

# MASON COUNTY PLANNING ADVISORY COMMISSION

**Minutes  
November 18, 2002**

(Note audio tape (#3) dated November 18, 2002  
counter (#) for exact details of discussion)

*(This document is not intended to be a verbatim transcript)*

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## 1. CALL TO ORDER

The meeting was called to order by Chair Diane Edgin at 6:00 p.m.

## 2. ROLL CALL

**Members Present:** Bill Dewey, Diane Edgin, Steve Clayton, Theresa Kirkpatrick, Marilyn Johnston, Bob Sund. Irv Shotwell has resigned from the Commission to move out of state.

**Staff Present:** Bob Fink, Darren Nienaber, Allan Borden, Pam Bennett-Cumming, Susie Ellingson.

## 3. APPROVAL OF MINUTES

September 16, 2002. Steve Clayton requested adjustments to the minutes regarding statements quoted. They included counter #'s 1695 and 2540. Both paragraphs should have included the statement that the Allyn Community Association has written a letter of support for this project. Minutes were approved with requested changes. The minutes for the October 7, 2002 meeting were approved as presented.

## 4. NEW BUSINESS

(#0120) Diane Edgin: Last month we had a continuance and Bob is going to address that now.

(#0125) Bob Fink: My name is Bob Fink and I am the Planning Manager of the Department of Community Development. Last month you continued the public hearing on a proposal to amend the parking ordinance in rural residential areas. A couple of weeks ago we had a workshop. There were several parties that we notified based on the sign-in sheets and had a discussion over those amendments. The county is currently in the process of preparing a new draft. We think that there are some changes needed to the proposal that was before you but we don't have the exact language and we would like to take it to another

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workshop with the people. So those people will be notified that were notified previously plus if anyone else wishes to be notified they should leave their name and address and we will provide them a notice of that meeting and also send them a copy of any draft language that we have for their review. I would ask that the PAC continue the hearing to the next regular meeting which will be December 16 at 6:00 pm and hopefully we'll bring you a complete package to consider at that time. Thank you.

(#0170) Bob Sund: The information you send out for the workshop will we get a copy of that?

(#0174) Bob Fink: If you want it we'll send it to you otherwise we'll wait until after the workshop and give the people a chance to comment and whatever comes out of that we will send to you. However, I would be happy to send you the earlier drafts.

(#0180) Theresa Kirkpatrick: I would be interested in the earlier draft as well as notification of the workshop so I could attend if I'm able to.

(#0186) Diane Edgin: I think that would be a good idea to do. We need a motion to continue the hearing until next month.

(#0192) Bill Dewey: So moved.

(#0194) Bob Sund: I second the motion.

(#0196) Diane Edgin: We have a motion and a second to continue the hearing on rural parking until next month. All in favor? Motion passed.

(#0226) Marilyn Johnston: Before we start the hearing, I have a question to ask. It's something I should have asked some time ago when we began dealing with variances. If we are not in compliance yet with GMA by what authority can we be dealing with or granting variances?

(#0285) Bob Fink: The statute that creates the order of invalidity in the GMHB has a specific exemption for certain types of permits from the affect of the order of invalidity. Those exceptions include construction of single-family houses on existing lots, the remodeling and changes to existing structures, boundary line adjustments and any permit that's otherwise vested prior to the date of the order. All those permits can not only be processed but they also are exempt from the affect on vesting of the order of invalidity. For instance, the permits that you have here tonight that you're considering are both residential properties and you're considering changes on those properties and those are exempt from the order of invalidity.

(#0315) Marilyn Johnston: Even though there's the shoreline and that kind of issue involved in this?

(#0322) Bob Fink: The shoreline is not invalid. What's invalid that affects these properties on the shoreline is the Fish and Wildlife buffer provisions; that's invalid. But the fact that that's invalid doesn't affect our ability to review a single-family residential development on those properties on existing lots. That is a specific exemption provided in the ACT itself. So that's our authority. Under these terms we read our regulations the way they were adopted.

(#0340) Marilyn Johnston: I just wanted a clarification so that we, as a quasi-judicial body, that we weren't going to have this come back to us in some form of liability.

(#0350) Theresa Kirkpatrick: I'd like to bring up the point that when we first met in July we discussed that it would be very helpful on each project to have pros and cons available and if that could become available that would be most helpful and my only other comment is if there's any way we could receive anything any earlier it would be most helpful. I noticed some of this material is dated October 2. Personally I didn't

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receive this until Thursday and that doesn't give me much time to review this volume of material. So I feel the county and the PAC and the citizens would be better served if there's any way we could receive it with a little more time for review.

(#0375) Marilyn Johnston: I asked for pros and cons and I also asked about what I called a chart dealing with these different variances that we had signed off on and what I'd like to request is a Finding of Fact that the BOCC signed so that for each one of these variances we have dealt with that we have those for our file. That would include the Morris, the Parton, the Johnson, the Keith, the Powell, the McFeely, the Jackson and then the two we deal with tonight for my file so that I have a copy of the Finding of Fact. As we get into these variances and different situations or questions come up I'd like to have in my possession the actual Finding of Fact from the BOCC.

(#0435) Bob Fink: Normally what you do is at the end of the year or maybe in the training period after six months you go back and you look over a longer period of time and you revisit what issues have come up; what worked well and what didn't work well and what changes are necessary. I'm not saying that we can't provide you with copies of that information if that's what you require.

(#0460) Diane Edgin: All we ever see is a small bit in the paper so that would be helpful. So tonight we're dealing with a variance for Jerry Vermillion. Can we have the staff report?

(#0480) Pam Bennett-Cumming: Good evening, Pam Bennett-Cumming. I'm a planner with the Mason County Planning Department. I'm going to be handing out to the PAC a couple of letters but before that I'd like to add something to the information you already have before you. We've received, since that staff report, two phone calls; one from Constance Ibsen of the Lower Hood Canal Watershed Implementation Committee and one from John Diehl. Both expressing concerns about the Vermillion project. In addition, just today staff has received two more letters written in opposition to this project. I'd like to hand them out to you and ask that you take the time now to review them and then before going any further, staff has a recommendation for the PAC.

(#0525) Theresa Kirkpatrick: Both of those phone calls were opposing the project?

(#0530) Pam Bennett-Cumming: That is correct.

(#0532) John Diehl: That's not exactly accurate, at least in my case. The time that I called I was making inquiries.

(#0540) Diane Edgin: We can get to your testimony later. We're going to take a few moments to read this information.

*Recess in meeting for PAC to review new information presented tonight.*

(#0620) Pam Bennett-Cumming: This proposal by Jerry Vermillion to expand his existing residence in the stream buffer and in a buffer from the shoreline has received comments, as I indicated, since the staff report was provided to you. The two written comments, in particular, allege some fill has been placed without benefit of county review in the area that appears to be in or adjacent to where the expansion would happen. Based on that issue staff is going to recommend that the PAC consider a motion to table review pending the Mason County Planning Department's investigation of this information. Obviously we do not know if this will change the project at all; it's simply written information provided by people in the area. We would need to investigate. We don't know if the result of the investigation would be that there is or is not a violation. So in other words, we don't know how the project will or will not change. Rather than the PAC take the time to review a project that, given the new information, staff could not currently recommend that they make a recommendation tonight. We're asking that you consider making a motion to table the review

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pending investigation. Then we will readvertise the project, bring it back before you at a later date to be determined subject to our investigation in as timely a manner as we can.

(#0685) Darren Nienaber: Diane, I recommend you poll everyone to make sure they have read the letters. Also, it's still a public hearing so you still have to allow for public testimony.

(#0695) *Diane polls PAC regarding reading of the two letter. Poll indicates all PAC members have read the two letters.*

(#0714) Bill Dewey: Pam, can you clarify the nature of the two calls you had?

(#0716) Pam Bennett-Cumming: I had a phone call from Constance Ibsen of the Lower Hood Canal Watershed Implementation Committee expressing concern about expanding a development in the stream buffer and a concern about insuring that the expansion would have adequate water supply and septic review. But in particular expressing concern over the expansion at that site and it's proximity to the shoreline and the stream. Mr. Diehl, as he clarified, did request a copy of the staff report which we provided him. He also expressed concern over development in stream buffers.

(#0748) Diane Edgin: We will go ahead and take testimony now.

