

MASON COUNTY PLANNING ADVISORY COMMISSION

Minutes
June 16, 2003

(Note audio tape (#2) dated June 16, 2003
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 Bill Dewey at 6:00 p.m.

2. ROLL CALL

Members Present: Steve Clayton, Mark Drain, Bob Sund, Wendy Ervin, Bill Dewey and Theresa Kirkpatrick. Diane Edgin was excused.

Staff Present: Bob Fink, Darren Nienaber, Allan Borden, Susie Ellingson.

3. APPROVAL OF MINUTES

The minutes from the January 6, 2003 meeting were approved as presented. There was a request for a change to the January 22, 2003 and January 27, 2003 for the minutes to read 'Vice-Chair' instead of 'Co-Chair'. There was also a request for a change to the January 22, 2003 minutes on page 20 under item #1495 to reflect '3, 4, and 5' instead of '3, 4, and 4'. Minutes were then approved with requested changes.

4. NEW BUSINESS

(#0175) Theresa Kirkpatrick: I'm now going to pass out copies of these orders that Darren has just presented to us.

(#0178) Darren Nienaber: There's two cases there. One is a 1995 case and the other one is a 1996 case. At some point if you'd like me to give you an overview on these I can.

(#0200) Bill Dewey: Why don't you go ahead and give us that overview now.

(#0205) Darren Nienaber: You probably saw the announcement in the Shelton Journal. What was clear was that the invalidity had been lifted but what they weren't entirely clear about, but I made clear to the paper but didn't really carry forward in the article, was that we're still awaiting an order on compliance issues for the rural zoning case. The invalidity was lifted on the rural commercial zoning districts and they didn't find any substantial interference with anything else. They issued one order on the invalidity issues for rural zoning, which is the worst level under the GMA, and then the next level is that you're simply noncompliant. So it's

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that you're not compliant or you're so extremely noncompliant that you're invalid and you substantially interfere with the goals of the Act. So they only issued an order as to the first but not to the second. Then on the other one, the critical areas case, they entirely found in the county's favor, even though some issues were in dispute so they lifted the invalidity and then found compliance in the case. The good news from the county's standpoint is that one case, unless anybody appeals, is finished after almost eight years. The BOCC said congratulations and they wanted to make sure that the PAC was thanked for the long, long hours that you put into it.

(#0255) Theresa Kirkpatrick: What is currently under appeal from the county's standpoint?

(#0258) Darren Nienaber: Frequently Flooded Areas; that's an issue that's in the court's hands right now.

(#0260) Theresa Kirkpatrick: Do you know approximately when that might be heard?

(#0265) Darren Nienaber: October is when I think the hearing is scheduled. The Agricultural Exemption; not whether the GMA substantively requires the Agricultural Exemption but whether or not the GMHB illegally expanded the scope of their review; that's the legal issue. It's more of a principle than anything else. On the other side whether or not the county was required to get a Final Supplemental Environmental Impact Statement. As you know, we already went and did one anyway and we're waiting on the result of that from the GMHB.

(#0292) Bob Sund: So the first thing you said is that they've lifted the invalidity but ...

(#0296) Darren Nienaber: They lifted on the rural zoning case but they also have open space issues. They lifted invalidity for the first time. Before you couldn't permit any free-standing commercial structures in the county but now the county can do forward and safely do that. They also said they were going to issue an order on compliance issues ... they kept it confusingly vague. It could be they sent out a couple of fantastic orders and then just needed more time for the other one. I suspect, if there is anything, it's housecleaning. I can't really comment more than that, although it's unlikely our discussion will get into the paper, there's a certain thing where lawyers aren't really supposed to talk about the cases pending in front of a judge.

(#0336) Theresa Kirkpatrick: I have a question for Mr. Drain. I see McDonald Land Company on both of the orders. Are you affiliated with that company?

(#0338) Darren Nienaber: Let me clarify that. He had officially withdrawn several months ago and the GMHB, during the hearing, indicated to me that they considered him withdrawn but I wanted to make it perfectly clear because several months ago I had asked for an official order that made it clear that he was withdrawn and they did issue that order. So McDonald Land Company is listed there but the company is officially out of the case.

(#0355) Theresa Kirkpatrick: And he was withdrawn before appointment to this commission?

(#0358) Darren Nienaber: Yes.

(#0360) Theresa Kirkpatrick: Good. Thank you.

(#0362) Bill Dewey: Any other questions for Darren? Alright, Allan let's go with the BLA's.

(#0382) Allan Borden: This staff summary that I've given you is composed of one page that has all the changes that are listed on the following four pages so if you don't want to read the following four pages you can just read the first page. What has happened is the PAC reviewed the BLA standards in May and you recommended adoption and there was some editing that was accomplished and that was submitted to the BOCC on June 10th. On June 10th several people spoke as public testimony and stated some comments that prompted the BOCC to ask the Department of Community staff to make some adjustments in the text. That's what you have in front of you. One of those comments had to do with an individual who had a 5 acre piece of property and wanted, through a BLA, to resolve an encroachment situation; wanted to reduce his lot below the 5 acre development density size. We propose this #4 to address that situation and in the last week Bob and I have been talking about this revision and we may want to make it more general, or at least

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apply to more than just the RR 5 zone. We may want to have that first sentence of #4 read 'BLA's in the Rural Residential 5, 10 and 20 districts may reduce the size of a lot currently 5 acres to below the development density standard provided that', etc. It's a situation in which the proposed BLA that reduces a lot below the development density standard is in order to resolve an encroachment and still allows the lot to be of a size that can still accommodate future development providing sufficient area and dimensions to meet the setbacks and buffers for development, just as we discussed back in May.

(#0494) Wendy Ervin: I thought that essentially the wording that we had basically covered this eventuality that you had... providing that you didn't go over the density in that area so that providing you weren't increasing the number of residential lots or the number of residences allowed ... single residence per 5 acres it appears to me that even if you change the BLA's and make this smaller you have not allowed more residences over here and so you still have this guy's 5 acres and this guy's 5 acres ... you can move that line around but you're still only going to get 2 residences in that 10 acre no matter who owns it and where the lines are.

