statute – it gives a local jurisdiction the authority to provide extensions, but by ordinance. So we can't just resolve to, or, you know, Gary can't just decide to give extensions. We don't have that opportunity right now if we want it. We have to adopt it. And if we want to provide that relief immediately, that's why we're recommending adopting the one year. Because it may not be long enough for some people's purposes, but maybe the Planning Commission could say, Yes, we will adopt that but please still look for –

Chairman Easton: Okay, so make a definitive legal argument to me about why two years would not be legally appropriate.

Ms. Dvorkin: It's not a legal issue; it's a policy issue.

Chairman Easton: Okay.

Ms. Ruacho: But we can't do it right now.

Chairman Easton: Yeah, we can. Why couldn't we do that right now?

Ms. Ruacho: Because it's a – we have comments opposed to it and it's a substantive change. So we would need to allow people the opportunity to comment. We didn't propose a range. We didn't propose an additional time. So that's why we're recommending the one year. If we don't do this one year now – this is our one time-sensitive amendment that we've been talking about for a couple of months – if we do not do this there are applications – or plats, not applications; they have their approval – that *will* expire. So what we put out was a year. If we give them the year now they can get the year, and then if within the year we want to give them another year or what have you, we have the opportunity to do that. If we do nothing, they will expire and there's nothing we can do about it.

Chairman Easton: So I've got two lawyers in the room and I've got a staff member who's telling me that the lawyers are saying that we can't – because of the way the public hearing was drawn up and the way that the comments were received – that we *can't* entertain a motion then for two years?

Ms. Dvorkin: You can entertain the motion. I –

Chairman Easton: I recognize that it still needs to be approved by the Board of County Commissioners and the staff is most likely going to oppose it, but –

Ms. Dvorkin: You can entertain the motion, it's just whether if it were challenged it may fail on public participation grounds.

Chairman Easton: For the lack of public participation? All right. Commissioner?

Ms. Lohman: Question for staff: Some of these old preliminary plats then, that have been on the books for a long time but they really haven't been executed, what *was* the original expiration? Or was there none?

Chairman Easton: There wasn't.

Ms. Ruacho: There isn't one for, I think – it's very confusing, and it's even confusing for those of us who deal with it on a day-to-day. Those that you are talking about that are very old, they don't have approval. They're applications. And now they're coming forward. They're being reactivated. Somebody walks into the Department and says, I've got this application from, you know, fifteen years ago and I would like to take it to preliminary, you know, stage. Those are going to be dealt with with a provision you guys talked about earlier. Those are going to have a certain amount of time. If they don't do it within a certain amount of time, they're going to be disposed of. These are ones that are – they have their preliminary approval and they have a certain time that they need to act within, and should that be extended or should it not be. And we're running up against that timeframe for some plats, some specific plats.

Ms. Lohman: So these old ones, your one-year extension or not really isn't going to have anything –

Ms. Ruacho: It does not apply to them. We have another provision that we talked about earlier that applies to them.

Ms. Lohman: Okay.

Chairman Easton: See, I'm significantly bothered by the way in which the notice was written that then boxes us in to only accepting staff's recommendation on this extension. And I find that – I'm slightly offended, because, as a Commissioner, I expect legal staff to work with the Department to write the

notifications in a way that we don't have to accept – that our only option is to either accept or not accept staff's recommendation without putting us in danger of having a public – or being –

Ms. Ehlers: Well –

Chairman Easton: Let me finish – in danger of violating – because I don't want to violate the public's trust about making – I mean, I want to make sure we have public hearings that address the issues. I don't want us to make decisions without public hearings. But to only allow us one date option on this because of the way it was noticed feels very – I mean I feel like I'm being strong-armed by staff.

Unidentified voice from audience: ___ comment?

Chairman Easton: Please be careful from the audience. Albeit, I'm going to assume it was unintentioned, but it doesn't put the Planning Commission in a position to be the nine that are supposed to, you know, (be) distinctly different people who are supposed to deliberate on this. It's now legislating by legal – it's almost legislating just by the notification and that seems – that seems very unfair.

Ms. Dvorkin: If I could comment.

Chairman Easton: Please.

Ms. Dvorkin: I'm not, as legal counsel, saying you can't do that, and I'm not saying that the Board can't approve something different than we put out. It is just subject to that challenge. You know, and the ideal situation would have been we recommend – we could do one, three or four and give options. That way, the – you know – the public could comment on all three options. We didn't do it that way. We came up with a proposal. This is the policy direction that the Department thought was appropriate and that's what we put out. If the Planning Commission feels most comfortable saying, We like two years, put it out there. The Board can decide and we will –

Chairman Easton: Yeah, but I'm going against legal opinion. I'm not only going to be dealing with the fact that the staff's going to oppose whatever this Commission – if this Commission agreed to something different, but I'm also dealing with the fact that legal's going to say to the Commissioners that you are – potentially didn't have a public hearing that covered this.

So, I mean, it's – I'm on the record as being beyond frustrated by the way that this was handled, and I'm going to leave it to the rest of the Comm – I need a motion to deal with this issue. I had one. It died for lack of a second. This is the last time I'm going to bring it up. If it dies again, we're moving on with no extensions.

Mr. Hughes: I'm –

Chairman Easton: Mr. Hughes?

Mr. Hughes: You know, I'm going to compare – I'm trying to – I think I'm kind of with Jason here. But if we would have gone back to the – just for example – in the expansion of the NRI provision and staff said if we could consider putting a conservation easement into this, well, that wasn't advertised or anything else so to me that's no different than saying two instead of one.

Ms. Ruacho: And we never intended for that to mean that that wasn't going to need public comment. It's just that something you could recommend to the County Commissions, as this would be something you could recommend.

Mr. Christensen: I also want to respond with regard to these proposed code amendments. Certainly there are a number of choices – 1, 2 and 3; a, b and c. If we were to propose codes with a variety of options, certainly the proposal would be more than a couple pages in length, and you'd get comments all over the board. So you have to make a proposal and it either is okay or not. If you choose to approve something, you make a recommendation to do so. If you don't like it, you don't pass it.

Chairman Easton: I understand.

Mr. Christensen: If you have issues associated with it, then you could appropriately adopt findings of fact and provide guidance to the Commissioners. If you would have preferred to see something different, you're free to make those desires known and we would encourage you to do so and we would represent those as such. I think what we would like to do is not lose an opportunity now for an extension, and if you and/or the Commissioners want to be able to consider other options, preserve that and come back and address it, but not lose an opportunity to keep people in play by not allowing the extension.

Chairman Easton: I recognize – I recognize, number one, I recognize this is a citizen-run commission that's advised to work side by side with the staff. And the citizens advice commission was put in a position that proved what legal just said, that we aren't in a position because of the way that the notice was written and the public hearing was handled that we can't make a decision outside of one year. If I'd have known that was the situation during the public hearing or if I would have been a part of helping to write the notice, this particular issue would have raised – to the Chair's opinion – to the point that I would have made – I would have made a point of saying, at least as the Chair, that I don't think that's appropriate for us to put us in that position.

Furthermore – furthermore, it's already died once here. And I'm being gracious to bring it back up one more time for the opportunity. And I totally – I hear what the Department is saying, that if we don't grant these extensions that they, that they – it goes away. And if we don't make a recommendation, it doesn't preclude the Board from making a decision. It just means that we don't recommend the changes. I mean, we're just a – we have to remember that we are just what we are: a hearing board. Commissioner Nakis and then Ryan.

Ms. Nakis: So the way I understand this, you're asking – staff is asking us to okay this one year, with the option that next year you may decide to extend it another year. Is that because of the economic situation or is that – or am I misunderstanding you?