(#0780) Ken Martig: My name is Ken Martig. I am a licensed professional civil engineer practicing as Martig Engineering. I am here tonight representing the Vermillions with their variance request. I have read both of the two letters that you received this evening dated the 15<sup>th</sup> and the 18<sup>th</sup> of this month and would like to address the substantive matters in those letters first if I may because I would like to speak to the motion that's pending as to whether or not staff requires time to review the issue of fill, which is addressed in those two letters. The Vermillions have owned the property approximately five years. In the course of the work that I have done for the Vermillions in doing a geotech report and reviewing the dimensional aspects of their site I also have reviewed aerial photographs. The aerial photographs that I reviewed that I have with me tonight are dated 1989 and 1999. As you can see since the Vermillions have only owned the property approximately five years the 1989 photographs predate their purchase. These photographs I will give to you but I will summarize them first. The thing that these photographs show me, and I trained in viewing stereo, aerial photographs for work associated with geotech reports, hydraulics and hydrology. In addition to my license as a licensed professional civil engineer I also have a Washington State license in hydraulics and hydrology. One of a half a dozen folks in this state that have credentials associated with the issues you're dealing with tonight. When I reviewed these shorelines and I reviewed the wetlands from the photographs that are available by the Department of Natural Resources in 1989 and 1999 we see that basically the shorelines are identical. If one were to look at these photographs at face value if there's any fill it would not be associated with the Vermillion property but would be property westerly of the Vermillion property. But I don't believe that that is fill; it could be slight accretion but in any case it also could be related to tides. The conclusion is certain that there has been no substantive change of the shoreline between 1989 and 1999, therefore there's no fill that would alter the shape of the land mass along the shoreline of the Vermillion property. Secondly, when we look at the wetlands that are a product of the stream and when we look at the location of those wetlands that are a product of that stream you will see that we have more wetland vegetation there today in 1999 than we did in 1989 so in fact, there is more vegetation associated with the unnamed stream. Doing a lot of work in stream rehabilitation and watershed management I hasten to point out that when we talk about this small unnamed stream one must appreciate if you haven't been to the site that we're dealing, on the Vermillion property, a flow that exits from a 12-inch diameter culvert that was placed decades ago by the then Washington Highway Department when they were constructing the highway along this portion of Hood Canal. The hillside ditchline for the highway collects a myriad of spring activity from the hillside. The highway ditches collect those and then at various locations there's a culvert that goes under the highway that allows that water then to find it's way to the canal. That culverting system has been in for many

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decades and the flow rate that we're talking about is constant year round. We have quite a stretch there that collects water that comes through this 12-inch culvert. This summer when I gauged the flow under the highway at this particular location we were looking at something like 40 gallons a minute. One of the expertises I have is in measuring stream flow. I have patents for equipment for monitoring open channel flow. The flow in this is not susceptible to large overland flow during the winter. This winter I will again gauge the flow in that stream but do not expect to find it in excess of 70 to 80 or even maybe 100 gallons per minute. The original parameters for hydraulics permits they cut off at a low flow of 5 cubic feet per second, which is several thousand gallons a minute. Streams that were smaller than that originally had no regulations associated with them. It's only recently that we have looked at perineal streams that are as small than this. They are important today because of the wetlands that they support and the wetlands that they support have an ecosystem associated with them that's very important to Hood Canal. I want to put these two photographs into the record; 1989 and 1999 that you can view and to show you that in my professional opinion, there has been no change to that property in the last ten years let alone the last five years.

The Vermillions have been in contact with the county over a long period of time and they've been working with former staff folks such as Randy Neff and I could name others but the bottom line of what my message is that they came to the county with a dream. They had various alternatives for this dream and they laid them all out on the table. They were told about the regulations and the Vermillions did the best they could to digest all of the regulations and they started doing some things on their property. They ended up where we are tonight. I've been involved with them only a matter of weeks or a couple of months because they were bogged down in trying to understand the regulations and the staff was bogged down in the amount of material he kept giving them and all of the visions he had was he was hoping the staff could help him make some decisions on so it got to be a pretty big pile of things that needed to be sorted through. With the current staff that you have they've done an excellent job in trying to sort through these things. I have worked with your staff very diligently to sort through these things and the original proposal that you have before you, prior to receiving these two letters and the phone calls; you talk about trying to get material in a timely fashion so that we can review it and respond to it properly. I've been working diligently on this project and I find out today that there are four new folks out there that have some opinions. I can stand here and honestly tell you that they have not brought up something that I haven't already looked at and that I haven't already worked with your county staff on in the work that we've done. I was there when F & W was there talking about the stream. I have met with your county staff and everything that is of real concern has been addressed including the materials in the letters and phone calls. Therefore I would hope that through the rest of the testimony you're going to hear tonight and when we get to some questions you may have that I can help clear up anything that you're still fuzzy on so that by the time that we're through with this process this evening that you'll feel comfortable going ahead and making a decision tonight.

(#1272) Bob Sund: You have expertise in determining flow of water. You measured it at 40 gallons per minute. Could you possibly tell me the size pipe that it would take to carry that water?

(#1288) Ken Martig: Five garden hoses.

(#1294) Bob Sund: I stopped by the property and it looked to me like the flow of water probably would go through an inch pipe. That's today after all this rain. It looked to me like the main spring possibly was somewhat east of the culvert. Is that true?

(#1315) Ken Martig: The main spring would be south and east of the existing culvert; yes.

(#1328) Bob Sund: Pre highway days obviously that spring ran straight to the salt water and when the highway was built the ditch made use of collecting that spring water and running it to the west and put it through a culvert. If that is a viable stream I'm wondering does the highway department get a hydrology permit to clean the ditch?

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(#1356) Ken Martig: The Department of Transportation today is undergoing new regulations relating to the control and maintenance of their ditches. At this point the newer systems and the major systems; they are reacting to the new regulations for erosion control. The various counties and minor highways have yet to become involved because they have so many thousands of miles of ditches to maintain that when there is something very significant then they are pulled in to make that the letter of compliance of permits is followed but there are many cases that still have to do road ditch maintainance without taking the time for permitting. There are several springs trapped along there. There is one spring that is larger.

(#1440) Steve Clayton: We're dealing a lot with the trees that are involved in the area and you have the sun in the south end and you're dealing with the shadows. In the 1989 photo the shadow shows a large tree on the property; the 1999 does not. Is that correct?

(#1455) Ken Martig: It's possible. When I looked at these in stereo there was one large tree that does not appear again in 1999 so I believe there was one isolated large tree.

(#1470) Steve Clayton: You talked about no addition to the shoreline. Are you able to show if there was an elevation change as in a fill because it would appear that in the 1989 photo there's not parking there and it would appear in the 1999 picture there is parking as per say so in the theory that a foot or two of fill has been added for the parking?

(#1488) Ken Martig: That's a good question and a good observation. Again, only under stereo when you have the two together and look closely can you see the elevation portion. Obviously the sensitivity of picking up a foot or two I would be anything but honest if I said I could pick up a foot or two of elevation. What is of note to me, having been to the site, is looking at the vegetation as it exists today and the relief that's necessary for that vegetation to exist. When I look at that relief that's there we're talking about less than 14 inches between what would be the bottom of the stream channel and it spreads out and the stream never has shown to be in contact with the water of the canal except under extreme high tide. When I look at the vegetation that we have in the 1989 and then in the 1999 and then I look at the stereo part of it there has not been any fill added in the vegetation zone. They're talking 5,000 square foot that has been filled. That's 50 x 100. That geometry doesn't exist at this site so what I'm saying is that the letter doesn't compute with the geometry of the site and the information of record.

(#1565) Steve Clayton: You related to the northern side of Highway 106. In my site visit it appeared that there has been some removal of vegetation which also seems to be confirmed via the pictures also in the wetland buffer and I believe that the letter said is not only there been alteration on the shoreline side of the highway but also on the upland side which is also viewed as part of our variance.

(#1584) Ken Martig: This is another good observation. The thing that I want to point out is that I'm currently working with Ms. French of Mason County looking at those questions; those questions have been raised by the county of the Vermillions and I have given her a preliminary report on that portion you're addressing which is south of the highway. That's a separate parcel number. What we're talking about for this variance for the addition to this cabin is on a different parcel. I've been informed that as we are working on this second parcel and this issues that your raised on questions south of the highway. I'm working with county now. They're saying they are happy with the progress that we are making and addressing those issues. There will be mitigation; there will be a full geotech report associated with that so that we do it properly. That's a separate issue. The county is doing these separately but concurrently.

(#1640) Steve Clayton: Just going along with what Pam is saying about not being prepared, we have documentation on the south side of the road that this property owner has not gone through the permit process in removing some of that vegetation in the stream buffer. We aren't able to ascertain whether on the north side of the highway whether or not that has occurred yet.

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(#1654) Ken Martig: There's absolutely no question in my mind on the north side of the highway that there has not been any fill that has damaged the wetland because we have more wetlands today than we did in 1989 five years before the property was purchased by the Vermillions. As it relates to the issues on the south side of the highway those are being dealt with by the county and you can rest assured the county is going to deal with those and I'm working with the county and the Vermillions to make sure those get dealt with properly.