(#0525) Bob Fink: The reason we brought this to you is basically an abundance of courtesy to give you an opportunity to look at some changes the BOCC is considering making to what you sent to them. We thought since we had time and had this hearing we'd take the opportunity to bring it to you. There are three changes that were talked about at the BOCC meeting. One change actually came from Commissioner Johnson who has concern about some of the old language; language that no one has looked at. When this ordinance was first adopted, all the rural area was 5 acre densities so there's language in here that still reflects that previous condition. On the first page of the ordinance copy handout, this change is essentially making it clear that the example given is 5 acre densities so if you're dividing land, what's now in a rural 5 acre area, there's a density requirement that you have one house per 5 acres. It goes on to discuss that if you have an existing lot that's smaller, that's okay and you're entitled to one dwelling on that existing lot that's smaller. The rest of it goes on to talk about when different conditions apply but what Commissioner Johnson was concerned about was that the language implied that there was only a 5 acre density out in the rural area and that was simply incorrect; it was out of date. He was correct in that so we just simply modified that. It's not a significant change but just a clarification. The other change was substantive but it was a carrying through of the concept which is developed elsewhere. To take just the 5 acre rural residential as an example, you have two thresholds. One threshold is at 5 acres. When you're dividing land, you have to have 10 acres to divide it into two lots. Those lots don't have to be 5 acres each; there's an allowance in there for a smaller lot and a larger lot. That's where you get into the second threshold which is a 2 acre minimum lot size. So, for instance, if you start with 10 acres and you're going through a land division and instead of doing two 5's, if you want to do an 8 acre and a 2 acre you can do that or you can do a 6 and a 4. That provision was to give flexibility and allow people to adjust the lot sizes depending on the conditions on site, depending on what they want to get out of it, and how big a lot they want. That's up to the applicant to determine as long as the county is getting access and buildable sites within that range and preserving the overall density in the rural area we've met our goals. But in doing that several of these provisions have changes that are in here and that you sent forward address certain cases where there's an encroachment where you're allowed to go below that lower threshold of 2 acres. If you have a 2.01 acre lot and your neighbor's house was partially on your lot, and he might actually be able to gain title to that through legal action, the purpose of the BLA is to allow people to negotiate and settle those encroachments without having to go through a court process and therefore re-establish lines that everyone is happy with. As long as we are preserving those buildable lots we thought that it should be okay for people to go below 2 acres; the overall density is the same; there's still two lots there, or whatever there were in the beginning, and all you're doing is allowing the crossing of that lower threshold. That was provided in the language that you sent forward. What we didn't provide in the language that you sent forward was to cross the 5 acre threshold, or the 10 or the 20 acre threshold. So what was brought up as a comment by Mr. Frost is that he is in a situation where he has an encroachment and his neighbor encroaches on his land so he's going to lose some acreage and he's trying to work out an agreement with his neighbor but the problem is that he can't drop his lot below 5 acres in the 5 acre area of which he is in. So what we're proposing here is to follow the same theory of not having a problem with someone settling an encroachment by allowing them to go below that threshold. You're still not increasing the rural density, you're dealing with an act of physical encroachment that does exist and as long as you've got enough acreage to meet your needs for development there doesn't seem to be any reason not to allow that. That's the second change. The third change is under 3d and it's simply a number change. The other two do have a substantive effect and one continues the same theory that was applied earlier and the other one is simply a correction of something

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that wasn't amended as we went through and made changes to the contract. So we've brought this to you and if you want to discuss it you can. You don't have to take formal action on it. This isn't a public hearing and we don't have any one from the public here to testify.

(#0768) Wendy Ervin: I'd like to ask a question. I've always considered that the framework of the 1 per 5 acre or 1 per 10 density was that you take an amount of the county and you say all property in this area will be 1 residential unit per 5 acres in this block. It never seemed to me that it should matter who owned that property. To me per 5 acres in this block of 250 acres then you're only going to have ... you're limited to the number of residences that you can have in that area so it never seemed to me that it should ever matter who owned those plots as long as you weren't going over the number of residences per acre.

(#0810) Bob Fink: There's a couple of factors that complicate it. First off, that's one of the reasons that we allow ... to some extent, it doesn't matter exactly how large those lots are and that's why we allow that flexibility but there is evidence on the record as the lot size drops below a certain point there are issues that come up with water quality, there are issues with clustering and if you start with 640 acres instead of 10 or 30 or 60 acres then what you can end up doing with it, if you don't control that lot size, is that you get clusters of houses that change the character of the area in a way that's not acceptable. You've just gotten the orders of the GMHB; this was part of the thinking of what went into what's allowable. The county, at one point, allowed smaller lots. In the first version we had all 5 acre tracts, we allowed 20,000 sf lots. Now we only allow 20,000 sf lots in the case of a designed, clustered subdivision that has all these other limits on them. You're allowed these clusters of small lots but you have to have open space. You can only have so many lots in a given cluster. You have to separate the clusters by such a such distance so there's all these design requirements going into that cluster that you don't have in a standard subdivision. A standard subdivision, you're limited to 2 acres; your smallest lot is 2 acres. There are complications with allowing people to unlimited control over the acreage in trading the land with their neighbors. Just tracking the amount of development they're allowed in any given point in time as the regulations change it becomes very difficult. We've always treated since the beginning that if you have a 5 acre lot in a 5 acre area then that's the smallest lot you're allowed. You can't say that you have one development right so you're going to trade 3 of those acres to my neighbor; your neighbor may have 8 acres and you have 5 acres well you can say that you want to trade 2 acres to my neighbor because I only want one house anyway and then suddenly your neighbor has 10 acres and he can say that now he wants to divide his land. So you have complications like that when you talk about the totally free exchange of land and being able to track that. The person with 1 acre only has one development right and if he drops below the density then it would become nonconforming and there's a general rule that you don't allow the creation of a nonconformity or the increase in a nonconforming condition. Those are general rules and we have exceptions to that right here but you want to be careful about when you allow for those exceptions.

(#0935) Wendy Ervin: I thought that providing the density language that we said you could do this and this providing you didn't alter the density. I thought that took care of this situation.

(#0950) Bob Fink: To some degree it does and we think it will for the right-of-way changes. We think we have precautions in there so that ...