Ms. Ruacho: No, I mean, you're exactly right. The reason we're proposing an extension is based on the economic situation and we're mirroring what the legislature did and giving an additional year to their two years. And, you know, I think –

Chairman Easton: You're not mirroring what they did. They gave a two-year extension.

Ms. Ruacho: Right, and so –

Chairman Easton: And my suggestion was mirroring what they did, which was a two-year extension.

Ms. Ruacho: And we are not – I think what – I think there's some misunderstanding here that we would object to that. We absolutely don't object to it and wouldn't object to it. It's just that we – all we're trying to do is get the one year on the books now and then, if you guys recommend an additional year after that, that's nothing we would object to. It's just that we need to run it through the process again.

Chairman Easton: Okay. Well, wait. Then you would object, because if it went to the Commissioners with a two-year extension you would object because you're saying you feel like it has to go back through the process again.

Ms. Ruacho: Yes, and it's not that we would object.

Chairman Easton: So I mean I want to be clear. You wouldn't be supporting a motion for two years. But there isn't a motion for two years. It's just the Chair's point of view.

Ms. Dvorkin: At that point it becomes __.

Chairman Easton: Ryan, did you – or Jill?

Mr. Walters: Jill? I would suggest that, if you wanted to, whatever number you want to choose, you can choose that number. Your action does not enact a development regulation.

Chairman Easton: We understand.

Mr. Walters: The Board's action enacts a development regulation. Under the GMA, if the legislative authority is going to enact a development regulation that is outside the scope of what was offered for public comment, then the Board has the responsibility of providing an additional opportunity for public comment. So if you want two years, five years, ten years, whatever you want, you can make that recommendation. The Board can have a public comment period, consistent with the GMA.

Chairman Easton: But look. History's pretty clear. When we don't agree with staff, staff goes to the Board and tells them that we don't agree and our track record with overcoming that is slim. When you multiply that by a narrowly written, or possibly overly narrowly written call for a public hearing, you're making – you're sort of making a mockery of people giving their input and that's what I find frustrating. I need to move on. We're way over time. And I still have to deal with CaRDs which is not going to be brief.

Mr. Walters: GMA – with respect to Gary – GMA envisions the staff making available alternatives available for public comment.

Chairman Easton: You didn't make an alternative available to public comment, though. You made *one* alternative available.

Mr. Walters: No, no. Well, I didn't make anything available for public comment, but the GMA envisions the staff releasing options, as you indicated, for public comment. So staff could make available options – something that you could choose from, something that the public could comment on ___. That's common ___.

Chairman Easton: But they didn't. They didn't and Gary's comments were that that would have been – in his opinion, could have created a lot bigger situation.

Mr. Christensen: I will say –

Chairman Easton: Hang on.

Mr. Christensen: – in response.

Chairman Easton: Hang on.

Mr. Christensen: I need to clarify a point here, if I may.

Chairman Easton: All right.

Mr. Christensen: Okay. Before the proposal was released for public comment and a hearing even made, we took this matter before the Board of County Commissioners. We ran it by them. We had time with them. We said, Are you ready to go? They said, Go.

Chairman Easton: All right.

Mr. Christensen: Okay? So it doesn't mean that they endorsed it. It doesn't mean that they're willing to support it all. But they felt it was ready for public review and comment. Now we could have spent more months, more time developing options, as Ryan suggests, but the fact of the matter is some of these issues were time-sensitive; we had to move through it. These were supposed to be code amendments made last year. So we are doing the best we can with what resources we have to move these things through.

Chairman Easton: How would you need to spend more time to give us the option of one-year, two-year, three-year? Josh?

Mr. Christensen: No, this isn't the only work program item we're working on.

Chairman Easton: I'm talking about this one.

Mr. Axthelm: We don't know how long the economy's going to be down. So what I would suggest is if we have this one year in here, but then we make sure that it's on – it's on this list – do you review this every year? This list??

Ms. Ruacho: Mm-hmm.

Chairman Easton: We didn't last year.

Mr. Axthelm: Make sure that it's on the list for next year so that it's addressed next year again so that they have the option again to extend.

Mr. Christensen: Well, and a change – I'm sorry.

Mr. Axthelm: So that that way we can get the extension for one year this year for these people. And that's understandable. I mean, it's – that's what they need. But then make sure it's on next year so they have the opportunity to comment and get that extended again, if need be.

Chairman Easton: You've got to remember we didn't have – we are – Gary mentioned this and he mentioned it in light of the fact that staff resources are

limited, and we recognize – this Commission's been very understanding of that, I believe. That doesn't necessarily mean that there'll be – there's an opportunity for code amendments annually. We have annual code updates, but it doesn't necessarily mean it happens every year. I need to go to Commissioner Ehlers. She has a question.

Ms. Ehlers: Where is the five or seven years included in this text?

Mr. Christensen: It's in RCW 58.17.

Ms. Dvorkin: And it's – I pulled it up on – you don't see it because it's one of the no-change items in 14.18.100(6). So here it is as adopted, and so it says, "Preliminary subdivision approval duration. Short subdivisions shall be valid thirty-six months." And then the long subdivisions shall be valid for sixty months. And just the fact that the legislature has provided an additional two years, we honor the legislature, even though we haven't adopted the changes that they've made because they're temporary fixes.

Ms. Ehlers: So in other words, we've got seven years plus one year.

Ms. Dvorkin: Correct.

Chairman Easton: That's the recommendation.

Ms. Ehlers: That certainly should be plenty for this year.

Chairman Easton: Commissioner McGoffin?

Ms. McGoffin: I recommend a truce here. This is my peace plan – that we approve the code amendment as requested by the Planning Department for 2011 and request in a finding of fact that in April of 2012 we want to revisit this very same code and see where we're at.

Chairman Easton: It's been moved. Is there a second?

Mr. Axthelm: Second.

Chairman Easton: All right. It's been moved and seconded that we adopt the proposed changes as laid out by the staff for – as laid out by the staff for a one-year extension, and with an addition to that with a finding of fact that in the 2000 – in April of 2012 that this Commission reconsiders this section of code.

Ms. Ruacho: And we would just recommend changing "in April 2012" to "*by* April 2012." Maybe sooner than that.

Ms. Ehlers: Yes.

Mr. Christensen: Yeah.

Chairman Easton: So be it. Discussion?

(silence)

Chairman Easton: All those in favor, say "aye."

Ms. Ehlers, Ms. Nakis, Ms. Lohman, Mr. Hughes, Chairman Easton, Ms. McGoffin, Mr. Axthelm and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Abstentions?

(silence)

Mr. Christensen: To maybe –

Chairman Easton: Hang on. It clears. It clears eight-zero.

Ms. Ruacho: Thanks.

Mr. Christensen: Thank you. To maybe put people at ease, I think that this item and certainly some others that you're deliberating on that are not ready for final action could come back before you certainly, perhaps even before the end of this year. So we're not required to just do annual amendments once a year.

Chairman Easton: No, and actually that's something I want to talk about later.

Mr. Christensen: And so there's a good possibility that on some of these items we'll be back before you sooner rather than later.

Chairman Easton: Okay.

Mr. Christensen: And we'll have some direction from the Commissioners on these.

Chairman Easton: The Commissioners need approval to extend the meeting till 9:30.

(sounds of approval)

Chairman Easton: All right. The meeting will be extended till 9:30.

Ms. Ruacho: And wait – and just even if you want to, still that's fine. The remaining issues are not time-sensitive and so we could take them up at your May meeting.

Chairman Easton: Commissioners, what's your sense about how much debate there is concerning the CaRD issues? How much time are we looking at – you know, do you have five minutes' worth of questions, Carol, or forty-five minutes' worth of questions?

Ms. Ehlers: I don't have any questions. I have two "adjacents" to remove and another typo.