(#1750) Constance Ibsen: My name is Constance Ibsen. I want to clear up that I did reach Pam Bennett-Cumming and my first inquiry was in the capacity regarding the septic in particular for the Lower Hood Canal Watershed Implementation Committee that I sit on. We have not taken a position on this as an executive committee so today I'll be speaking as an individual citizen also with the Advocates for Responsible Development. First off, I have pictures to share that are more recent from Sunday of this site and he spoke to just the aerial photographs; the difference between 1989 and then 1999 and I would agree with the consultant that the owner has made a lot of changes on this piece of property. Mr. Sund and Mr. Clayton; you've been to the property. In your packets where you saw the picture of the front porch and I see that it's a glassed in porch; like a room. That has been an update. I don't know when this remodeling was done. They started in 1998 with getting some kind of new drainfield and the records of the county show that they have not gotten the final inspection on that system. I will pass out these most recent photos now. When I was looking at this I looked up this piece of property and Mr. Vermillion is also known as Montana Reach, Inc. He owns all this property and thus started a process of doing a boundary line adjustment which took this little part from the mother parcel and made a baby parcel in 2000. He has just since February of this year transferred that baby parcel to Donna and Jerry Vermillion, husband and wife. So he owns the rest of that property; that's over 35 acres adjoining and this acreage is 1.67 acres. I want to let you know why I'm so interested in these variances. Some of you know that I have always been interested in land use with a particular emphasis on transportation and its impact on our environment and land use. I've been following that and that leads into everything else; all roads lead to everything else. I attended most of the briefing sessions in the last year or so before they quit having them on a regular basis. All last winter when the county was trying to gain compliance with GMA then Community Development Director Ron Henrickson would assure the BOCC that once we get in compliance then we can make changes. The BOCC was always silent when he would make those kinds of remarks so I just took it as concurrence that that was the way we were going to do it. We were going to get compliance then we were going to do business as usual. I became even more concerned on January 29 when during a BOCC briefing when they were talking about the Fish and Wildlife Ordinance and Mr. Henrickson was talking about the 100 feet that they would have to propose to get compliant but then stated that our fallback position is to come back after compliance and drop down the buffers to 50 feet. So again I'm getting a little concerned. Then Senator Tim Sheldon had sent a letter to the former Planning Commission dated February 20<sup>th</sup> where he said the Planning Staff is telling him that after the Comp Plan is adopted he can ask for a variance. So I began to disengage from that process of what the amendments were going to be to the Comp Plan and said that I'm going to devote my energy to these variances; I'm going to be watching these variances. So that's kind of background of why I'm here tonight. I'm going to share this presentation with Mr. Diehl. This picture here shows his upland side where he has parking. He also has a sign and he's a licensed shellfish harvester. He has commercial shellfish 'no trespassing' signs on the beach right next door to the one he's on. I'd like to read this into the record or do you want to take a recess and read it right now.

(#2165) Diane Edgin: Should we have her read this into the record or should we take a break and read this?

(#2182) Bob Fink: I don't think that you need to read it if you're going to continue the action. You need to read it before you make a decision but you don't need to read it if you're going to continue to a different day.

(#2196) Diane Edgin: So we're all in agreement that we're going to table this and let Pam go back and

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review this?

(#2205) Steve Clayton: Procedurally if this would sway our opinion on whether or not to table it we should have an opportunity to read it.

(#2215) Bob Sund: How can we make a decision to table it when we haven't read all the facts?

(#2222) Bob Fink: You're only making a postponement of the decision.

(#2238) Diane Edgin: My own feelings are that I do feel that staff has to review the photographs in question and come back to us on that.

(#2250) Theresa Kirkpatrick: In light of the letters that we were presented with tonight alleging fill at the property I think even before I read testimony I would say those allegations right there would be enough for me to vote to postpone it until next month until staff has time to investigate those allegations.

(#2278) Bob Sund: You have a licensed engineer that's telling you that any fill that occurred had to have occurred before the Vermillions bought the property.

(#2288) Bill Dewey: He's also giving us a time period from 1989 to 1999; we don't necessarily know what's happened from 1999 to present.

(#2292) Steve Clayton: Ms. Ibsen, would you be opposed to us taking this into the record and not reading it at this time?

(#2298) Constance Ibsen: What are you going to do this evening? Postpone or table or continue?

(#2300) Steve Clayton: We need to make that decisions but based on our conversation here you can draw your own conclusion.

(#2306) Constance Ibsen: Can I then at this time put some other information before you? I'm willing to also leave my pictures for you.

(#2322) John Diehl: My name is John Diehl and I'm representing not only myself but Advocates for Responsible Development. I came here instead of simply submitting the letter to give you the opportunity for some interaction because this is a complicated matter from a legal standpoint. I thought you might well have questions about the testimony that I would give. I propose to give that testimony and you may have questions but because of the complexity of it which doesn't rest on the fill issue that it would be well to take advantage of this public hearing to have some interaction. That was the premise that brought me here.

(#2375) Steve Clayton: That's a good reason to read it.

(#2378) John Diehl: If you choose to continue the matter you will have a chance to reflect upon what is in writing in front of you. Either through reading it and having some dialogue or through an oral presentation from which to the extent that I would present it I'd be happy to have you interrupt at any point with any questions or comments.

(#2412) Diane Edgin: I think we will now take a recess to read this letter.

*Recess in meeting.*



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(#2620) *Diane polls PAC regarding reading of Mr. Diehl's letter. Poll indicates all PAC members have read the letter.*

(#2632) John Diehl: With respect to the fill issue that has arisen tonight I think it's interesting in general one doesn't suppose that if something was done badly without a building permit the transfer of ownership exculpates the succeeding owner so the question of whether fill was added before or after 1999 or 1995 may not be terribly important. Certainly is interesting to note that there are allegations by neighbors that there has been recent fill and at least from my look at the aerial photographs I would hope would give great weight to the testimony of neighbors with regard to that issue. Clearly even Mr. Martig acknowledges that the applicant started doing some things on his property. He didn't specify what those things are and you might want to ask him. It does appear that there was some jumping of the gun here. That I think is not the fundamental question and I hope it's clear from the written material that you just reviewed that we regard the fundamental question as whether the criteria applicable to granting variances are fulfilled. The central point I'd like to make is that here we have an application for a greatly expanded, more than a tripling of a footprint, in an area where the present use is a non-conforming use. It is difficult to fit that within the criteria applicable to granting variances. On its face does seem to be a situation that is not unique, extremely uncommon in precedence for previous variances and I want to remind you a single instance or even a few instances would in no way oblige you to grant a variance in this case. Fundamentally you have to decide at what point you draw the line and say that maybe this isn't going to do great harm but if we allow this kind of activity on the part of this applicant or similar applicants will be through accumulative affects cause more considerable damage. That is the fundamental concern that we bring to the table. We don't come with an axe to grind against Mr. Vermillion. We're simply concerned that the process of granting variances be held to the ordinance criteria as strictly interpreted and that a more lenient interpretation that tries to make it friendly to everyone who applies will ultimately destroy the purposes of our Resource Ordinance.

(#2880) Bob Sund: I'd like to ask if the applicants were able to read this latest material that we have?

(#2890) Ken Martig: Yes, we have.

(#2895) Steve Clayton: On page 4 you talk about no variance under 17.01.150 based on buffer areas and actually we can issue one on a buffer area; we cannot issue except in wetland related vegetated areas so the argument might be brought up that we are not affecting the vegetation area although we are in the buffer area.

(#2918) John Diehl: I would respond to that by saying that the exception where you cannot grant a variance is with respect to as you just said; wetland vegetation areas and this is such a wetland vegetation area. The whole concept of the way you deal with those is not with variances and I would say it was blurred in the staff report but with mitigation broadly speaking and where there is a strict priority in terms of what you attempt to achieve with mitigation. The highest priority being given to avoidance so the fundamental question with respect to the wetland vegetation is not whether a variance is appropriate because it's an apples and oranges thing; it's not the question for you with respect to the wetland but rather whether the entire impact can be avoided and the answer to that is 'yes'. They can build elsewhere that doesn't have that impact.

(#2990) Steve Clayton: You said that the variance standards say that we can't rule on it and as per the variance standards we can give a variance in a buffer area. This would be a buffer area. The concept of whether or not it's appropriate is separate from whether or not we would fit under the development regs.

(#3008) John Diehl: I interpret the ordinance as saying that you can give a variance in a shoreline buffer or a stream buffer but it specifically excludes a wetland buffer.

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(#3036) Steve Clayton: It specifically excludes a wetland related vegetation area and I would guess that the Vermillions are going to say there's no vegetables left where we want to build; it's all gravel.

(#3065) Diane Edgin: Someone said here that this Type 4 stream came through a 12-inch pipe. How is that a Type 4 stream coming through a 12-inch pipe?

(#3082) Bob Sund: And further, the amount of water that comes through that 12-inch pipe can be probably carried by a 1-inch pipe; that's the amount of water that we're talking about.

(#3092) Steve Clayton: Could you explain to us what does a Class 4 relate to?

(#3094) John Diehl: I come at this more from a legal standpoint. I don't pose as a hydrologist but what I would point out to you is the applicants own habitat management plan calls it a Type 4 stream so I think you have to take that as a given. That leads to the regulations that are applicable to the Type 4 streams. It doesn't matter whether it's in a culvert or anything else as long as it's a Type 4 stream.

(#3128) Pam Bennett-Cumming: Staff would like to note for clarification that the State Department of Fish and Wildlife determined that it was a Type 4 stream.

(#3138) John Diehl: If the applicant wanted to retract his application and come back with some new evidence saying it was some other type stream you could look at that evidence but at this point you have to take it as a given that it's a Type 4 stream.

(#3160) Bob Sund: Part of this stream on the northerly side of the highway looks like maybe it flows along the toe of the highway eastward? Without measuring that it looks like part of that lies within the highway right-of-way.

(#3194) John Diehl: I think I'm in agreement with Mr. Martig that the significance of this is not so much the amount of water but the wetland vegetation that's associated with whatever water is there. That's the primary value of Type 4 streams so it's obviously a disturbed Type 4 stream but perhaps in the process of being disturbed has created some additional wetlands which are valuable.

(#3234) Bob Sund: Mr. Diehl, did you write in here that you felt that the plantings were to be to the west of the structure? When I observed the property there was a fence line on the west side of the house.