(#0958) Wendy Ervin: That you could move your boundaries however but you couldn't change the density.

(#0962) Bob Fink: There's a standard of one house per 5 acres. If you allow someone to cross that threshold then you've allowed them to create a nonconforming lot.

(#0970) Wendy Ervin: One house per 5 acres; my thinking was it didn't matter who owned that 5 acres.

(#0982) Bob Sund: And if you do a BLA and one place becomes 4 acres and the other is 6 acres there's still only two houses.

(#0990) Bob Fink: Through a BLA you can't create new lots. This is probably something we should discuss at another time.

(#0994) Wendy Ervin: I'm thinking this is just fine but I think it's superfluous. It seems to me that this had pretty much been covered.

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(#1002) Bob Fink: Our interpretation and people perceive that it is not covered. You are creating a nonconforming situation when you allow a lot in the 5 acre zone to go below the 5 acre density. You do consider the lot by lot as well as the area as a whole. You are creating a nonconforming lot when you do that.

(#1015) Wendy Ervin: You're creating two nonconforming lots because this guy next door has a larger amount of space and can only have one residence.

(#1020) Bob Fink: It's a minimum standard. So the other one isn't nonconforming. You may be indeed taking it and making it conforming but even though you may be doing that, it's the creation of a nonconforming situation that usually requires a variance to do and what we're trying to do is so people don't have to go through a variance process in order to make this accommodation.

(#1053) Bill Dewey: Any other questions for Bob on this?

(#1055) Theresa Kirkpatrick: I'd just like to say I really appreciate the courtesy of bring this back to us.

(#1060) Bill Dewey: Does anyone feel that we need to take any action on this?

(#1066) Bob Sund: Even though at the time that the BLA is made and one lot becomes nonconforming, it can be stated at that time that that nonconforming lot still has one dwelling site granted to it and so it wouldn't be down the pike. It could be done at the same time as the BLA is done. I recall the discussion and I thought that our discussion was made so that we did cover that in a general way.

(#1095) Mark Drain: I would be supportive of the language that Allan gave us this evening. I just think it helps to clarify what it's all about.

(#1108) Bill Dewey: I didn't hear any dissension to that.

(#1118) Mark Drain: Are we in agreement enough to make a motion to accept what the county has proposed?

(#1122) PAC: Yes.

(#1124) Mark Drain: I'll make a motion that we accept this additional language that Allan has spoke of this evening plus the changes that are outlined on the staff summary page and that they be added or included into the BLA ordinance.

(#1136) Steve Clayton: I'll second that.

(#1138) Bill Dewey: Is that including adding the '10 and 20'?

(#1140) Mark Drain: Yes.

(#1142) Bill Dewey: We have a motion and a second. Any discussion? All in favor? Motion passed with one person abstaining. We'll now move to the public hearing to consider revisions to Title 15 regarding hearing of appeals.

(#1170) Allan Borden: In November of 2001 Title 15 made some significant adjustments in the responsibility of hearing both permits and appeals through the Development Code. A couple of months ago we clarified the responsibilities of the Hearing Examiner to hear certain permits and that was adopted by the BOCC. Tonight the proposed revisions to Title 15 focus on the text to adjust certain references in Title 15 that would remove the process of the BOCC hearing appeals of the decisions made by the Hearing Examiner. As I mention in the staff report, the BOCC had discussed this proposed change with staff and we proposed a series of changes. Primarily the BOCC found that it's difficult to respond to their constituents at the same time of remaining impartial of potentially hearing an appeal of a decision by the Hearing Examiner. Appeals of the Hearing Examiner's decisions would go directly to Superior Court. The BOCC can basically focus on

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the Type IV decisions with the DR's and the Comp Plan changes. When Title 15 was revised in November of 2002 we also included the SMP review and those cases are heard by the Hearing Examiner and there was inclusion in the process that if the Hearing Examiner made a decision and a person wished to appeal it they would appeal it to the BOCC and now that appeal will go directly to the Shorelines Hearings Board as it always has.

(#1300) Bill Dewey: So in the past on a shorelines appeal you didn't have an option of the intermediate step with the BOCC before the Hearings Board?

(#1305) Allan Borden: That's correct. Before November and December of 2002, shoreline cases were heard by the BOCC and not by the Hearing Examiner.

(#1318) Bob Sund: You didn't have a Hearing Examiner.

(#1318) Allan Borden: We had a Hearing Examiner but we didn't have the authority to review shoreline cases until we made the changes in Title 15 that took place in November of 2002. Just for historical sake, the SMP was not officially revised until April 1, 2003. The amended version which shifted a lot of the permit processing from the old SMP and placed it in the DR's. That regulatory reform amendment was not finalized until April 1st. Once that was officially adopted by DOE then cases that were applied for through the SMP could then be heard by the Hearing Examiner. It's actually only the month of April and May and the first half of June that shoreline cases have been heard by the Hearing Examiner. This proposed revision would eliminate the appeal of shoreline cases ... once the Hearing Examiner made a decision it would not be heard by appeal by the BOCC.

(#1382) Bob Sund: So you're taking the county out of the process, is that what you're saying?

(#1384) Allan Borden: No, the county is still involved in it because of the Hearing Examiner.

(#1388) Theresa Kirkpatrick: It's taking the BOCC out of it.

(#1492) Darren Nienaber: In a sense it gives them a lot more options. I've told them if they get a phone call from anybody they've got to tell them 'no, I can't talk to you about this permit'. It's a very serious issue because if you get appealed on that the higher court could say that it's invalid because of the fact of not being able to have contact with the ex parte contacts with the quasi-decision maker whom ever that might be. The BOCC, even though they're elected people, have had to tell their own closest people that they can't talk to them about any of that stuff. So in a sense it takes them out but it also allows them to go in. It just changes the process.

(#1440) Bob Sund: How can they come in, then?

(#1442) Darren Nienaber: Then they could communicate with ...

(#1444) Wendy Ervin: Can they advocate with the Hearing Examiner?

(#1455) Darren Nienaber: That's a little tricky.

(#1457) Bob Sund: Who names the Hearing Examiner?

(#1462) Bob Fink: They were appointed by the BOCC. There was a solicitation of proposals of people interested and then they were interviewed and selected by the BOCC.