Chairman Easton: And I'm just going to a couple people who I know had some concerns about this. Mr. Mahaffie, do you have much on this? I know this is an area of your concern.

Mr. Mahaffie: I have issues. I don't –

Chairman Easton: I mean, are you thinking we have a few minutes' worth of issues or are we looking at –

Mr. Mahaffie: I would hope so!

Chairman Easton: All right. Then, you guys, let's try to dispatch these tonight. Is that all right?

(sounds of assent)

Ms. McGoffin: I think we should keep going.

Chairman Easton: All right. Let's go.

Ms. McGoffin: Why don't we just do 87?

Chairman Easton: Skip 86? Why would we skip 86?

Ms. McGoffin: Because she said we could do it in May.

Chairman Easton: Well, we could do it in May or we could finish it tonight. It sounds like we should finish it tonight.

Ms. McGoffin: Okay.

Chairman Easton: 86, .310. It's on your screen. Include exception for lands lying across a road. Skagit Surveyors' letter addressed this issue. "The setback provisions in 14.16 and 14.18 are inconsistent." 14.18 requirements result "in negative impacts to resource production."

The Department does not" – this is the Department's response – "The Department does not agree with the interpretation of the commenter. The subject setback (14.18.310)(8)(b) requires" – quote – "'buildings with the development'" – end quote – "to be set back 200" feet from an adjacent resource land. "The setback is not applied to the boundaries of the CaRD lots, as the commenter asserts. It is quite possible to design" a CaRD – "to design the CaRD lots to adjoin the road as required by 14.18 as well as meet the 200-foot setback" from structures placed on the lot. "The provisions are separate and" are "distinct and are not inconsistent. The Department does not recommend that the code be amended as suggested by SSE. The current proposal will allow the inclusion of the road right-of-way in the setback calculation, which will allow great flexibility for structure placement" within still maintaining – "while still maintaining the necessary and prudent protection to the surrounding NRL lands."

Commissioners, in this section of code, starting in line 39, page 22 of 25, you're reviewing just what's underlined as an addition. Can you limit your comments to – I know there's lots of issues about CaRDs, but I'd like us to try to limit our comments to this section. Commissioner Mahaffie?

Mr. Mahaffie: Well, from the conversation we've had tonight, I don't – personally to me it should just stop at the road – the setback. That's kind of where I'm hung up.

Chairman Easton: Tell us why.

Mr. Mahaffie: The farther you're pushing it, I mean if it's a resource land that the CaRD is on, everything you're pushing back is affecting resource land. Anything that you could do to preserve – it's not just resource land *adjoining* the CaRD. It's the resource land the CaRD may be sitting on that's affected. Anything that – I mean, as you go through the code relating to this, several times, you know, it brings out preserving as much as you can – the resource land – and it's counterintuitive for some of these setbacks. I mean, I understand the intent, but common sense sometimes isn't served well.

Chairman Easton: So you believe that the phrase "in those instances where the building lots are separated from the adjacent NRL land parcel by a public road" period? Is that what you're proposing or suggesting? So you said to stop at the "public road"?

Mr. Mahaffie: The setbacks stop at the public road. Personally. Not the sentence – the setback.

Ms. Ruacho: I think it would be helpful just to let you know that there was an original draft that did just that. And we take them to our resource advisory boards before we release to the public because they're appointed by the County Commissioners. And that was rejected. That *was* what was –

Chairman Easton: By which board?

Ms. Ruacho: The Ag Advisory Board. That was what was originally drafted, and they just didn't feel that that provided the protection to the resource operators sufficiently across__.

Chairman Easton: What did the Forest Advisory Board say?

Ms. Ruacho: I don't think that's one that they weighed in on because – they weighed in on several, but it's just not jogging if they did on that one or not.

Chairman Easton: Okay.

Ms. Ruacho: But I know the AAB did.

Chairman Easton: Commissioner Ehlers?

Ms. Ehlers: The 200-foot setback in the forestry was so that trees wouldn't fall on the buildings and the road provides for that. The second thing that I think – recognize. There are a number of public roads that the County doesn't own the right-of-way or the land underneath them. And so the landowner, I think in that case, can legitimately claim that that's part of their setback. It seems to me that it – that it – in Forestry, in gives more land to the resource as part of the 200-foot setback is on a road. What I would really like to do is replace "adjacent" with – is your preferred term "adjoining" in this case?

Chairman Easton: We'll come back to that. Marianne, isn't the net effect of what I read in your comment letter is that in the end this provision does more to take away from preserving the land than it does to preserve the land?

Ms. Manville-Ailles: That's right.

Chairman Easton: And isn't the whole intention – the intention of anyone who chooses to do a CaRD is to put – to try to cluster the development as closely together as possible to put the least amount of impact on the resource land, at the same time keeping the development costs lower by keeping those – I mean, obviously you serve both purposes because you keep the – the whole idea of a CaRD is to keep things clustered together?

Ms. Manville-Ailles: Correct.

Chairman Easton: What's the – so, in your experience then, from what you said in the comment letter, how is it possible to get this setback, you know, in a way that's more consistent with the code then?

Ms. Manville-Ailles: The problem is – and let me just give you a dimension so that you can put this in your head. Typically these CaRD lots are 1-acre lots. I think we would all agree with that. A 1-acre square is 209 feet by 209 feet. If you have to have a building setback of 200 feet, that would give you – and you have – you have it adjacent to the road – that would give you 9 feet to build your house.

Ms. Ruacho: If you make the lot a square. That's not required. It's just required to be an acre.

Ms. Manville-Ailles: But and that's correct, but when you're designing lots – I just want to – I want to put that in your head so that you can understand what's happening on these. And I – I can give you – they're – when this came up last year, or two years ago, you recall we've submitted the information on it, we've submitted the actual plats where we showed that the applicants had come in and had wanted to do exactly what you said, Jason. They wanted to put the lots against the road so they could preserve land that they were actively farming. And this is not Ag land, the Ag zone. This is primarily in the Rural Resource zones. They wanted to do that. In order to be able to put those lots against the road and cluster them together – not just against the road, but there were some houses that were – that were – there were several houses that were also adjacent to them. They couldn't put them next to the houses, either. They had to put them 200 feet from the existing houses and 200 feet from the road in order to meet the intent of the code, which, in effect, pushed those houses 200 feet more into the resource land. Whether you're talking about houses or whether you're talking about lot lines, it pushed them 200 feet further into the – it pushed them a minimum of 200 feet into the resource land. The alternative for that applicant to be able to do what I think we all agree would have been a better situation would have been come in and apply for a variance. And that applicant was unwilling to spend the many thousands of dollars that it costs to apply for a Hearing Examiner variance, plus the cost of having someone prepare that. And so they went ahead and did that.

And I mean you can see on – if you looked at an aerial photograph of it today, you can see where there was an area that was actively being farmed for crops that is not now because of this provision. And that's – and we have had numerous examples of this. I can tell you that I have taken many, many of these now to the Hearing Examiner to – I had to go to the Hearing Examiner and have not once been turned down by the Hearing Examiner to reduce those – to reduce those setbacks.

So we're being forced into this additional process at a cost – and I mean, we're not talking just a couple hundred dollars. We're talking thousands and – probably closer to $10,000 to do a variance process to be able to do something that's –

Chairman Easton: That's the intention of the code.

Ms. Manville-Ailles: – is supposedly the intention of the code.

Chairman Easton: Okay.

Ms. Manville-Ailles: I'm not –

Chairman Easton: I've got to stop you there. Commissioner? Marianne had a question – or no, not Marianne. Annie?

Ms. Lohman: But you're not talking 200 feet around the entire perimeter. You're talking about the edge, correct?