(#3244) John Diehl: *Mr. Diehl indicates on map his observations.* That's where the wetland is and as you can see the wetland is so very close to the proposed garage that there would scarcely any room for meaningful plantings there. The proposal is specifically for the west side of the house. It's alleged to be mitigation. But in fact what is it mitigating because it's not either between the house and the shoreline or between the house and the wetland nor between the house and the stream.

(#3366) Steve Clayton: It's also the location of the septic tank and also that's the 5-foot side of the house and the applicant states that there's 6 inches that the fence is on the property so it's 4 ½ feet then you take 1 ½ eave so you've got a 3-foot buffer and I forwarded a question to Pam about we had previously talked about in one of our other variances about a household resident being able to control the area directly around his house. I didn't receive a good response about that; you've got 4 ½ feet between your house and the fence you have to grow plants there as a matter of mitigation and it just seems unusual.

(#3410) John Diehl: I'd like to point out that the plantings plan calls for among other things Western Red Cedars to be planted in this area. I think it's obvious that if they're to be planted within no more than five feet of the house that you will not have mature red cedars in that location.

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(#3490) Marilyn Johnston: You visited the site?

(#3492) John Diehl: I haven't personally visited the site.

(#3494) Marilyn Johnston: Then you can't answer my question.

(#3496) John Diehl: Constance has visited the site.

(#3500) Marilyn Johnston: I believe one of the pictures is taken on the other side of the highway.

(#3515) *Constance describes pictures.*

(#3594) Diane Edgin: Is there any more testimony? I will now close the public hearing portion.

(#3502) Darren Nienaber: The applicant would like to speak again.

(#3612) Diane Edgin: I will open up the public hearing again for additional testimony.

(#3615) Ken Martig: Now you see what we've been dealing with. It isn't real simple as you can see. The issues that control the decision are the ones that I want to keep in focus. First of all, let me hasten to point out that the existing home has a new drainfield on the south side of the highway and the existing septic tank is adequate for the existing home and the pump that is pumping the affluent to the drainfield on the south side is sufficient for the existing home. The new tanks that have been placed that have not yet been finalized are part and parcel to the addition and once that the new bedroom is added there will be more flow and so the system is in the process of being upgraded consistent with the proposal for expanding the home. So even though those new components are visible in the photographs they are not yet activated because they are not yet necessary because what is expected to be constructed and living in today isn't. One of the questions that came up was what happened from 1999 and tonight as it relates to vegetation? The measurements that I've taken and the reconnaissance that I've done at the site show that what you see in the 1999 aerial photograph is currently still there. In addition, there has been planting that has been done by the Vermillions both along and within the Department of Transportation right-of-way which is adjacent to the buffer and as well as on the beach side of the parking area where they have done some planting there in the vicinity of where the one large tree was. The mitigation plans are hard to understand but they're a legal requirement and therefore they have to be met. If you look at the mitigation plan that's in the habitat management plan what you see is that we're utilizing that zone between the house and the fence for some of the bushy salal and fern type of plantings because the requirement for mitigation is that native plants need to be added to the site based on the HMP. The areas that you see shown on the document exceed the prescribed square footage and the reason they're on there is to show the three different locations where the mitigation will occur and there is ample room to meet the requirements and exceed the requirements that were in the mitigation plan. What's important from a technical standpoint; I can't speak to the political, I can't speak to the legal; you will not find me addressing those things. I'm your technical person in this team. The thing that's important is whether we do or don't have the wetland vegetation there that has been there. The answer is yes and that we have more wetland type vegetation today than we had ten years ago. That's the question. Now as it relates to a Type 4 stream. Parts of the definition of a Type 4 stream involve that it has to run year round. This one does. The next part is that it has to have a minimum bed width of 18 inches. This one at certain locations does. The reason it does is that the flow is so small that in most of the areas it can't form a definite channel so it's basically surface flow that can spread itself out to the widest point of around 18 inches and in some places maybe 24 inches before it gets consumed and trained again. We don't have the high flow element to incise a channel. If we had a high enough velocity for the flow that's there it would make a channel that would be less than 18 inches and therefore it would not qualify for a Class 4 stream. I'm the technician, I read the manual and this is what it says. Don't misunderstand it as being a Class 4 stream that you really are familiar with and

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take dire pains to make sure that the mitigation and all the various issues are scrutinized with all kinds of options that are very important in those specific events. The reason that we're here before you today is that this is a site specific case that doesn't fit all of the regulations; this is an exception and we're here to discuss all of those exceptions so that we can move forward with the proposal that has been worked out with the county staff. As it relates to the shape of the shoreline, I am involved with the hydraulics that I do in looking at wave rebounding. We look at the shapes along Hood Canal; the shape of this particular shoreline if you look at it you will see that it is a streamline condition in the direction of the waves and unlike areas that I can point to on the canal where there is a fill-induced variation to the shoreline, this is not a fill-induced variation to the shoreline. The last thing that I would like to point out as a practical matter, in my engineering practice as some point I like to drop back to that as a final resting place for sanity we have a highway that has traffic on it day in and day out that is in violation of the setback requirements for this Class 4 stream. It's an activity that is much more visible than people occupying a single-family residence in the proximity when you look at activity levels. So I want to just summarize by saying that I worked carefully with staff and I know that there have been some frustrating moments on their behalf given the way this thing has been presented and unraveled over the last several months. I think staff has put all of those issues out and the Vermillions with my help have done what I think is a good job in terms of putting the pieces back where they belong and the decision that was made by staff was to recommend it as presented until these two phone calls, two letters and this new document before you was presented. I see nothing in there that violates any of the technical standards upon which the staff and I have worked with to reach our decisions.

(#0320) Steve Clayton: You say the septic drainfield that's on the hillside is currently in use?

(#0322) Ken Martig: Yes.

(#0324) Steve Clayton: And that's not on the parcel that we're looking at?

(#0326) Ken Martig: The parcel number associated with what we're looking at is primarily on the north side of the highway. There is a width going up the hill so that we can have a road there to get to the drainfield and position the drainfield consistent with Mason County requirements for the drainfield. That is part of the reason there was a boundary line adjustment.

(#0350) Steve Clayton: So the parcel does extend south of the highway?

(#0352) Ken Martig: A small swath on the west boundary does extend on the south side.

(#0354) Steve Clayton: And you're saying the drainfield is to be built? Or is built?

(#0356) Ken Martig: Is built and in operation for the existing cabin.

(#0358) Steve Clayton: And you say the actual septic tanks are adjacent to the house and that there is a small one that's currently being used and a larger one that's been installed but not being used?

(#0362) Ken Martig: The pumps that were referred to have not been installed because they will be a higher capacity for the higher flow that will be generated if the proposal is approved and constructed. There will be more bedrooms therefore the requirements for greater flow exist and those units were put in to handle the greater flow.

(#0375) Steve Clayton: And part of the HMP gave planting vegetation along the house to the west side and also over the septic tank ...

(#0378) Ken Martig: Around the septic tank. Keep in mind that the tanks themselves are roughly 8 x 5 and there's nothing that prevents you from landscaping around those unlike the drainfield itself.

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(#0390) Steve Clayton: Your HMP says you have 260 and 160 feet of vegetation be placed so that's 420 in that area and a 8 x 5 drain tank would be 40 square feet so you'd be less than the 400 square feet as far as the mitigation planting.

(#0400) Ken Martig: That's not correct. The swath that you see; I'm aware that there is additional planting in the zone between the parking and the beach where there's existing vegetation. That will be expanded. We have an obligation to meet that square footage and that square footage will be met.

(#0418) Steve Clayton: As far as the map shows that is an existing vegetation area and by the marks on it you're saying you're going to add to an existing vegetation area which doesn't seem like that increases it.

(#0424) Ken Martig: We're going to add adjacent to it so the square footage will increase.

(#0428) Steve Clayton: The HMP plantings plan doesn't show an increase in surface area in that area and maybe if we decide to postpone this that will get clarified.

(#0326) Ken Martig: There is ample room to have additional non-vegetated areas become vegetated with the recipe shown and that will be done. That is a condition that is in the document that is recommended for your approval.

(#0448) Diane Edgin: How many bedroom home is proposed?

(#0455) Jerry Vermillion: There is one bedroom proposed for a total of two bedrooms.

(#0458) Theresa Kirkpatrick: Getting back to the drainfield, on page 5 of the staff report it says that it's new. How new?

(#0460) Ken Martig: The drainfield was constructed a little over a year ago.

(#0470) Theresa Kirkpatrick: If this scale is correct it's pumped over 300 feet. Is that correct?

(#0478) Ken Martig: That could be correct but It's not uncommon to pump them a quarter of a mile.

(#0488) Theresa Kirkpatrick: As far as the mobile storage unit; is that proposed to be a permanent but mobile fixture?

(#0492) Ken Martig: The mobile unit that you see on the north side of the highway will be gone as soon as there's a permit to do the construction because it's right in the way of where the construction will occur.

(#0502) Theresa Kirkpatrick: Are you qualified to speak to why the seasonal restriction that was originally proposed as part as the HMP and then it was later rescinded? Can you speak to the reasoning behind that?

(#0510) Ken Martig: It was a computer error. It was extracted from the permit that related to the pile driving associated with the new dock facility that the Vermillions have. The same consultant that did that work did this work and it was in their computer and that part got carried over. It does not apply to this particular kind of activity where it did apply to the pile driving activity.