(#1470) Bill Dewey: So they serve at the will of the BOCC.

(#1475) Bob Fink: Yes, the contract can be cancelled if the Hearing Examiner isn't doing an adequate job. As Darren was saying it gives the BOCC a greater chance to be involved and to know what's going on at the policy level and be involved in the policy. They could hear about a case before it's settled, they can give advice to the guy about how to pursue resolution. They can talk to citizens about a case that's not been totally resolved and if there's a regulation or something that's resulting in decisions that aren't what they want

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to see then that's their role to set the policy and go in and revisit the regulation and possibly change it so that decisions are consistent with the policy that they're trying to set for the county. When you deal with individual cases the facts are so specific and the law is so complicated that they have a very difficult time filling that role. When they hear an appeal from the Hearing Examiner it's a closed record hearing so they don't listen to testimony and so they're simply reviewing the decision of the Hearing Examiner with respect to the law and the facts of the case. They do have an opportunity to make a different decision but there are complications with that as well.

(#1552) Darren Nienaber: It's also a lot, I think, a lot legally more thorny hearing appeal cases than it is hearing the original case. You have to have your eye out to make sure no new information gets in and you still have to watch out that you haven't had contact with that person on that case.

(#1578) Wendy Ervin: Is it as thorny for the Superior Court ... it seems to me to be more clear cut if you're taking it to the Superior Court for your appeal than it is going to the BOCC who are actually the boss of the Hearing Examiner and so going between the employee and the supervisor and appealing a decision where the Superior Court is entirely out of that loop so they should have a more clear cut ability to deal with just the legal issues.

(#1600) Darren Nienaber: I'd also point out, for what it's worth, the Hearing Examiner, Phil Olbrechts, is unique amongst Hearing Examiners in that he was also a planner and he's also one of the state's most respected land use lawyers, too, and he teaches land use law classes at the University of Washington.

(#1615) Theresa Kirkpatrick: I know it was proposed by citizens over a year ago that Mason County adopt an ethics and conflict of interest policy. Was that ever implemented?

(#1626) Darren Nienaber: Above and beyond the current requirements, no. Not that I know of. Although there are some things within the Planning Commission that have been adopted from the original rules. There are several different conflict of interest provisions set forth in Title 42 of the RCW's.

(#1642) Bob Sund: So Darren, you just said that the Hearing Examiner was this guy at the University of Washington.

(#1646) Darren Nienaber: He teaches a land use law class as part of the program.

(#1650) Bob Sund: So he is named as our Hearing Examiner?

(#1652) Darren Nienaber: Correct.

(#1654) Bob Sund: I guess my concern about all of that is where does the local control come back in? If we're dealing with somebody that's a land use guy from the University of Washington dealing with this on a more grandiose basis ...

(#1666) Allan Borden: He has to be implementing our regulations.

(#1670) Bob Sund: I know but he has to interpret our regulations, too. There's sort of an interpretation that goes on ... I guess it's the same thing

(#1676) Darren Nienaber: To paraphrase what he had told the BOCC 'you can give me hell after I make a decision'.

(#1680) Wendy Ervin: That doesn't alter the decision.

(#1682) Darren Nienaber: That's right.

(#1686) Wendy Ervin: That just means that somebody reads him the riot act and he shrugs his shoulders and goes on about his business.

(#1694) Darren Nienaber: No, no, if the party that you're contracting with is visibly upset is it a wise decision

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to continue to make them upset consistent with the law.

(#1720) Bob Fink: You have to realize that whenever there's an appeal there's probably two constituents that are upset with what happened and they're both constituents of the BOCC. In that sense you're always going to make constituents unhappy. The question is what is the policy that's supposed to be implemented and is that policy clear in the Comp Plan and in the regulations? If that policy plan is not clear in the Comp Plan and in the regulations then the BOCC needs to change that so that it is clear how they want decisions to be made. In other words, what policies aren't being properly implemented? It's appropriate for them not to try to read ... that's what the Hearing Examiner does. He applies the regulations and policies as written same as staff is trying to apply the regulations.

(#1772) Bob Sund: We've been ten years working on growth management and we thought we were complying all the time through that process and because of the interpretation of the GMHB we weren't complying and so there's a difference of interpretation of the law on how strict you're going to interpret that law or ... we thought we were obeying by the law in the growth management thing and it took us ten years by changing, changing, changing and keep moving to what the ... I guess I'm a little concerned about somebody that's out of the county making a decision on something that's in the county and getting into that same ball game that we've been in in the past.

(#1812) Darren Nienaber: For what it's worth, a lot of his first experience from planning and land use law was in Forks, Washington. So he's very familiar with the rural areas and economy.

(#1825) Bob Fink: He's been the City of Shelton's Hearing Examiner for a number of years.

(#1830) Wendy Ervin: When he looks at an issue ... in the appellant court in the Supreme Court when they are looking at a question of law they sometimes have to back up to what was the intent of the legislatures and go through minutes or whatever to find out what was their intent. Does that Hearing Examiner go into what was the intent of the BOCC when they wrote this specific regulation?

(#1850) Darren Nienaber: Oh, yes, and probably he's better qualified to do that than, believe it or not, the BOCC themselves because that's exactly his job is to apply interpretation what the legislative intent was. Also, he is familiar with case law, which the BOCC is not; they have no training in terms of what the Supreme Court has ruled on what reasonable use means, for example. There's a lot of case law behind that. There's also a lot of case law of regard to what the typical standards for a variance are. He's already been trained; he's already done that hundreds of times. The BOCC don't know just because they've never had that particular very specialized training. I don't think they've ever quite felt comfortable, frankly, applying legal standards and making legal judgments.

(#1904) Mark Drain: For the person appealing his decision, how much more of a burden is it to go before the Superior Court versus the BOCC? How much more time, money?

(#1915) Darren Nienaber: You could look at it that way or you could look at it as just simply an extra hurdle that the county has created and sometimes developers do look at it that way as just an extra little nuisance hurdle that has to be cleared.

(#1932) Bill Dewey: So to clarify that, Darren, you're saying that the extra hurdle is the appeal to the BOCC and then on to Superior Court? So what you're saying is that this eliminates that middle step?