Ms. Ruacho: It would be along the road or where it meets an adjacent parcel.

Ms. Lohman: Because there is a danger of having –

Chairman Easton: Or where it meets an adjacent parcel. So you've got a road and adjacent parcels.

Ms. Manville-Ailles: The perimeter.

Ms. Lohman: Right. Because there is the – I understand the frustration of your actually taking more; however, you can't have an incompatible use next to an NRL. And that's where the tension comes in, because what happens is is you actually take away from the NRL because they have to step back.

Chairman Easton: But you're driving them further from the road. If you had them closer to the road, then you wouldn't be interacting with the NRL.

Ms. Lohman: If you have houses right on the property line against a farm, what do you think's going to happen?

Chairman Easton: No, I'm saying that if you – if you're pushing them 200 feet *from the road*, you're pushing them closer to adjoining parcels.

Ms. Lohman: I don't understand the road thing, but I do understand from the adjacent NRL.

Ms. Ruacho: Right. Well, what we're proposing here is to allow the inclusion of the road right-of-way in the 200-foot setback so it necessarily shrinks the setback. It gives them 60 feet to 100 feet.

Ms. Ehlers: It gives them 60 feet.

Ms. Ruacho: So we're –

Chairman Easton: So instead of 200, now it's 140?

Ms. Ehlers: Yeah.

Ms. Ruacho: To – or, depending on the right-of-way, it can be up to 100 feet. So it could cut it in half or –

Ms. Manville-Ailles: But it also could be as much as 50 because 50 is now the standard.

Ms. Ruacho: Yeah. Again, it depends on the road, whether it's a bigger road –

Chairman Easton: So it's – it could be a net gain of 50 to 100.

Ms. Ruacho: So this proposal reduces the setback. It does not – as far as Marianne would propose to eliminate it, as Matt was saying – and, again, we did propose that originally; that was seen as not a –

Chairman Easton: I understand. Does that make sense then to your question about not understanding the road part, Annie?

Ms. Lohman: Yes.

Chairman Easton: Okay. Just a second. I'll come right back to you. Elinor?

Ms. Nakis: Where did this number 200 come from? 200 feet? I mean –

Ms. Ehlers: The trees.

Ms. Ruacho: It's a – yeah. ___ tree height.

Ms. Nakis: From the tree, but if I'm looking – if I'm on Cook Road and I just bought 40 acres there and I'd like to develop a CaRD that wasn't going to adversely affect the farmland, so that the people that purchase that property – for example, they were going to, you know, purchase the property on the front of Cook – on Cook Road frontage, you're saying that they'd need to put their houses 200 feet away from the road? That would be the setback?

Ms. Manville-Ailles: Mm-hmm.

Ms. Ruacho: Currently.

Chairman Easton: If we don't adopt this.

Ms. Ruacho: We're proposing to now include the roadway.

Ms. Nakis: If we're all about preserving farmland, then that –

Ms. Ruacho: It's not about – it's not – there's a balancing act, like Annie was talking about. It's not *all* about the person who's doing the CaRDing and it's not *all* about the neighbor. It's about trying to balance. So if you want to put your CaRD lots up against the road because you want to preserve *your* farmland as much as possible, you're bringing those homes closer to the guy on the other side of the road who doesn't want them that close, for spraying and noise and dust and all those issues that they then get complaints about. So it's a kind of balancing act.

Ms. Manville-Ailles: But it depends. Because if they weren't doing a CaRD, they could still do it.

Chairman Easton: I need you to wait till I call on you, okay? Commissioner Ehlers? I'm sorry – actually Commissioner Hughes was next. He has something pertinent to this. Go ahead. Dave, did you –

Mr. Hughes: Well, some of it's being answered but, are we in a situation again where we're talking about changing something that wasn't up for public hearing?

Ms. Ruacho: If you're talking about going further than what was proposed.

Mr. Hughes: Well, I'm looking at the sentence. You were talking about (b), it looks like. 14.18.310(b) – you know, the first sentence is an unchangeable or un-public – unadvertised public hearing item and –

Ms. Ruacho: You mean if you were talking about changing the 200 feet?

Mr. Hughes: Right.

Ms. Ruacho: Yeah, we would have to – I mean, it would be our opinion and our recommendation that we would have to put that back out. Because we know at this point, even if we eliminated the fact that just in this situation that the *road* be counted as a setback that our own Ag Advisory Board would oppose that change.

Mr. Hughes: Yeah, but, you know, I can remember the day when everyone came in and was complaining about building their house a half-a-mile in, too.

Ms. Ehlers: Yeah.

Ms. Ruacho: Mm-hmm.

Mr. Hughes: Now we're – especially we're talking the same zone, Ag to Ag – now if it was Ag to Rural, then, you know, maybe that's a different story.

Ms. Ruacho: Yeah, and, again, it might be one of those situations where, you know, what we're doing here – I think, you know, it gets late and people get tired. I think it's kind of hard – but what we're proposing to do here is lessening the setbacks. So what I'm hearing from everybody is, We don't want to have the bigger setbacks.

Mr. Hughes: That's what I – that's how I'm reading it.

Ms. Ruacho: Yeah, that's what we're proposing to do. If you want to take it even further. in a finding to take it further is something we could do.

Chairman Easton: Hold on. Commissioner Ehlers?

Ms. Ehlers: Well, Dave's right. We had a number of study sessions a long time ago, and the 200 feet for Forestry was because a lot of the trees – the Doug firs – were 200 feet tall and one of them fell down on somebody's house, where the house was right next to the lot line. And so it was a safety issue.

In terms of Agriculture, it was a matter of spraying and everything else, and you couldn't be more than 200 feet from the road. The back of your house, the back of your buildings had to be 200 feet or closer to the road. So to require a 200 – if you're talking about Ag zone, to require anything *in* 200 feet or 140 is a violation of the whole principle. If you have the adjacent NRL zone is Ag and what's on the other side, as Dave says, is Rural or Residential or what have you, then that may be a different point. But we're not – when you write these codes you have to know why they were written in the first place.

Chairman Easton: The comment letter was limited to this phrase – that the 200-foot setback, as they relate to parcels designated on Resource land that are also adjacent to Resource land. That's not included, and we could – it would seem to me that we should have the ability to potentially change – is it possible, I ask, to change the phraseology in the code to match Resource land to Resource land, and then look at whether we could lower the requirement? Is that even in our options? Within the way the code's structured?

Ms. Manville-Ailles: That's how the other code is.

Mr. Walters: As a general matter, what's in the comment letter doesn't enable you to do more.

Chairman Easton: No, I'm not saying that. I'm saying within the way a code is structured, can you adopt – *could* you adopt – rules that relate only to an NRL – only to designations that are borderlining other similar designations, so that an NRL that bordered an NRL could be altered this way, but an NRL that bordered a Rural Reserve couldn't.

Ms. Manville-Ailles: It already is.

Chairman Easton: All right. Mary?

Ms. McGoffin: I forgot what I was going to say.

Chairman Easton: I think we've talked this one out pretty good. Josh?

Mr. Axthelm: It seems logical to me. You have a 200-foot setback from a side from properties next to each other that across a road should be included in that like they have shown here. That makes sense because it still gives that property across the road a 200-foot distance just like they're allowed from the side. So it's logical.

Ms. Ehlers: Mm-hmm.

Mr. Axthelm: I move that we accept it like this.

Ms. Lohman: Second.

Chairman Easton: So it's been moved and seconded to accept the changes as proposed in the code in front of us, lines 39 through 41. Discussion?

Ms. McGoffin: With a finding of fact.

Chairman Easton: And you are requesting a finding?

Ms. McGoffin: Yes.

Chairman Easton: What's your finding request? I mean, you can just request a finding, but it doesn't – it would look –

Ms. McGoffin: It would finish the motion.