(#0532) Theresa Kirkpatrick: This is the first I've heard of the pile driving activity. How close is that to this property?

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(#0535) Ken Martig: It's in front of the property; it's their dock.

(#0538) Theresa Kirkpatrick: This document that I'm holding dated September 18<sup>th</sup> from Agua Tierra says "under further consideration, Agua Tierra has chosen to lift this restriction of construction activities".

(#0546) Ken Martig: That was another computer problem.

(#0550) Theresa Kirkpatrick: In section 8.4 it talks about chemicals applied during the building process. Can those be elaborated on?

(#0558) Ken Martig: None.

(#0560) Bill Dewey: Madam Chair, we're two hours into this one issue and we're not getting any further.

(#0570) Diane Edgin: We will now close the public hearing. Pam did you want to address anything?

(#0578) Pam Bennett-Cumming: Staff would just like to reiterate that based on the information we've received in letters and information submitted tonight, quite frankly we don't know what the outcome of our investigation would be of the alleged fill, and it's possible that the result will be the same as we have here tonight or it might be different, but the county has a responsibility to make that investigation now that the information has been provided. Staff's role in this hearing is not to investigate it but rather than to request that the reading of the staff report be postponed and that the commission consider a motion to table further review pending the investigation and what may be a revised report from staff. While there are many other subjects that were mentioned tonight that staff could speak to and provide clarification I'd rather wait until later. If you do decide to make a decision tonight staff respectfully requests to reserve the right to speak to some of the comments made tonight.

(#0622) Steve Clayton: Would an appropriate move be to continue it and that way we could take further testimony or to postpone the decision? If the staff report isn't out yet I would assume that a continuance would be appropriate.

(#0630) Pam Bennett-Cumming: Since we don't have a date certain tabling would allow the applicant and the county to then reschedule at a date to be determined.

(#0638) Steve Clayton: So the proper phraseology would be to table it? I make a motion to table this.

(#0640) Theresa Kirkpatrick: I second the motion.

(#0644) Diane Edgin: We have a motion and a second to table the Vermillion variance.

(#0646) Bill Dewey: As far as information I would like to have back from staff when we reconvene to hear this I would like clarification on the property that's involved in our decision. You referred tonight about additional property on the other side of the road and I'd like to know if it's linked to our consideration or not.

(#0658) Diane Edgin: I think all of our questions that were raised here tonight will be answered.

(#0660) Steve Clayton: I'd like to see the septic permit on this one.

(#0662) Pam Bennett-Cumming: Yes.

(#0665) Diane Edgin: All in favor of the motion? Motion passed.

(#0668) Steve Clayton: If we no longer do variances, if it passes tomorrow, does this one come back to us

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or does it go to the Hearings Examiner?

(#0678) Darren Nienaber: The applicant probably could opt into the Hearings Examiner process if he so desired.

(#0686) Steve Clayton: Technically, if it's a continuance or a table he'd have to come back to us. If he reapplied it would go to the Hearings Examiner?

(#0692) Darren Nienaber: They're vested towards the old regulations which would be a PAC process. That's a decision for the applicant.

(#0720) Diane Edgin: We have our next Shoreline Conditional Use Variance Application for Scott Woodward.

(#0760) Pam Bennett-Cumming: Pam Bennett-Cumming, Mason County Planning Department. Staff is going to present a staff report on the Woodward variance request from the SMP. The applicant's representative provided us in the original application many color photos and I recognize they don't reproduce well in black and white so staff is going to pass around two things. A set of photos that are identical to the ones in the staff report reproduced in black and white and a set of additional photos submitted later by the applicant's representative. This after-the-fact Conditional Use Variance request by Scott Woodward is to retain two 6-foot chain link fences with privacy slats at easterly and westerly property lines and extending approximately 10 feet into Lake Isabella. The fences waterward of the shoreline setback common line are non-conforming to the shoreline setback and staff recommends denial based on inconsistency with both the Residential Development chapter and with Variance chapter criteria. (*Pam continues to read from staff report attached hereto*). Do you have any questions of staff at this point? The applicant's representative Mr. Oberquell is here this evening.

(#1295) Diane Edgin: We will now open up the public hearing. Mr. Oberquell?

(#1298) Argal Oberquell: I would prefer to wait until the others have testified to make my presentation.

(#1302) Diane Edgin: Does anyone else wish to speak to this matter?

(#1305) Matthew Kamin: My name is Matthew Kamin. His fence is on my property. You have the pictures of it and it's obvious. When I walk out of my house I look to the right and I cannot see the lake. I pay \$140.00 a month for taxes on this property. You walk down to the lake I cannot look to the right so half of the lake I cannot see. I have a problem with my children swimming down there. They cannot swim at that section of the lake because when the wind blows it pushes them into the fence and the fence isn't supposed to be in there. I don't even understand why I'm here. She's already explained why that fence should not be put up and why it should be at 30 inches from my house. It's making my property worth less money because of that fence being up. We all have regulations that we all should follow by. He should not have some kind of variance to make this legal for him. This fence was put up illegally; illegally on my property. He has no permit to put it up and there's no survey. He did it just rudely and put it on my property. That fence is actually sitting on my property. I want you to take care of what you should and he should do like everybody else does. He illegally has his fence on my property, he illegally has it the wrong height and he says there are other fences on that lake that are also that high and there is not a single one. You also have salmon that lay their eggs just within 30 feet of that. I've had to save two dogs off that fence, two geese off that fence. You don't put a fence in the water. He should take the fence down to the right height and take it out of the water. He potentially has added at least 20 feet along where the fence is right now with black man-made rocks so it extends out. It's ruining my property.

(#1438) Diane Edgin: Do you know when you bought the property if there was a survey made?

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(#1440) Matthew Kamin: No, there wasn't. There's an old fence there which part of it was removed and part of the fence was moved from me, after permission from the Woodwards, to move it up next to my house. The big metal stake was removed down by the lake. They put in here about harassment. It's because of the fence being put up. That's when the harassment started.

(#1486) Bob Sund: Are we judging on the fence or just the portion of the fence that's in the water?

(#1492) Pam Bennett-Cumming: Staff can clarify that and I believe it's in the staff report. Staff's role in reviewing this and representing it to the PAC is not to represent whether or not the fence is in a particular location relative to the property line; that is a civil issue, but to represent the shoreline regulations in relation to the fence that the applicant has installed.

(#1565) Dave Kamin: My name is Dave Kamin. I own the adjacent property to my brother and I used to own all the property at one point. When I bought the property 15 years ago there was an old existing fence that went from Delight Park Road all the way down to the lake. It was an old fence and it was pretty much all there with fence posts running all the way out into the lake. Over time he has added rocks and made a rock jetty and two years ago he added this new fence. He did it without a permit and it's 6 feet high. It encumbers my view, too. We have a little picnic area there and the kids water-ski out of there and we can't sit in our picnic area and look at the lake now because the fence is there. He was told numerous times that it wasn't supposed to be there. There's salmon spawning out there today and the fence is there impairing the course of the salmon.

(#1560) John Diehl: My name is John Diehl and I'm speaking on behalf of Advocates for Responsible Development. I simply want to say that we agree with the staff report on this matter. Certainly just as in the Vermillion case, we hope that you will guard against the use of variances to nullify regulations. This is a particularly egregious case so I feel it's unnecessary to allow the variance.

(#1685) Argal Oberquell: My name is Argal Oberquell and I'm the attorney representing Scott and Marjorie Woodward. We have made application for this variance and my clients have found themselves in kind of a Catch-22 situation. They filed an anti-harassment petition against Mr. Kamin and as a result of their filing that anti-harassment petition and getting that order he reciprocated and filed an anti-harassment petition against my clients. One of his main complaints was my client's Rottweiler dog. He claimed that it had killed a cat of his so my clients went to Southgate Fence and were not aware that they were required to get a permit but nonetheless they didn't get a permit. Southgate didn't tell them they needed a permit and they put up the fence. It is a 6-foot fence and they put in privacy slats primarily along the side facing the Kamins and then on the other side. But contrary to your staff report the privacy slats do not go all the way down to the water. You can see that from the photographs. Though it does not meet the site requirements that we're talking about today. As I understand the regulation once you get beyond the site line your fence can only be 30 inches high. But one of the primary points that is made in the staff report in interpreting the regulations and the purpose for the regulations is to preserve the site view of the lake. We find it ironic that Mr. Kamin is speaking about his view being obstructed when you can see from those photographs that the bulk of the vegetation and large trees and other vegetation is on his side of that fence. Some of the waterfront views that we have taken pictures of there you can't even see the fence for all of his vegetation. It's his vegetation that is taking away the view - not the fence. There are some cedar that are as high as the 6-foot fence so consequently even if the fence were to be lowered you're still not going to have any greater view than you ever had before. Staff talks about being concerned about privacy and there are other ways to obtain privacy. Obviously from the history of these folks and from the fact that that's the reason why you build fences is for privacy. The other point that is not mentioned by staff and we're obviously compelled to address it is the fact there already was a fence going out into the water and still is. It shows in the photos. That barbed wire fence was there when my clients purchased their property 20 years ago. That barbed wire fence, according to the survey that they got 20 years ago, was the property line. So what did they do



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when they built this new fence? They built inside of that; the barbed wire fence is still there. If this fence has to be lowered and taken back from the shoreline you're still going to have the barbed wire fence out there; it's grandfathered in. I find nothing in the regulations that say that you can compel the removal of that fence and that's the property line fence. Either it's by survey or by adverse possession. It is totally untrue; Mr. Kamin is mistaken when he says that our fence is on his property. Neither fence is on his property. Another thing that they did after the enforcement action was started is Mr. Kamin removed an over 20 foot corkscrew willow tree that was at the corner of his house and moved it 20 feet closer to the fence which further obscured his view but also obscures my client's view. My clients don't care about that; they want their privacy. You're not going to improve any view whatsoever if you have this fence lowered and you're not going to result in a fence not being in the lake if you have this cyclone removed back because the barbed wire fence will still be going into the lake. If the intent of the ordinance is to protect view then we've done nothing to destroy the view that this property has. We did show other properties that have fences going into the lake of the same kind and as irony would have it the one that borders on the David Kamin property is identical. There's boathouses out into the lake and there's a Kamin dock that goes way beyond; that's almost 100 feet out into the lake which was built without a permit. Any questions?