(#1935) Darren Nienaber: That's right.

(#1944) Mark Drain: Is there some kind of a resolution committee ... an opportunity to bring in another Hearing Examiner or someone that ...

(#1954) Darren Nienaber: Some counties do have appellant Hearing Examiners.

(#1962) Wendy Ervin: Have the Superior Court been in the loop prior to this? You have the Hearing Examiner and then you appeal to the BOCC ...

(#1965) Darren Nienaber: Sometimes to the Shorelines Hearing Board.

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(#1968) Wendy Ervin: But the Superior Court wasn't in that loop?

(#1972) Darren Nienaber: That's right.

(#1974) Wendy Ervin: But now we're putting that in?

(#1975) Bob Fink: Once the county made it's final decision Superior Court was always the next step with the exception of the shoreline cases where you had the Shorelines Hearing Board and then you went to court. It's always ended up in the same court if the parties continued to disagree and they continue to pursue it. It's just a question of whether you go through the process of the county hearing an appeal on it's own action or not.

(#1995) Wendy Ervin: And it is filed as though it is any other suit?

(#2005) Darren Nienaber: It's similar and ordinarily a suit is a complaint; a summons. For appeals of permit decisions it would be an appeal.

(#2015) Theresa Kirkpatrick: So appeals are allowed no new information. It's just a judicial review of a previously existing occurrence?

(#2022) Darren Nienaber: As long as the fundamental integrity of keeping the quasi-judicial process is kept in tact then there's no new evidence. If there's interference with that ... for example, if it goes up to appeal and somebody sneaks in some backdoor information somehow then it could give the court administrator an excuse to open it up again.

(#2042) Bob Sund: So no new information can be brought into an appeal? Even though something more has come to light?

(#2045) Wendy Ervin: If something comes up under some conditions it can be.

(#2048) Darren Nienaber: Actually, I don't think under our code there's any new information.

(#2055) Bob Fink: The Regulatory Reform Act, adopted in the 90's to try to expedite permits and to establish some uniform standards, they only allow one open-record hearing. If you had an open record hearing then the appeal has to be a closed-record appeal.

(#2078) Darren Nienaber: It was from state amendments because a lot of people in the process were getting real tired of spending all the money and time on one record and you've got everything established and fixed and then if you have another hearing then it's an all new free-for-all and the legislature decided to really simplify that process.

(#2098) Bob Sund: So the Hearing Examiner is under contract for a certain length of time? Can that contract be terminated at any time?

(#2108) Bob Fink: I believe the way it reads is that he can be terminated with notice.

(#2116) Theresa Kirkpatrick: We're really not discussing the Examiner, we're discussing getting the BOCC out of the appeal loop.

(#2120) Bob Sund: I know but they're related. It is related. If you take the BOCC out and the Examiner is in ... I have another question about this sentence in the introduction, Allan. It says 'for these reasons, the Board has discussed this situation of possible conflict with staff and has requested', etc. My question is who is the conflict with? Is it with the situation or is it with the staff? Or should it say 'the Board has discussed with staff the situation of possible conflict'.

(#2182) Theresa Kirkpatrick: So basically this could just prevent a hot potato from falling in the BOCC's lap. Was it motivated by any specific case, do you know?

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(#2188) Darren Nienaber: It's been building up over time. It was originally considered before I even came here.

(#2194) Bill Dewey: Allan, are you finished with your comments?

(#2198) Allan Borden: I just wanted to state that with this proposed revision it makes it important that people participate in the Hearing Examiner hearing itself and that they bring up all issues that might be relevant at that open-record hearing because they can't bring up unheard issues at an appeal.

(#2220) Theresa Kirkpatrick: The Hearing Examiner hearings are in the legal notices in the Journal every week?

(#2224) Allan Borden: That's right and another thing that's in the revision here is that on page 2 of the revised text where it says Notice of Appeal Hearings. We notify everyone who asked to be made aware of either when hearings are taking place or when decisions are made.

(#2260) Bill Dewey: The public hearing is still open and we've actually moved into discussion. What I'd like to do is ask the lady in the audience if she is here to testify on this issue.

(#2262) Anita Latch: No.

(#2268) Bill Dewey: Let the record show that there is no public testimony on this particular item and with that we'll close the public hearing and move to discussion. I had a question on the appeals. Darren, what percentage of appeals generally go through each of the steps; that would go to the BOCC and then on to Superior Court or the Shorelines Hearing Board?

(#2295) Darren Nienaber: In this new process I only know so far of three appeals are filed with the BOCC. None have worked their way into the courts. When the permits were just with the BOCC there were maybe 50 or 100 permits and I can think of just a few that were appealed to Superior Court and none have been reversed since I've been here.

(#2330) Bill Dewey: Process wise, when you're in front of the BOCC the appellant can argue their own case?

(#2340) Darren Nienaber: That's correct.

(#2342) Bill Dewey: Is the situation different with Superior Court?

(#2344) Darren Nienaber: It's the same thing; they can represent themselves.

(#2360) Bill Dewey: Is it comparable as far as cost?

(#2365) Darren Nienaber: The filing fee for Superior Court, I think, is \$110.00. Don't quote me on that but our growth management appeal was \$110.00. It is set forth by statute and I think there are different fees for different types of cases. Appeals to the BOCC for permit decisions I suspect are a few hundred dollars. It's actually cheaper in terms of filing fees.

(#2398) Bill Dewey: The final question I have is what is typical of other counties in the state?

(#2400) Darren Nienaber: There's a wide range. My sense is that this is slightly more common going straight to court. There are certainly other counties that have the appeal to another appellant Hearing Examiner. As a side note, the goal is to have the Hearing Examiner be entirely fee funded and not from the general fund. Going back to the question, a few other counties have their appeals go to the BOCC.

(#2450) Wendy Ervin: Has the person been able to go from the Hearing Examiner and take an appeal to the Superior Court without taking it to the BOCC, or was that a necessary step?

(#2462) Darren Nienaber: Under the most current system that we have they would have to appeal it to the

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BOCC first.

(#2470) Bob Sund: The Hearing Examiner is a relatively new thing as far as Mason County is concerned and so up until that time the officials of the county might make a determination on some kind of permit and then the constituent could appeal that directly to the BOCC, correct?