Chairman Easton: Oh, you want – okay, we'll deal with the finding when we come back from the motion. Discussion? Look, I think CaRDs are broken and confusing. I think they're inappropriate and disturbing.

Ms. Ehlers: Mm-hmm.

Ms. Ruacho: I think we can make a finding!

(laughter)

Chairman Easton: Okay. Because they don't – they do everything that you want people to do while pissing everybody off whom you don't want to piss off, that cutting down the trees and building houses on farming. And that makes absolutely no sense in Skagit County. It probably makes no sense in *Mars*, but it doesn't make *any* sense in Skagit County. And out of principle, I will probably *never* vote yes on anything that relates to a CaRD. I'm glad that the rest of you probably will approve this and make it better, but I am voting no emphatically. This is messed up. Any other discussion? Commission Nakis?

Ms. Nakis: Okay, so since we're talking on this, right next door to me there's a CaRD and it's 10 acres of wetlands with two 1-acre CaRD or lots in there that are butted up to each other. They share a driveway. And right now the 8 acres and 1-acre lot with the house on it is for sale. But nobody's interested in buying that because this island property is right smack next to another 1-acre lot that nobody could anticipate or figure out what might be done with it. Last year they rented that property out and there were four trailers parked in that 1-acre spot that doesn't have a house, and then there were several people in the other –

Chairman Easton: So are you speaking in favor or against the motion?

Ms. Nakis: I'm totally – I'm totally just complaining about CaRDs!

Chairman Easton: That's okay. I guess I'll accept that since I just did it myself.

Ms. Nakis: I think that they lower the value of properties, too.

Chairman Easton: All right, any other complaints about CaRDs or comments on this discussion?

Ms. Ehlers: Oh, don't get me started! Can we replace the word "adjacent" with "abutting" or "adjoining"?

Ms. McGoffin: Not tonight.

Ms. Ruacho: I wouldn't recommend it without looking into it. I mean, "adjacent" means touching or –

Chairman Easton: Let the – the Chair rules that the Commissioner has the ability to make that as an amendment. If she can garner a second, I'll put it up for a vote. Is there a second to change "adjacent" to "abutting"?

Ms. Ehlers: Oh, please second it, because "adjacent" doesn't mean a damn thing.

Mr. Hughes: Well, "abutting," if there's a road in the way then it's not abutting.

Ms. Ruacho: I don't know that that's what we mean all the time.

Mr. Hughes: Well, that's what we're talking about.

(several inaudible voices)

Chairman Easton: Anh, anh – I need a second. Is there a – it dies for the lack of a second.

Ms. Ehlers: It has no meaning whatsoever.

Chairman Easton: Which part? The death or the – never mind.

Ms. Ehlers: The "adjacent."

Chairman Easton: So the question before you is the approval of the language as staff drafted it from 14.18.310(b). All those in favor, say "aye."

Mr. Hughes, Ms. Lohman, Ms. Ehlers, Mr. Axthelm and Ms. McGoffin: Aye.

Chairman Easton: Oh, we're going to need hands on this one. All those in favor, raise your hand, please. And all those against, raise your hand. Let's show it passes five-three.

Mr. Mahaffie: I abstained.

Chairman Easton: Oh, I'm sorry. Five-two with an abstention.

Ms. Ruacho: Five-two with an abstention. That's Matt. And, Elinor, you're voting no?

Ms. Nakis: Right.

Chairman Easton: Jason and Elinor voted no. Matt abstained. And Mary has a finding.

Ms. McGoffin: So my finding is simply that even including the roadway and deducting that – so in this case whatever less of 200 feet now they have to set back – is still not enough in some situations and still inappropriate in some situations.

Ms. Ruacho: And is that a finding of the Commission?

Ms. Ehlers: Too much or too little?

Ms. McGoffin: It's too much to push them away from the road.

Ms. Ruacho: It doesn't reduce the setback enough.

Chairman Easton: Is that the consensus of the Commission, that it doesn't push the setback enough?

Ms. McGoffin: A setback should be reduced in some instances where common sense prevails.

Ms. Ehlers: Mm-hmm.

Chairman Easton: Is there a consensus on that? Is there – is there some – I mean, all we have to do to not have consensus is one of you say, I don't agree with that. So if you don't agree with what she just said as a finding, please speak up now, not later when I sign it.

Mr. Hughes: I'd have a problem with it if it's in the like zone.

Chairman Easton: Can you add the phrase "in the like zoning"?

Ms. Lohman: It says that in there.

Chairman Easton: Not in her finding.

Ms. Lohman: Oh. Sorry. Excuse me.

Chairman Easton: You can go back to the tape and pull the finding off of that, okay?

Ms. Ruacho: Did he say – what, Dave?

Chairman Easton: In a like zoning.

Mr. Hughes: Like.

Ms. Ruacho: Oh! I thought he said *light*!

Chairman Easton: In identical zoning.

Mr. Christensen: Yeah.

Mr. Hughes: Oh, you didn't hear? We're making some new zones up tonight.

(laughter)

Chairman Easton: No new zones. Not at nine-thirty. Okay.

Ms. Ruacho: Okay, in like to like zoning.

Mr. Hughes: Well, that's why we're getting them by.

Chairman Easton: That's why we're getting them by.

Ms. Ruacho: Is that okay, Mary?

Ms. McGoffin: Yeah, that's all right.

Ms. Ruacho: Okay.

Chairman Easton: Okay. All right, so that's consensus. Okay. Moving on to 87, .320, CaRD cluster requirements. Concerning – SSE has concerns with the results of cluster requirements.

Staff's response: "There is no substantive difference resulting from the proposed amendments. It is the Department's intention to clarify instances of the term "adjacent" throughout Title 14. In this case, it is the Department's desire to more clearly indicate that the property lines of" a CaRD lot "must be adjoining i.e. touching." Commissioner Ehlers?

Ms. Ehlers: Is pleased.

Commissioner Easton: I'm perceiving that you might want to speak. Is pleased, Commissioner, with the staff's recommendation?

Ms. Ehlers: Well, with clarifying what the word "adjacent" means, although line 9 still has one, since "adjacent" doesn't really mean much legally in this county, or at least nothing consistent.

I have a difficulty with line 6. There was a short CaRD out near me. It was a beachfront short CaRD. There was a lot of opposition to it. It would have been the stupidest kind of land use planning on earth to mandate that be next to the

road when it was a fair distance to the shoreline and it was the shoreline that there was the reason for the CaRD. So – but that's –

Chairman Easton: Do you have a recommendation other than – are you in agreement with the changes that the staff's made?

Ms. Ehlers: To?

Chairman Easton: Commissioners, to .320. Is there consensus on the staff changes?

Ms. Ehlers: I don't agree with (a).

Chairman Easton: All right, so we don't have consensus so I'll need a motion then to deal with 320. I need a motion to either to approve – the Chair would entertain a motion to approve the staff's changes or a motion to –

Ms. Lohman: (inaudible)

Chairman Easton: When we get to discussion, I'll let her talk to why she doesn't agree with (a). How's that? If we get there. Do you have a motion?

Ms. Ehlers: I don't like CaRDs any more than you do, so I'm not going to give a motion on it.

Chairman Easton: I need to do something with this section, y'all.

Ms. Lohman: Well, you can't discuss it without a motion so I'll make a motion to accept –

Chairman Easton: The staff's changes?

Ms. Lohman: – staff recommendations.

Chairman Easton: Okay. So it's been moved. Is there a second.

Mr. Hughes: Yeah.

Chairman Easton: Okay, so it's been moved by – moved and seconded to approve the staff changes to .320. Discussion? Mahaffie?