(#2040) Diane Edgin: Anybody else wish to speak?

(#2045) Darren Nienaber: Ordinarily the applicant gets the last word but you could restrict their response if they wish to speak again.

(#2052) Dave Kamin: My property is adjacent to the boat ramp. The state put the fence in about two years ago. They stopped purposefully approximately 75 feet shy of the water line and then used their existing barbed wire fence so him saying they have a fence like Scott's is not true. The old fence is still there. The barbed wire fence that's in between Matt and Scott has never hampered anybody's view because it's under water. His fence does hamper my view because when you look to the west that fence sits right out there.

(#2122) Matthew Kamin: When I look out my house I look over their shrubbery and over that fence. There's not a single fence in the lake like theirs. He's talking about my shrubbery; he's got shrubbery all the way up and down that whole piece. When I look out my house all I see is a big blue fence. He doesn't see the blue fence because of his shrubbery so why am I looking at a blue fence?

(#2176) Argal Oberquell: I would simply invite you to look at all of the photographs that are there that show the other fences and also Exhibit C which shows all of the trees in front of Mr. Kamin's property.

(#2190) Diane Edgin: We will now close the public hearing portion. There's a lot of issues involved in this particular one but the ones that we specifically are asked to address are based on the SMP and that is fences into the water and height. Everything else is irrelevant.

(#2216) Bill Dewey: Pam, is it legitimate to have a hedge like that that exceeds the height? Is that required to have a permit as well as the fence we're talking about?

(#2230) Pam Bennett-Cumming: Earlier decisions by earlier BOCC have essentially supported the position that a fence-like object, such as a row of sight obscuring vegetation since it looks like a fence and it acts like a fence is considered a fence and there have been decisions made by the BOCC that vegetation like that is to be lowered. The challenge for staff going to the site was that entering into the property was not possible; it was all padlocked. Enforcement staff had the same situation for them when they were investigating and gathering information for the HE case that got us to this point here. So, yes, shrubbery that acts like a fence has been looked at in the past as needing to meet the same provision.

(#2278) Bill Dewey: I was just trying to understand it. The attorney was making the case that the fence being lowered to 30 inches and the view would still be obscured by the hedge row and my question is that

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a legitimation justification or should the hedge row be lowered as well?

(#2290) Pam Bennett-Cumming: Technically we can look at the hedge row in terms of is it consistent with the provisions of the SMA for obscuring a view.

(#2300) Diane Edgin: This fence went up two years ago. These regulations have been around for a long time so that means that there's some liability here on the part of the person who not only paid to have the fence put up but also the person who constructed the fence. They're supposed to be licensed contractors and they're supposed to know the regulations.

(#2322) Pam Bennett-Cumming: When you're talking liability, I'm going to defer to our legal council to answer that question.

(#2330) Darren Nienaber: You don't want to get into that; that's not an issue for you.

(#2336) Bob Sund: The 30 inch height is an issue here and this property is 800 feet deep. Are we concerning only the outer lakeward 200 feet?

(#2362) Pam Bennett-Cumming: Staff would draw your attention to the site plan that was submitted.

(#2376) Steve Clayton: From the roofline of the adjacent property out it needs to be 30 inches high and not in the lake.

(#2390) Bob Sund: Does the lake level change during the year?

(#2392) Pam Bennett-Cumming: Likely it does and we're looking at what's described in the SMP the OHWM (Ordinary High Water Mark).

(#2396) Bob Sund: Do we know where the OHWM is there?

(#2400) Pam Bennett-Cumming: That is a call that staff would make in the field and so should a decision be made ultimately to recommend removal of that portion of the fence waterward of the ordinary high staff would go out and make that call and identify it. At present that's hard to do without access to the site.

(#2432) Bob Sund: So the petitioners are asking us for a variance to maintain a 6-foot fence and into the water?

(#2445) Pam Bennett-Cumming: That's correct.

(#2450) Bob Sund: What's the reason for the variance then? We have to have some logic for that.

(#2460) Diane Edgin: This is an after-the-fact variance.

(#2462) Bob Sund: So they built it and now they're asking for the variance.

(#2466) Pam Bennett-Cumming: That's correct.

(#2472) Theresa Kirkpatrick: Somewhere in the staff report there is a call for a 75-foot setback from the water and it's my understanding that it should be 100 feet on a lake of this size?

(#2500) Pam Bennett-Cumming: What we're looking at here is a variance from the SMP so it's got to come back to the common line and because on this site if the minimum distance under the Resource Ordinance chapter you're talking about applied, the Fish and Wildlife setback may or may not be even closer to the

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water than the common line.

(#2525) Bill Dewey: Madam Chair, if there's no additional discussion, I would move that the Woodward Conditional Use Variance Shoreline Permit request SHR2002-00019 for two 6-foot chain link fences with privacy slats located waterward of the shoreline setback line be denied on the basis of inconsistency with the variance criteria and that we adopt Findings of Fact as prepared by staff.

(#2555) Steve Clayton: I'll second the motion.

(#2558) Diane Edgin: We have a motion and a second. Any further discussion? The sad thing here is that we've pitted neighbor against neighbor when the people who should know, who constructed the fence, that there's permit processes out there and this is why we have them to avoid situations such as this. If I had anything further to add I would also at the same time say that maybe some reasonable removal of vegetation on both parties part.

(#2600) Bill Dewey: My motion stands.

(#2610) Diane Edgin: Okay, all in favor? Motion passed.

*Break in meeting.*

(#2680) Allan Borden: I will now present the information to you on proposed changes to the Mason County DR's and Resource Ordinance.

(#2685) Marilyn Johnston: Allan, before you start under the maps it says Map 1 to 6. Are those available for us?

(#2698) Allan Borden: Those are the maps that were submitted in March of 2002 as part of the compliance hearing.

(#2702) Marilyn Johnston: But we don't have copies of them.

(#2706) Allan Borden: No, we didn't send them to you.

(#2710) Marilyn Johnston: I found that troublesome because I didn't have them to refer to.

(#2716) Allan Borden: Right now no one has them. We don't have any copies available to give to you right now. There are copies at the Permit Assistance Center and we have copies in the office.

(#2740) Darren Nienaber: It's been extremely difficult to get color copies of them.

(#2745) Allan Borden: We can bring them in here to show you. I can explain to you that the point you bring up which is on page 2 of the DR's that change was made because the sentence that's crossed out is not relevant any longer because there is not just one map that's the official map of Mason County. (*Allan points out Development Areas Map 1*). This Development Areas Map 1 are the development densities in the county. You go from 1 to 5, 1 to 10, 1 to 20 and it also shows the long-range commercial forest, agricultural lands, inholding lands and the UGA's. This map also shows the location of the 175 LAMIRD's that are listed in the table that follows the staff report. The Limited Areas of More Intensive Rural Development (LAMIRD's) is a designation that's called for in the rural element of the GMA. In some places there are such a great number of these isolated areas that we have the sub-maps that are listed here. (*Allan indicates on map*). We have individual maps of the 175 areas and the map shows the boundary of that parcel illustrated. (*Allan indicates on map how to find the 175 areas from the table*).

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(#3045) *Miscellaneous discussion.*

(#3082) Bob Sund: I didn't see Lake Cushman on this map. The community at the store.

(#3124) Bob Fink: Lake Cushman is designated as an ICIA. (Isolated Commercial Industrial Area).

(#3140) *Miscellaneous discussion.*

(#3360) Diane Edgin: Since I'm familiar with Spencer Lake I can think of four different businesses that were out there 10 or 11 years ago that aren't on here.

(#3372) Bob Fink: Spencer Lake is partly designated as a Hamlet. In the Spencer Lake vicinity there are ones outside the Hamlet that are LAMIRD's.

(#3422) Diane Edgin: What about self-storage units?

(#3432) Allan Borden: Those are Rural Industrial designations. They're considered warehouses. What I'd like to do now is get back to my presentation. With your staff report you have the LAMIRD table, proposed revisions to the DR's and proposed revisions to the RO. These are revisions that address the concerns of the WWGMHB in their Findings and Order from August of 2002. The revisions to the DR present a clear definition of the Rural Commercial 1, 2, and 3 zones, a new Rural Commercial 4 zone for large lots in isolated areas and the new Rural Tourist Campground zone for properties owned by state agencies, public utilities, community service organizations, homeowners associations, golf course and campgrounds.