(#2500) Darren Nienaber: It depends on the type of permit. There are some permits that go straight to the BOCC and then some that are made administratively.

(#2510) Bob Sund: I thought that a few years ago that that was the reason for advocating a Hearing Examiner is to remove the workload from the BOCC of listening to appeals.

(#2522) Bob Fink: If you're talking about originally before there was a Hearing Examiner adopted by the county all the non-administrative permits went through the BOCC. Like building permits and some Mason County Environmental permits are handled at the administrative level without a public hearing. But all the other Mason Environmental permits, shoreline permits, variances, special use permits that required a public hearing, Type III permits; they're quasi-judicial permits. There's more judgment involved in using them and a public hearing involved and they all went through the BOCC for final decisions. Some of those previously had been heard by the PC and some by the SAB but all were decided by the BOCC. They were on the order of 60 to 80 permits a year of that type. It did eat up enormous amounts of time for them to process all those permits. That certainly was one of the reasons for switching to the Hearing Examiner process. It's one of the justifications now for allowing appeals to go directly to court. It's still the idea of saving the time of the BOCC so they can do the other parts of their job. Just like the BOCC don't go out and fill potholes; when potholes need to be filled they make sure those potholes are filled and they don't go out and do it themselves. While land use decisions are certainly important to people but they should be made according to the law and the particular facts of the case and they don't necessarily have to be made by the BOCC. There's nothing wrong with the BOCC making those decisions and as was noted earlier there are several other counties where BOCC continue to make those decisions and this is just a different way of doing it.

(#2658) Bob Sund: One of my concerns, getting back to this conflict and trying to decide who the conflict is with. If it's with the constituents, well, that's the nature of the game. Anytime you're in an administrative type of job and you're going to make a decision about something, somebody's going to be for it and some are going to be against it.

(#2682) Bob Fink: Not necessarily at all. Actually most decisions are not controversial. Even public hearings.

(#2692) Darren Nienaber: With permits, the difference in legislative actions, that's exactly their job. In quasi-judicial actions, you think of the BOCC as being law makers for the county. That's sort of what you view them as setting the policy and enacting legislation. In the federal system you've got a legislative branch, executive branch, and a judicial branch. Here it's a little mucked up because you've got a legislative branch that sometimes acts also like a judge and the requirements are different, the training is different but in order to be a judge you can't talk to anybody and in a legislative situation your job is to talk to everybody. In a judicial branch you have to act judge like and that means don't talk to anybody at all. If you do and if you violate the appearance of fairness doctrine then the remedy may be that the permit is invalid.

(#2755) Bob Sund: The process worked okay it's just that they had too many, correct?

(#2762) Darren Nienaber: It worked good but let's just say that you're on a rocky sea and you're kind of Grays Harbor did get into trouble about a year and a half ago where somebody got involved in the wrong way through the quasi-judicial process and a permit was invalidated. The remedy is to go back and do the whole process over again but you may have just cost that developer a ton of time.

(#2808) Bob Fink: From my own knowledge I don't think the motivation to establish a Hearing Examiner was because the county was making wrong decisions. There is certainly a risk of making a decision wrong and that risk is minimized with a Hearing Examiner who is experienced, specialized, and trained in making land use decisions. But there's liability in either case so I don't think the original motivation was because the county was making bad decisions. I think it was a matter of freeing the policy making body to make policy

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and perhaps to a certain degree limiting liability and trying to get better decisions in that way; good, lawful, standing decisions that are made timely. We were having two hearings ... or one meeting and when we couldn't have two hearings then we had a public meeting where the PC would make a recommendation to the BOCC and then the BOCC would hold the actual public hearing after the regulatory reform act limited us to one public hearing in a permit process. This step is not one that is mandated; it's an option and the question to you is do you think this is a step the county should take? There's pros and cons to each side.

(#2918) Bob Sund: When we first talked about this several years ago you gave everybody in the Planning Commission a book prior to the new commission. There were some pros and cons in that book. My concern is that I want to see the county remain in as much control as possible over the decisions affecting the county. I have a reluctance to advocate some decisions to go outside of the county. The Assessor makes a judgment on property and you appeal that within the county to the Board of Equalization. Now if you're not happy with the Board of Equalization then you go to the state board. I guess I'd like to see an appeal process someplace along the line within the county.

(#2982) Wendy Ervin: I think what they're saying is that the BOCC do the legislation; they set up all the rules and regulations and have on record whatever their thoughts were and whatever the input was from the citizens at the time that that regulation was done so that's where the county has it's authority. Then the Hearing Examiner comes and makes the decision based upon the legislation that the BOCC have put in place and based upon all of the thinking that went into that.

(#3015) Bob Sund: I guess I'm saying that laws always have an interpretation of that law.

(#3020) Darren Nienaber: Sometimes but ...

(#3025) Bob Sund: Look at the constitution of the United States; it's interpreted, too, and we think that's hard and fast.

(#3034) Darren Nienaber: There's plenty of land use cases and permits that come before the Hearing Examiner where they had no choice. Sometimes there's cases where there might be a little bit of leeway but the leeway is not necessarily that much. That zone of leeway one way or the other is not that wide to the extent that it is there in certain cases the process allows the BOCC to say that as a policy matter we stick within the constraints of the law but we probably favor development over less development. I think that's probably the philosophy they're coming from in general. So they can kind of say that's they want to operate as a BOCC and that's their decision. To the extent there is a little bit of discretion the Hearing Examiner knows how to comply with the law far better than the BOCC to make a legally sufficient decision that is more consistent with their philosophy.

(#3118) Steve Clayton: I think it's a good step for the county to move on to Superior Court rather than the local control. I think it takes the lobbying of your BOCC and the politicking out of the aspect; the squeaky wheels don't get the power so much as what is in writing. It creates more consistency for our system if it's in writing and it's not interpreted based on who knows who and how big a property owner you are. And if you don't like what is written then you go to the BOCC and they change the procedure so that people that read the procedure know what is expected.

(#3152) Wendy Ervin: But it's changed for everyone and not just one.

(#3155) Steve Clayton: Correct. It's changed for everyone and not just one and maybe you didn't win on this one but you learn and grow by that but it creates consistency for the landowners and other people in the county.