Mr. Mahaffie: I'd be okay with it if the "shalls" were taken out and put "should."

Ms. Ehlers: Ah, that makes a difference.

Mr. Mahaffie: There it comes back to my comments on common sense.

Ms. Ehlers: Mm-hmm.

Mr. Mahaffie: Properties aren't always flat, for starters.

Chairman Easton: Sometimes they're accidentally square.

Mr. Mahaffie: There're site conditions that may necessitate other configurations. There's Public Works rules, as far as siting driveways, that address this and quite adequately.

Ms. Ehlers: Mm-hmm.

Chairman Easton: So as the motion sits, you would vote no, but you might consider making an amendment to remove the word "shall" in line 2? Or other "shalls" – all the "shalls"?

Mr. Mahaffie: I don't like it but I would accept it if the "shall" in line 3 and the "shall" in line 7 and the "shall" in line 10 were changed to "should."

Chairman Easton: Would you like to make that as an amendment?

Mr. Mahaffie: Yeah, I would.

Chairman Easton: There's a motion to amend. Is there a second to amend?

Ms. McGoffin: I'll second.

Chairman Easton: It's been moved and seconded to amend the motion to remove the word "shall" in lines 3, 7 and 10, and replace the word "shall" with "should."

Mr. Hughes: Boy, are we having a – do we have a CaRD left?

Ms. Ehlers: Mm-hmm.

Mr. Hughes: No, adjoining – what's going to be in between the houses? A strip of open space from the one owner who's given up all the –

Ms. Ehlers: He's right ___.

Ms. Lohman: We just create a loophole to –

Mr. Mahaffie: Well, can I give some examples?

Mr. Hughes: Okay.

Chairman Easton: Sure. Talk with him.

Mr. Mahaffie: Sometimes, for example, there's a small ditch that has a 50-foot buffer that separates one lot from two other lots. I've seen it. It's quite common.

Ms. Ruacho: We allow for that in another provision – for critical areas.

Mr. Hughes: That's critical areas.

Ms. Ehlers: Yes, but that's a "should" thing.

Mr. Mahaffie: Driveways. I'm personally really involved with this. I've done this CaRD, two-lot CaRD sharing a driveway. Site conditions would have – it would have been really nice to put in a separate driveway. I had to cut down forty to fifty trees that I would not have wanted to to make this apron. The square footage of impervious surface is twice what I could have done it with. I mean, we're talking thousands of square feet of impervious surfaces to make a shared driveway work, versus two separate driveways. Sometimes – and to me it's the staff's job to guide people in the "should," you know – to be forceful, if need be, or to realize common sense.

Chairman Easton: All right, the proponent has spoke to his issues about why he wants the "shalls." Is there anyone else who wishes to speak to the *amendment*?

Ms. Ehlers: I will speak toward the – in favor of the amendment.

Chairman Easton: Okay.

Ms. Ehlers: I think it takes a lot of the onus away. I can –

Chairman Easton: I recognize that you want to say something.

Ms. Ehlers: And it also means that you can do Firewise practice, which the CaRD does not recognize. When we approved the CaRD, we were shown examples of CaRDs in Bucks County, Pennsylvania, in the middle of tall chestnut and oak forests, which are not likely to burn in August and September –

Chairman Easton: Okay, you're – we're with you on the Fire – I understand what you're getting at in the Firewise thing.

Ms. Ehlers: So.

Chairman Easton: Commissioner? To the amendment.

Ms. Lohman: Maybe my – correct. I guess it depends on what NRL the CaRD is in because it – there's different implications. I understand site topography issues that would make, you know, what you say in a –

Chairman Easton: Forested area.

Ms. Lohman: More a forested –

Mr. Hughes: Or a rural, or any –

Ms. Lohman: But out in the Ag zone where the ground is relatively flat and probably the only feature that would make you move one way or another would be a ditch or a roadway, it's a different scenario. So you have to be careful when you have a one-size-fits-all regulation – which is what this is – on its application. So I am cautiously – with an abundance of caution I support your amendment to change it to "should" from "shall."

Chairman Easton: Okay. I'd be surprised if legal staff didn't have something to add, because I've never been in a should/shall conversation where they didn't have something to add. Mr. Attorney?

Mr. Walters: So I would suggest – first of all, I don't like the word "shall" *ever* because it sometimes has different meanings; however, it is – sometimes within the same sentence – however, it is generally understood to mean "must," so I generally recommend "must" where you mean a mandatory sense.

If you want to say "shall," then you mean "must," if you want to say "should," what do you mean? Do you mean –

Ms. Nakis: Will.

Mr. Walters: – the applicant –

Chairman Easton: If possible.

Ms. Nakis: No.

Mr. Walters: Do you mean the applicant has complete discretion or do you mean that the Department has discretion and this is guidance to the Department? If you only have the word "should" to rely on in the sentence, what happens when the applicant really wants (a) and the Department really wants (b)? There's not a lot of guidance to the judge or the Hearing Examiner or the Board, each of whom may end up hearing this, to determine what the legislative authority really meant.

Chairman Easton: So am I to assume by your comment, sir, that then if this motion was – if this amendment and then a motion was to be approved that legal staff would oppose this to the Commissioners?

Mr. Walters: No, no. It's a *policy* decision. The question on whether it should be "should" or "shall" or "must" or "may" is very policy-oriented. The question is just, What do you mean? If you intend for it to be completely permissive and it's just guidance, then "should" is probably okay. But if you mean for *staff* to be able to determine what the appropriate circumstance is, you probably need to add something to that effect.

Chairman Easton: To that effect. Do you want to speak to that? Does the proponent? Do you want to speak to – I'm going to give the proponent the chance first.

Mr. Mahaffie: I don't know. I've found staff if they think it should be one way, 90% of the time it's going to be that way.

Chairman Easton: Mary?

Ms. McGoffin: What word is equivalent to "should"? I mean I don't have a thesaurus.

Chairman Easton: Is there a better choice of words? You suggested "shall" should be "must." Do you have a good suggestion?

Mr. Walters: I guess my – yeah, I don't like "shall" ever – but my question is, What do you intend to occur here? Do you intend staff to make this decision? Do you intend it to be guidance without an identified –

Chairman Easton: Commissioner Ehlers? Let's limit our – let's all limit our comments to just the amendment. Commissioner Ehlers?

Ms. Ehlers: I mean "ought to."

Chairman Easton: You're speaking to intention. Commissioner Nakis?

Ms. Nakis: I think that it lends to flexibility and using common sense when you're looking at the lay of the land and having to make different – being able to have the flexibility in making common sense decisions.

Chairman Easton: But whose discretion?

Ms. McGoffin: But where?

Ms. Nakis: So –

Mr. Walters: I guess if you – I mean, if you had a sentence that said, "The proposal should do *x*," who's the decision-maker there? If you had a sentence that said, "The Department should consider the following factors and in its discretion determine *x*," that's different. You know, it provides explicit instruction as to who the decision-maker is. And that would provide clarity in the event that there's a dispute, which is going to be likely if there's not a mandatory term.

Chairman Easton: Okay. All right, we need to dispose of them and –

Ms. Nakis: So the tie-breaker would be the staff.

Mr. Walters: If you wrote it that way.

Ms. Nakis: Yeah. Right.

Mr. Walters: Or you could write it and say, "The applicant should consider the following, but may," you know, "choose."

Ms. McGoffin: Then maybe we need to add "at the discretion of the Administrative Official"? "He should"?

Chairman Easton: You know, it would have been really interesting for you or someone representing Gary to have to go to – to have to go out and make a real life decision about twice as much impervious surface for one driveway versus two. Obviously that'd be staff – that would put a lot on – put more demand on staff. Yes?