(#3550) Bob Sund: Do campgrounds include private campgrounds?

(#3555) Allan Borden: Yes, those ones that are in the table are private campgrounds. In addition, changes to the text under Rezone Criteria make reference to the RT, RC 4, and Rural Natural Resources in the review standards for a rezone proposal. Revisions to the RO addressed the Fish and Wildlife Habitat Conservation Areas and Frequently Flooded Areas Flood Damage Prevention Ordinance. Under the Fish and Wildlife critical areas, the buffer to the Type 1 waters, which are saltwater and large lakes, has been changed from a 75-foot vegetation buffer and 15-foot building setback to a 100-foot vegetation buffer with no additional building setback. Exemptions for agricultural activities has been deleted from the Fish and Wildlife Habitat Conservation Areas section of the ordinance as well as from the general exemptions section of the RO. Under the Flood Damage Prevention Ordinance, Mason County would designate the Skokomish River Valley Floodplain as an avulsion risk area and a floodway and further development within the floodplain would be prohibited. In addition, meaningful periodic diking inspections emphasizing the dikes and flood safety would be allowed as a monitoring program on the dikes in this area. An environmental review was done for the proposal through a draft supplemental EIS which was released at the end of October. The comments from the public are still forthcoming. Analysis of the proposed revisions focused on the potential impacts of designating the existing LAMIRD's, establishing the new Rural Commercial 4 and Rural Tourist Campground zones and modifying the rezone criteria as well as changing the sections in the Fish and Wildlife Habitat Conservation Areas and Flood Damage Prevention ordinances noted previously. We've talked about the map here that will supplement Table A and the idea is that you can look at the map, see the number, and look at the table and find out how big the lot is, what the parcel number is, who owns it and what it's designated for rural zoning. I have an item that I wanted to present to you tonight. In our discussions on evaluating commercial land uses, the staff came up with some clarification on the definition for retail that now appears in the DR's. You don't have this information in front of you but the term retail is defined as "the selling of goods or merchandise to the public for public use and providing services incidental to the sale of such goods." We wanted to add to that definition that retail does not include recreational vehicle and boat sales, mobile home sales, and new and used car sales. The reason for that is these latter uses are better served inside the UGA's.

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(#0110) Steve Clayton: So these are permitted uses within a LAMIRD and you're defining what a retail permitted use is within a LAMIRD?

(#0118) Allan Borden: It's to better clearly define it so that it's not construed.

(#0120) Diane Edgin: I would disagree totally on the marine because marine is water dependent and when you've got a business and you're talking about money and hours and expenditures demonstrating boats requires water and unless we have a huge lake inside of town you're effectively limiting what they can do with business. They are resource dependent.

(#0135) Allan Borden: Marinas are identified in the rural tourist activity.

(#0140) Bob Sund: We're talking about retail sale of boats, motors, recreational equipment and when you have a big lake like Mason Lake or Lake Cushman or Spencer Lake it would seem that would be an appropriate type of retail business.

(#0150) Diane Edgin: Very much so. I know Verle's; for them being 15 minutes down to Lake Isabella to put a boat in is quite a boon. If they had to come from the middle of town they're taking somebody out of the store for such a long period of time to do that. It's got to be business friendly.

(#0170) Marilyn Johnston: So what you're saying is when it's located in rural tourist and it's saying marinas, sales, service and storage and then there's nothing under rural commercial other than just the word retail.

(#0185) Diane Edgin: I'm not saying RV's or cars; I'm just talking about marine; it just makes sense.

(#0188) Darren Nienaber: There's a rural zoning district that allows that kind of activity.

(#0260) Marilyn Johnston: Under retail under rural commercial give me 2 or 3 examples of what that would be. As I understand it, it's something that I in the area living there, it's goods and services that would help me so what would be a retail there?

(#0282) Allan Borden: Retail would be a second-hand store.

(#0310) Bob Fink: It could be a VCR rental store; it could be a grocery store; it could be a barber shop. That's why the clarification is being sought. When we introduced the word retail sales as a general category it wasn't intended that include auto sales; large item outdoor display services, like mobile homes or RV's or boats. They are retail sales but they're treated differently than small scale inside display that's more typical of retail sales. That's what we're trying to clarify. The visual impact is different.

(#0372) Marilyn Johnston: It's still offering a variety of goods and services which serves surrounding rural residents.

(#0375) Bob Fink: Right. The issue of who is being served and what service is rural residents is something that was litigated and the distinction at this point is that rural residents need these services. We're talking about small scale sales of various types. People who live in rural areas need all kinds of things.

(#0415) Marilyn Johnston: In other words, in these places we're not going to see auto sales lots, we're not going to see mobile home sales and that kind of thing.

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(#0420) Bob Fink: Right. That's why we're trying to define retail sales that way.

(#0435) Bob Sund: A person might have a repair shop for outboards and they might start selling outboards. Then he might be selling boats to go with that and they may have to do things like that in order to make a living and if you can't sell boats then maybe they can't make a living there. I would hate to see someone be restricted that could not make a living like that when it's related to the area. We look at a place like Potlatch and even though it's not on the water Potlatch has a marine store and they sell all kinds of marine supplies for boats and they sell motors and they sell boats.

(#0480) Bob Fink: Potlatch is different and it's appropriate there.

(#0486) Bob Sund: But there may be places like that that could make a profitable business like at Spencer Lake.

(#0488) Allan Borden: If they switched from residential to commercial they will have to be rezoned. If they get a rezone it would be more appropriate to be rezoned to Rural Tourist than Rural Commercial and that way there is a provision for them to do that.

(#0500) Bob Fink: Rezone is one of the issues we want to tie down because we need to be sure to control and limit rezones in a way that prevents sprawl.

(#0518) Theresa Kirkpatrick: Could you read the definition one more time?

(#0522) Allan Borden: The definition would say "Retail: The selling of goods or merchandise to the public and providing services incidental to the sale of such goods. Retail does not include recreational vehicle and boat sales, mobile home sales, and new and used car sales."

(#0600) Diane Edgin: Is there any public comment on this section?

(#0610) John Diehl: In terms of the redefinition of retail I think it's a step in the right direction; the question I would ask is if we're talking about rural development we have to be concerned with rural character. If we are now acknowledging that it is incompatible with rural character to have auto sales lots in these locations should we not be asking what else in the retail area besides these sprawling display type businesses should be also excluded from the retail that is appropriate in those areas. For example; in this part of the woods it's not uncommon to find a fellow with a chainsaw who has a set up along side the road who carves things for people; that's a retail operation. It's kind of noisy and pretty conspicuous but not as conspicuous as auto sales but it's very commercial. Is that compatible with rural character? I think that that's one of omissions in the kind of analysis that we've gotten from staff. They've chosen a few conspicuous examples but I think there are a lot of retail businesses that really do not comport with the concept of rural character. A stationary store may be harmless in terms of it's environmental impacts but it's not part of rural character and you would expect to go to town for that sort of operation and I think you ought to be looking at requesting staff to do a more thorough analysis of what kinds of retail operations are appropriate to rural areas and compatible with rural character.

(#0715) Warren Dawes: I'd like to comment that this has been an issue before the GMHB and I believe staff is trying to resolve this issue. The GMA identifies that rural centers are to serve the current and projected population in the rural area by their services. That's the nature of a rural center. There are other types of businesses that can be located in isolated locations which provides jobs and doesn't necessarily have to serve the immediate surrounding area and your marina falls under the Rural Tourism. The rural centers are set up to be convenience centers for the rural population; the current and projected. Where we were running into problems before the GMHB was talking about retail and the example was given about how retail such as used car lots, mobile homes sales lots, do not serve just the current and projected

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population in that area; they serve a much wider population. There was talk about limiting the size of the building that could go in. That stops the big Walmart from coming in as a retail operation. They're not going to move into a 7,500 sf building or a 4,500 sf building but a mobile homes sales lot or a used car lot can probably get along very well with a small sales building and then take up an inordinate large area for these mobile homes, RV's or cars. That's not the intent of the rural center. There is a place for those things and in my way of thinking is what Olympia has in their auto mall is a good place for auto sales. RV or mobile home sales should go into an area where people can come to see them; in urban areas. I think this definition rural commercial as they are applied to the rural center the key here is to keep that wording of to serve the current and project population. Retail is envisioned in terms of doing just that and can be evaluated on that basis then you're complying with the intent of the GMA. Don't forget that all of this comes with a cost; if we're going to start growing these small centers into larger and larger and ultimately see them as UGA's, that all comes with a cost for infrastructure and what have you. You may not want to see that in some of these locations, like a Deer Creek or a Bayshore because of the environmental impacts. I welcome this change so that we don't see these sprawling mobile home sales lots and sprawling used car sales lots and RV lots.

(#0842) Steve Clayton: Regarding Mr. Diehl's testimony; do you think the definition as given for retail is adequate or should we go back to the old DR's which lists them out?

(#0864) Warren Dawes: To tie it as to be serving the immediate current and project rural population in that area. You want to have the gas station, quick food stop services areas for these areas. You want them to go to the UGA's to do their real speciality shopping.

(#0904) Bob Sund: If they wanted something in connection with the boats, to go clear to Shelton ...

(#0906) Warren Dawes: It's not been said that you have to do that. There is a Rural Tourism ...