(#3171) Theresa Kirkpatrick: Has anyone run this by the personnel at Superior Court? What was their input?

(#3174) Darren Nienaber: It's never done that way.

(#3180) Bill Dewey: I'd like to follow up on what Steve said because I was almost perceiving it the other way and I'd like staff's opinion on that. From what I understand what we have now because the BOCC can be involved in an appeal they have to recuse themselves from discussing permit applications because there's a

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chance it's going to come back to them on appeal; that's their concern is that they can't interact with their constituents on development permits, etc. The who knows who issue doesn't seem that it would apply. They can't talk to people so they can't be influenced.

(#3224) Darren Nienaber: It is an extremely difficult burden when 98% of your job is to go out and talk with people.

(#3242) Bill Dewey: So then the Hearing Examiner hears the case and he makes a decision and as we have it now the BOCC would then hear the appeal and it's at that point that their opinion would be rendered but they would not have been influenced because legally they can't have heard that discussion from their constituents who might be trying to put pressure on them so they would just be using their opinion at that point and I suppose at that point it might be who you know and personal relationships. What's proposed would allow the BOCC to interact with the constituent that's got the permit application, with their staff on what outcome they might want and also if they were in a situation if that Hearing Examiner is under contract by them that Hearing Examiner knows that if he continually rules opposite of what the BOCC's opinions are he's not going to have a contract for long if he does that so he's under influence to some degree as an employee of the BOCC so it almost seems like under the proposed situation there might be more opportunity for unethical behavior or unethical influence. I came up with the opposite conclusion that you did.

(#3325) Theresa Kirkpatrick: Personally I like the idea of it kicking to the court. I know that the currently seated BOCC has a history of insulating itself from controversy and that's unfortunate in my opinion as a voter. One reason that I like to see this go to the Superior Court instead of the BOCC; I'm just afraid it might create extra expense which could be onerous for the person filing the appeal. You might have to get an attorney and very few citizens I know want to go into Superior Court on their own. Whereas citizens might feel less intimidated to come before the BOCC without an attorney. On the other hand I like the idea of kicking it over to court because not only can BOCC be influenced by their constituents but I remember an occasion sitting in this room during a public hearing when the spouse of a BOCC said 'don't you think we talk about this stuff at home'. So it's not just the constituent but it could be any number of influences and I think as much as I agree with Mr. Sund of the extreme importance of keeping control of our local issues local we have to remember that it will be heard in Mason County Superior Court. I think kicking it over to the judge removes the possibilities of tainted decisions. I would be in favor of this going straight to court from the Hearing Examiner. Again, I'm disappointed that our elected officials continually insulate themselves from political hot potatoes. On the other hand it's less of an opportunity for a taint. Somebody would have to get to a Superior Court judge and bend their ear instead of somebody bending the BOCC's ear. It might be easier to influence the BOCC than it would a Superior Court judge.

(#3500) Bob Sund: If they're influenced ... then the next step would be Superior Court.

(#3520) Theresa Kirkpatrick: Sometimes it might be impossible to put your thumb on where the taint of that quasi-judicial process happened. A constituent spends a lot of hours hanging out and chatting with the BOCC or as I said the spouses of a BOCC that could have an impact. I just feel it would make it cleaner. However, the judges have taken an oath.

(#3565) Wendy Ervin: The BOCC has also taken oaths and it's my personal experience with Superior Court that not all judges are created equal. So just because it says Superior Court you've got two judges and three Court Commissioners and they are not equally qualified or equally fair. So you're putting a lot of faith in Superior Court.

(#3596) Bob Sund: And just one person in court.

(#3600) Wendy Ervin: And one person can be affected better than two people on a BOCC. People are people; people who have taken oaths are still people who have taken oaths and people who break oaths are still people who have taken those oaths. In terms of fairness and rightness and the ultimate propriety of the decision ... I don't think that is a reason to change from going to the BOCC to the Superior Court because the fact is these decisions are still being made by fallible people.

(#3650) Bob Sund: I like your statement that the BOCC seems to be insulating themselves.

(#3658) Theresa Kirkpatrick: And the BOCC are the ones who proposed this change.

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(#3660) Bob Sund: That's what I'm concerned about and I guess I'm trying to say to the BOCC to stand up and don't put it off to somebody else.

(#3670) Wendy Ervin: The basis for their proposition, though, is because basically what you had was Mason County Hearing Examiner making a decision and it being appealed to the Mason County BOCC who are on the same side and so that means that the conflict that they're talking about is between the Hearing Examiner and the BOCC who should be basically on the same side of this issue and so therefore it was a conflict for them to be overseeing the Hearing Examiner's decisions and they wanted to put it across the street into a court so that you had another body. The BOCC and the Hearing Examiner are part of the same body making these decisions and appeals and that's what the conflict is.

(#3740) Theresa Kirkpatrick: The Hearing Examiner is trained in the law.

(#3745) Wendy Ervin: That's true and that makes him more qualified to make these decisions than the BOCC.

(#3752) Theresa Kirkpatrick: But we're not arguing whether the Hearing Examiner ... we're arguing whether it's the BOCC or Superior Court; the Hearing Examiner is in the loop.

(#3762) Bill Dewey: Actually, we're arguing the BOCC and the Superior Court. You were saying that we were arguing for the BOCC or the court and it's actually the BOCC and the court. What you have now is the option of both.

(#3780) Theresa Kirkpatrick: I see your point. My point was that the Hearing Examiner is not on the table.

(#3788) Wendy Ervin: No, but the fact is that the Hearing Examiner is not on the table in terms of whether he makes this decision or not but the fact is his position and the BOCC's, they are working on the same team and the conflict between two parties of the same team in having the appeal and the decision. That's where the conflict and the difficulty came in, as I see it, and that is why they wanted to put that appeal decision across the street into basically a different arena.

(#3825) Mark Drain: That's part of it but I think it's more involved than that. When Darren was mentioning that when you get down to the basics of it they wanted to have a separation between legislative power of the BOCC rather than integrating judicial powers into the same body and creating the conflict. I just wish there was another alternative for people who may be intimidated or may not think that they have the financial means and so forth to have to go to Superior Court. I do like the idea that the BOCC are keeping it within the county but I understand the staff's recommendation, also.