Mr. Walters: So the one other thing that I need to make sure that we say is what you're proposing here is potentially a really significant change, maybe –

Chairman Easton: Oh, here we go.

Mr. Walters: Yeah. So which is not to say that you can't do it, but, you know.

Chairman Easton: But we're up against the public again – the public notice again?

Mr. Walters: The reason that we have that is just to make sure the public has a chance to comment.

Chairman Easton: I understand. I was waiting for that.

Mr. Walters: So that can happen here, it can happen later. It just has to happen at some point.

Ms. Ehlers: Well, we did get public comment that goes in the direction that we're going, that asked us to be freer in how we design things so that it could be more realistic.

Chairman Easton: It's painful. It's painful that it's only at certain times, when we seem to be moving in certain directions, does this certain issue about whether we noticed the public enough comes up. I just wish that the four of you could sit on this side and have to deal with that. It's –

Mr. Walters: I understand that concern.

Chairman Easton: It's beyond frustrating. All right, we're moving on with –

Mr. Walters: I want to reiterate that you have the ability to do this.

Chairman Easton: I understand that we have the ability to do it.

Mr. Walters: All right.

Ms. Ehlers: I think I should explain why I'm smiling. I would love to have had Ryan here the day we talked about "should" and "shall" on Guemes Island.

Chairman Easton: Okay, we've got him –

Mr. Walters: The reason I was –

Ms. McGoffin: Do we have a consensus?

Chairman Easton: No, we're going to vote. We're going to vote on the – we don't have consensus. All those in favor of the amendment, signify by saying "aye."

Mr. Hughes: Which is?

Chairman Easton: Oh, excuse me. Let me restate the amendment. The amendment to the motion is to remove the word "shall" and replace them with the words "should" – with the word "should" – on lines 3, 7 and 10. Is that right? Yeah, 3, 7 and 10. All those in favor of the motion, signify by saying "aye."

Ms. Ehlers and Mr. Axthelm: Aye.

Chairman Easton: We'll have to raise our hands. And those opposed? And abstentions? I'm abstaining. Two? You're abstaining? All right, so let me do this again. We had two no's – or two yea's. Two yea's.

Mr. Axthelm: Three.

Chairman Easton: Who? We had you – raise your hand if you voted yea. One, two, three. Did you get that?

Ms. Ruacho: Yep.

Chairman Easton: Okay. We had –

Ms. Ruacho: Do you want your names listed on this one or just the –

Chairman Easton: Nah, just the vote.

Ms. Ruacho: All right.

Chairman Easton: It's just an amendment, so that's why I would just do the vote.

Ms. Ruacho: Okay.

Chairman Easton: And then we had – how many no's? Two no's? And three abstentions.

Ms. Ruacho: So did you want this even listed then, because it doesn't – it didn't – I usually don't list anything that doesn't live.

Chairman Easton: Nah.

Ms. McGoffin: Except that it shows the Commissioners how divided we are.

Chairman Easton: Well, actually I do – yeah, I do want this listed as a finding – or not a finding; as a – what would you call that?

Mr. Walters: (inaudible)

Mr. Christensen: A vote and no action.

Chairman Easton: Yeah, I want it noted for the Commissioners. In case they're only watching – most likely reading – if they're just reading and not watching.

All right, now to the question of the motion. Any further discussion on the motion? The motion is to approve the staff's recommendations for the changes to 14.18.320. 14.18.320, the changes. We're considering the motion. Any discussion – further discussion?

(silence)

Chairman Easton: All those in favor, signify by saying – or raise your hand, all those in favor of the motion. Who moves to approve this change to the CaRD?

Ms. Lohman: The "shall" or the "should"?

Chairman Easton: No, that – we just dealt with them. I'm sorry. We're on – the amendment did not pass. The amendment died. Now we're considering the actual approval of the provision of the changes to .320. All those in favor, raise your hand – to approve the staff changes.

Ms. Lohman: Well, I think I'm in favor of it.

Chairman Easton: Am I not being clear about what we're voting on? Do we all know what we're voting on?

Ms. Lohman: We're voting on the proposed language.

Chairman Easton: The proposed language. It's right in front of you right now. Everything that you see that's underlined, crossed out – that's what we're talking about.

Ms. Ehlers: In 14.18.320?

Chairman Easton: Yeah. Elinor, are you with me?

Ms. Nakis: Yeah, I am now.

Chairman Easton: Okay.

Ms. Ruacho: So just to be clear, I mean, if you're not happy with the language then the result is either the Commissioners can hold their own hearing or move forward or you want it to go back – basically the change we're making here is redefining "adjacent." So what you're wanting, then, is to have it go back to saying "adjacent."

Ms. Ehlers: Oh, no. No, no.

Ms. Ruacho: Well, that's what will happen.

Ms. Ehlers: "Shall share infrastructure" has nothing to do with "adjacent."

Ms. Ruacho: Well, I'm just saying that's what – the underlying will go away and it will go back to how it read before.

Mr. Hughes: I think what we're voting on is since he can't get a consensus to push it on, now we're voting on the proposed change – or the proposed changes that were in the public hearing.

Ms. Ruacho. Okay. And just – you know, I'm – we did this at the Planning Commission's request to redefine "adjacent." So if it's going to happen like this every time, then maybe we ___ take it up ___.

Chairman Easton: Wait, wait, wait. Don't go there. There's more to it than "adjacent."

Ms. Ruacho: Maybe it's too difficult.

Ms. Ehlers: We're not talking about "adjacent" as the issue. We're talking about "shall share infrastructure," "shall be clustered" and "shall adjoin___ ."

Ms. Ruacho: That's mostly where the word occurs. That's the issue.

Chairman Easton: Okay. Well, we can agree to disagree about that.

Ms. Ehlers: Those are the issues *I'm* talking about.

Chairman Easton: All right. I'm calling for the question. Those in favor of the motion to accept staff's changes, please raise your hand. Those opposed? Okay.

Mr. Christensen: Okay, so what was that? Three yes –

Chairman Easton: Five to three. Three, five.

Mr. Christensen: Three yes, five no.

Chairman Easton: Okay, so the Commissioners have the option of doing this on their own, sending it out to public hearing – or back to us for another public hearing – or nothing.

Ms. Ruacho: Right. They have basically all – again, it went – because it's coming to them with no recommendation. Yeah.

Chairman Easton: Right. When they come with – remind us – but when they come with a recommendation, what's the difference?

Ms. Ruacho: They have to either hold a public hearing or send it back. But when it comes with no recommendation they can act.

Ms. Ehlers: I would like –

Chairman Easton: I mean, before I close if you want to try to go in here and take some, yes, and not, I've got to give you the chance.

Ms. Ehlers: Please give me the chance –

Chairman Easton: All right, make it quick.

Ms. Ehlers: – to say that my vote "no" had nothing to do with the word "adjacent" versus "abutting" or "adjoining."

Chairman Easton: Okay. All right. Under General Business, a couple issues that relate to this that I need to bring up. Number one: When will the hearing for the Burlington-Edison Schools' – thank you, Marianne – when will the hearing for the Burlington-Edison Schools' concerns come up and can it be soon, since they are so brief – the three changes that we weren't able to deal with that they requested?

Ms. Ruacho: We've been talking with the representative and the last e-mail that went out indicated September probably.

Chairman Easton: Is that the soonest we can do it?

Ms. Ruacho: Mm-hmm.

Chairman Easton: Okay. Is that going to hurt them timeline-wise?

Ms. Ruacho: Un-unh.

Mr. Christensen: There may be – no, it doesn't seem to be time-sensitive. The other thing, it may afford us, while we have other work program projects and items underway which require our attention – whatever you finally recommend to the Board and what the Board may ultimately decide, they themselves may want you – or they may come back and readdress some of these issues in a different way.