(#0910) Bob Sund: Could there be a mix between a rural center and a tourist center?

(#0916) Warren Dawes: It's clear in the GMA that they don't mix; the rural center is one definition and these isolated uses are a separate definition under the rural section of the law and we don't see them mixing. Your concern is probably not a real concern in that if someone wants to create an isolated marina sales location on Spencer Lake or on Mason Lake they can do that if they do it in isolation but if you start grouping them together then you start dealing with the infrastructure needs for that because those things tend to grow into where you've got pollution problems and you have to start putting in infrastructure that you weren't planning on doing.

(#0996) John Diehl: I just want to remind you that there are three major tests that you need to apply when you're talking about what sorts of development of a commercial sort is appropriate in the rural area. You've just been focusing on one of the criteria and that is that the development needs to be primarily intended to serve the needs of the existing and projected rural population. There is also the requirement that it be compatible with rural character and that was what I was talking about earlier. The third feature which is maybe not so much an issue tonight is that in the case of development that is allowed on individual lots as opposed to cluster areas that already exist such other development on these individual lots must be isolated. So those are the most important governing criteria; if you keep those three in mind as you weigh any proposal you'll go a long way toward meeting the requirements of the ACT.

(#1070) Bob Sund: John, are you suggesting that rather than to name the individual businesses that we say that the business should be compatible with rural character?

(#1085) John Diehl: No, I'm saying that that is the criteria that you use to decide what you do allow in these areas. That's one of the criteria. It's not as precise a criteria as one might like and that's in a sense an

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invitation to an ordinance that clarifies it. I think we'd get into a lot of trouble if we had an ordinance that you can have any business in a rural area as long as it's compatible with rural character; that would present lots of difficulties for interpretation and it has for the GMHB already but it's the kind of thing that needs to be resolved at the level of the ordinance so that you don't put your staff in an impossible situation when it comes to an application for a particular development.

(#1115) Steve Clayton: So how do we go about creating this?

(#1118) John Diehl: Intuition is not bad; it's a start. In terms of process I do think that it would be helpful if you could induce staff to more thoroughly examine the options. The matrix of permitted uses, for all it's flaws, did have the virtue of innumeration a great many uses which could at least serve as a sort of a list of things that need to be reexamined and the GMHB's reaction to that original list was that a lot of them didn't make sense in terms of compatibility of rural character and with respect to serving primarily the needs of a local rural population. I'm not saying go back to the matrix of permitted uses; I'm just saying that that could be like a shopping list to give you some clues as to categories that you need to then make decisions about and the staff has taken the step in the right direction by saying that retail is a very broad category and some of these retail operations really are not either serving just the local needs or compatible in terms of rural character. I'm just saying go the next step and ask what else really should also be within that category.

*(#1375) Miscellaneous discussion on when the BOCC is going to act on these issues.*

(#1390) Darren Nienaber: It is currently scheduled for December 3<sup>rd</sup> but I think it actually will be heard on December 30<sup>th</sup>.

(#1400) Diane Edgin: We need to discuss the possibility of a special meeting to finish with these issues.

*(#1425) Miscellaneous discussion about the possibility of have a special meeting.*

(#1630) After discussion, it was decided to continue this hearing until December 2, 2002 at 6:00 pm.

(#1730) John Diehl: One of my complaints is that you're being asked tonight to take an action before the environmental review process is complete and that is fundamentally flawed. The comment period doesn't end until the 26<sup>th</sup> of the month and you shouldn't be taking any action until the comments are in. This continuance would allow for that issue to be addressed.

(#1815) Theresa Kirkpatrick: I do have a few broad comments about the general tone of these proposed revisions. Would this be an appropriate time to raise those so they could be addressed by staff? One thing that disturbs me with these proposed revisions is I see very little regulations regarding signage and it's been my experience that signage can very quickly change the rural character. The only reference in these proposed revisions that I saw were one little reference to bed and breakfast signs and the rest of them said something about signs reviewed as per each proposal. If our intent as a body is to put language in place to alleviate in the future having to review each proposal I would like to see something addressing signage code in relation to these development regulations. Lighting regulations; I've seen those in other counties. I know that these aren't addressing the GMA invalidity issues but if we're going for it we might go for some of these other issues. Also, some of the commercial regulations that Allan forwarded to us have areas of impervious surface coverage relative to lot size and that's what we're seeing in surrounding counties and I think that's a really good idea that perhaps we can address in this county. Also, for some rural commercial designations some of the other counties are doing a percentage of the lot size has to be mandated as landscaped and that would be something that might be good to look at here too. There is also not clear definitions of buffer planting requirements and I believe that's important.



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(#1904) Darren Nienaber: You mean the buffer yards? What about them?

(#1908) Theresa Kirkpatrick: There's just really not much definition particularly in relation to the way other counties have defined them. If there's some way we could spell that out perhaps it would alleviate the necessity in the future of having to revisit these issues.

(#1920) Darren Nienaber: We can talk next time about how buffer yards work and then you can have your recommendations based on the county's understanding.

(#1924) Theresa Kirkpatrick: Another issue we saw of importance during the Allyn process about hotels and motels - there seems to be a distinction and in this document I've seen both used interchangeably and as we saw in the use of the Allyn one there is a difference. I'd like also to address cell towers and if we could be clear on them. And certainly not least a concern with these proposed revisions is I see a lot of specific instances where an individual defined as the 'Administrator' and it's not clear to me whether that's the Department of Community Development or the County Administrator but that individual whoever holds that position seems to be given an inordinate amount of individual power and I think that in a system of checks and balances of democracy that should be addressed before we can move forward on these.

(#1982) Steve Clayton: My big concern was over the Frequently Flooded Areas in the Skok Valley and that the BOCC is maintaining an overview of variances for reasonable use. Under 4.4-3 on page 15 it says "an applicant for a development proposal may file a request for a reasonable use exception which shall be considered by the BOCC at a public hearing".

(#2016) Allan Borden: That's the old language. It should have said 'board of appeals' and then that would have sent you back to the BOCC. I can clean that up. These regulations were proposed in late September early October before we changed the language. The Flood Damage Prevention Ordinance is one of the regulations that's covered by the Development Code. I can edit it so that it's up to date.

(#2066) Diane Edgin: Do we have anyone else who would like to give public testimony tonight?

(#2080) Jim Hunter: My name is Jim Hunter. It appalls me that a few people are trying to destroy our community. Skokomish Valley is the oldest community in the county and you moved away about half of the houses in the valley. There are probably half as many houses in the middle and lower valley as there were 20 to 25 years. You've designated us agriculture; I opposed it to begin with but I accept it because that's what we were doing anyhow. I didn't think we needed to be told to keep on farming because that's what I've done there all my life and I intend to keep on. On page 6 of the staff report this paragraph that was the basis of the part that was turned down by the GMHB is complete scientific evidence that was worked over for years by the community and all the agencies involved and all that effort is by the wayside for a little bit of roadside science that they're basing this whole new ordinance on that restricts all building in the Skokomish Valley. It's pathetic; all the valley doesn't flood. There are places that flood and people don't build there anymore; people didn't build there to begin with in most instances. After hearing that last thing about the fence going into the lake, I'm building fences all the time out there and I never get a building permit. Am I not going to be able to build anymore fences out there? Do I have to get a building permit to build a fence? They've taken away our agricultural exemption and I don't know what kind of a can of worms that's going to end up with. Am I going to have to get a permit to plow and a permit to change from one crop to another? I know some people were trying to get a permit to build a manure storage to cut down on pollution and they've been turned down on that.

(#2268) John Diehl: If you have not obtained and read the orders that this work is in response to I would urge you to do so. They're dated August 23 for the order pertaining to the RO and August 14 for the order pertaining to the Comp Plan and implementing regulations. That will help to focus discussion. About the Skokomish Valley and the frequently flooded area there. It is probably true that all the valley doesn't flood

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and if it is then that part which is not within the 100-year floodplain is not effected by the regulations we're talking about because the frequently flooded areas are defined basically as the 100-year floodplain. That's only an issue whether new construction would be effected if in fact it is in the 100-year floodplain. I will add a word as I did privately to Mr. Hunter several weeks ago I think it is possible to read the GMHB order as unduly stringent with respect to new construction. I do think it's appropriate and I think the Board intended to rule out new construction in the 100-year floodplain that would be occupied and therefore pose a hazard to the occupants, need for emergency services, etc., but I do think also that the GMHB may not have thought about this in the way it frames it's language but that there probably is room for some new construction including a manure holding facility, barns, various kinds of accessory structures that are not ordinarily occupied and I have written the BOCC urging them that they incorporate in their amendments something to this affect and it seems to be a sort of common sense sort of thing that I at least would support in going back to the GMHB even though if you want to take a very narrow and literal reading of their language it might seem as though that's not permissible but I'm fairly confident that we can get that kind of thing approved and I would think this was the appropriate place to get it started.

(#2450) Diane Edgin: Any other comments tonight? So do I hear a motion to continue this to the 2<sup>nd</sup> of December?

(#2468) Marilyn Johnston: I make a motion to continue this until the 2<sup>nd</sup> of December.

(#2470) Theresa Kirkpatrick: I second the motion.

(#2472) Diane Edgin: We have a motion and a second. All in favor? Motion passed.

Meeting adjourned.