Chairman Easton: And then they could be grouped together?

Mr. Christensen: Yeah. We'll deal with it. So this earlier – I know I'm bringing up old business, but the earlier comment about by April of next year, we may actually be seeing some action on some of these items yet this year.

Chairman Easton: And that brings me to my next point. As Chair, I'm concerned about how we're grouping these together. Six-and-a-half, or going on seven hours of deliberations on 100-something changes, I'm not – I'm wondering – I want you to seriously consider it and I want to hear back from you – from the

Director – next meeting. I'm requesting that we consider code amendments quarterly – that there is just a standing order of business on our calendar to deal with code amendments and maybe take these in somewhat smaller, bite-size sort of fashion, because it's pretty extensive to consider them in the way that we have the last two times that I've done them since I've been on. So I want you to consider that and get back to us. I don't expect –

Mr. Christensen: We've been giving it some thought, so it's not new.

Chairman Easton: Okay.

Mr. Christensen: It's a good conversation to have.

Chairman Easton: All right, let's – we look forward to hearing back from you about that. Is there anything else to come before the Commission? Yes, Commissioner?

Ms. Ehlers: It's getting on to water system construction time. When will that change about the eight inches in the pipe go through?

Mr. Christensen: It'll be part of this recommendation. It'll go to the Board. If not late this month, early next month the Board will probably take it up.

Ms. Ruacho: Yeah, I think we're scheduled the 21st of May or something.

Chairman Easton: Okay. Well, look, the Chair wants to thank the Commission for their patience, staff for their patience, but I'm not doing that yet. Carly.

Ms. Ruacho: Back at the beginning I asked if – then – if you were going to do it by consensus, that we're going to need a motion.

Chairman Easton: Yeah, we need a motion to approve the whole – everything that was done.

Ms. Ehlers: Approve everything we approved of.

Chairman Easton: We need a motion to approve the changes that we came to a consensus on – an overreaching motion. That was easier than doing motions on each one.

Ms. Ruacho: Sure.

Ms. McGoffin: All right. I make a motion that we approve the miscellaneous code amendments that we had a consensus on.

Chairman Easton: Second?

Mr. Axthelm: Second.

Chairman Easton: It's been moved and seconded to approve the changes that were made by consensus tonight in the form of one motion.

Ms. Ehlers: And the other night.

Chairman Easton: And the other – what's that?

Ms. Ehlers: And on the 5th.

Chairman Easton: And in our previous deliberations.

Ms. Lohman: So what does that mean on the ones –

Chairman Easton: Discussion?

Ms. Lohman: – where we didn't have consensus?

Ms. Ruacho: Your vote will be reflected.

Chairman Easton: Those were recorded.

Ms. Lohman: Okay. I'm sorry.

Chairman Easton: Where we didn't have consensus – it's a good question – where we didn't have consensus, our vote was recorded. All those in – or, discussion?

(silence)

Chairman Easton: All those in favor? Aye.

Ms. Lohman, Ms. Ehlers, Mr. Hughes, Ms. Nakis, Mr. Axthelm, Ms. McGoffin and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Abstentions?

(silence)

Chairman Easton: Okay, the ayes have it.

Ms. Ruacho: Who seconded? I'm sorry.

Chairman Easton: Who seconded? Josh or Matt?

Mr. Christensen: Yeah, it came from over here someplace.

Ms. Ruacho: Matt?

Mr. Christensen: Matt.

Chairman Easton: Thank you for your –

Ms. Ruacho: And then – sorry!

Chairman Easton: That's all right.

Ms. Ruacho: You're always just so fast! Not, well –

Chairman Easton: Not tonight!

Ms. Ruacho. Let me take that back… So the schedule: We had, you know, originally proposed not to go to the wee hours and instead go on to May 3rd, but since we got done tonight on deliberations you would only have one item on your agenda on May 3rd. And we discussed last time if that happened it is something we could push back to June 7th, but what that would do – it was going to be your work session on pipeline safety.

Chairman Easton: Yeah. Now when you and I discussed – didn't we discuss this offline that I was open to the idea and wanted the Commission to weigh in – are you comfortable with a pipeline safety work session followed by a pipeline session – public hearing?

Ms. Ehlers: No.

Chairman Easton: Okay, let me tell you why I'm a big proponent for it. The public would get to come to the work session and under – would be even more invited to the work session than they normally are. We could hear it, we could – from a time management standpoint it makes sense. The pipeline safety stuff is not big enough to do a whole meeting on and we're kind of – we're going to have to work in the summer and I'd like to kind of small up the spring, if I can, to try to balance the work load.

Ms. Ruacho: And you won't be deliberating on it that night.

Ms. Ehlers: Oh, okay.

Chairman Easton: No, we would just have the work session and the public hearing. We wouldn't deliberate until June.

Ms. Ruacho: July.

Chairman Easton: Okay. Oh, July. Right.

Ms. Lohman: Question?

Chairman Easton: Because we're moving it to June. Thanks. Thanks. Yeah?

Ms. Lohman: When do you think the first installment on the Shoreline Master Plan would be?

Chairman Easton: That's a ways out still, isn't it? She's going to come back for work sessions before we even get to that.

Mr. Christensen: Yeah, Betsy will need to come back and provide you with periodic updates. So you're not – that's a three-year program.

Ms. Lohman: But on her first installments, are you looking closer to this fall or next winter or –

Mr. Christensen: You know, let me have Betsy send you an e-mail and let you know kind of what the timeline is and the update is.

Ms. Lohman: Because we need to have room for that.

Ms. Ruacho: She knows that you guys are booked out through August, so this schedule has gone in front of her.

Ms. Lohman: Because we don't want the schedule to get to be that she doesn't ever get any time.

Ms. Ruacho: No, she knows the schedule.

Ms. Lohman: I know she talked about having it in bites instead of the whole enchilada.

Ms. Ruacho: And she said she might need, like, ten, fifteen minutes with you here and there, which we can totally work that into the schedule we have. She just wouldn't have a big block, and she said she doesn't need it until at least the fall.

Chairman Easton: Okay, great. As long as we're staying in touch with her on that, that's great. All right. So then we are agreed then that we'll do the public hearing and the work – I mean, sorry, the work session and the public hearing together in June and we will not meet in May?

Mr. Christensen: That sounds good.

Ms. Ehlers: What kind of opportunity do people have who might learn something from the hearing and wish to write a comment letter that might be –

Mr. Christensen: You can leave a written comment letter –

Chairman Easton: You know what? Why don't we plan to have the comment period open a week longer than the public hearing? So would you in the notice include the public hearing – so I don't have to do it during the public hearing? Let's just already plan in advance to have the written materials available for a week past.

Ms. Ruacho: And I don't mean to, you know, argue about it. It's just that I wouldn't recommend that because if you say the notice is, Get your written comments in, then you guys have the written comments in – people don't – people are going to wait till the last day to turn them in; that's just how they do it. And then if it's really somebody who came and heard and wants to and then you reopen it, it's not all the people who got the notice will _____.

Chairman Easton: So what am I going to do, Carly? Take a poll of whether we should extend it or not?

Ms. Ruacho: No, just plan to extend it but don't do it in the notice.

Mr. Hughes: You can extend it at the meeting.

Chairman Easton: I'll just plan to extend it. Don't do it now – plan to extend it then.

Ms. Ruacho: Yeah.

Chairman Easton: Okay, that's fine. We'll do that. Okay, I'll be agreeable to that.

Ms. Ruacho: And then you get all the people who just wait at the last minute –

Chairman Easton: All right. So then we'll get them in. All right. That works. Okay. So no meeting in May. Kept you here till way too late – sorry about that. We'll be back in June and the meeting's adjourned (gavel).