(#0140) Darren Nienaber: There's two extra points I wanted to make. Number one, it's really tough from the BOCC's standpoint to come up with a decision that does anything but affirm the decision of the Hearing Examiner because the decision of the Hearing Examiner is essentially a law professor and how do the BOCC come up with a legal justification for overruling that. That's just one thought to put out there that it's an extremely tough position. The other thought that I had was that, for example, right now, if you're an applicant or a Developer and for that matter, a project opponent, you want to talk to your elected official about a project, you can't. So the BOCC can't respond to that. They're supposed to say that they can't talk to you. With this change, they can. If somebody has a variance application and they wanted to talk to the BOCC about it and say to the BOCC, for example, that I disagree with the planning department's interpretation, well, they can go to the BOCC and hold them accountable and ask them to explain the regulation to them. Bear in mind that the planning department makes a recommendation to the Hearing Examiner and the Hearing Examiner makes a final decision but right now the BOCC can't have that level of involvement at all. In that sense this change actually makes them a little more responsive.

(#0196) Theresa Kirkpatrick: Wendy, have you discussed this proposal personally with any or all of the BOCC?

(#0198) Wendy Ervin: No.

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(#0200) Theresa Kirkpatrick: Thank you.

(#0202) Bill Dewey: So we've had a good discussion and some good input from staff. Are we at a point where we want to entertain a motion?

(#0204) Bob Sund: Do we have to vote on this today?

(#0206) Bob Fink: It would be nice if you at least voted on it. If you can't make a decision ... but I don't know what's going to change.

(#0215) Mark Drain: What if we took a ten minute break and had a few minutes to absorb it.

(#0218) Wendy Ervin: I have some comments on possibly changing the language. Under #4 of Type III Review - Shoreline Master Program. This is written as 'you cannot begin', 'is not authorized', 'up to 60 days in a case provided'; ...

(#0250) Bill Dewey: The only changes being made to that is the numbering.

(#0255) Wendy Ervin: So there is no proposed change of language in that, then?

(#0266) Bill Dewey: No.

(#0268) Bob Sund: Would it be appropriate that we have a work session with the BOCC on this? All the legal implications here I'm not all that in tune with. The whole context isn't here. We've only included the part that's changed. Sometimes it's difficult to get the whole picture because the part that isn't here that we adopted prior is still out there some place. Would there be a value ...

(#0295) Bob Fink: It's a very simple change.

(#0298) Bob Sund: I know but it seems that we had quite a discussion at the time that we went with the Hearing Examiner to leave the BOCC involved on some issues. Now we come back and we're taking them out. So I don't know if the BOCC is still involved in some of those issues that are not on this sheet or whether they're completely insulated.

(#0312) Bob Fink: Currently, the only permit decisions that go to the BOCC are on appeal from the Hearing Examiner. The appeal of administrative decisions, such as a decision that I make that someone doesn't like, that's appealed to the Hearing Examiner. The Hearing Examiner decision can then be appealed to the BOCC. But only an action that's an appeal of a Hearing Examiner decision goes to the BOCC. That's the only type of permit decision now that goes to them.

(#0333) Bob Sund: Permit decisions that ...

(#0335) Bob Fink: Permit decisions where the Hearing Examiner has made a decision, most of those can be appealed to the BOCC. Certain types of permit decisions already go directly to court. A building permit decision from the Building Official can be appealed to the Hearing Examiner but the Hearing Examiner decision doesn't go to the BOCC; that decision goes to court now. There's a couple of other types of permits, too. In the case of code enforcement those cases are handled by the Hearing Examiner and they're not appealable to the BOCC. Every other case that we're not dealing with specifically here already either goes to court or it goes to the BOCC on appeal. If this action is approved in this form then no permit actions will go to the BOCC. Setting legislation will still be in their pervue but a decision on an individual permit they're not in that cycle. People won't have to go through that step to get to court. So you can consider it's either an extra step that you're making people go through before they get their resolution or you can look at it as another local shot. If people are unsatisfied with the local decision it goes to court anyway.

(#0396) Mark Drain: So since there's been a Hearing Examiner how many appeals of his decision have gone to the BOCC?

(#0402) Darren Nienaber: I think three.

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(#0405) Wendy Ervin: How many cases has he decided?

(#0412) Bob Fink: I would have to guess around twenty five.

(#0417) Darren Nienaber: There are some cases that are extremely technical.

(#0430) Mark Drain: Theoretically if the BOCC only had five appeals to hear in one year it's not that much of a burden for their workload but we're still looking at ...

(#0445) Darren Nienaber: It consumes an enormous amount of administrative time.

(#0448) Bob Fink: It's not an inexpensive appeal opportunity to provide people at the local level. We charge several hundred dollars for the application and it does take an enormous time to prepare for the appeal.

(#0455) Wendy Ervin: The appellant's time or on both sides?

(#0460) Bob Fink: Obviously the people bringing the case it takes their time but it also takes the time of the BOCC, the time of the attorney who is supporting the BOCC. We don't know what the long term case is going to be and since they've gone into effect only this year so that's almost one every two months. That does take a lot of time.

(#0480) Wendy Ervin: If it does go to Superior Court do you represent the ...

(#0482) Darren Nienaber: Yes.

(#0484) Wendy Ervin: So it's going to take your time no matter where that appeal goes. You're going to be ...

(#0488) Darren Nienaber: It's actually a lot easier for me in court.

(#0494) Theresa Kirkpatrick: That several dollars application fee you mention is for an appeal to the BOCC?

(#0496) Bob Fink: Right.

(#0498) Theresa Kirkpatrick: And it's maybe less money for an appeal to Superior Court?

(#0500) Darren Nienaber: Our growth management appeals, which are big, are \$110.00 filing fee.

(#0508) Bill Dewey: What's the will of the PAC? Should we see if we can get a motion on the table?

(#0510) Steve Clayton: I'll make a motion to accept the staff recommendation as presented.

(#0515) Theresa Kirkpatrick: I'll second the motion.

(#0517) Bill Dewey: We have a motion and a second. Any discussion?

(#0520) Wendy Ervin: I just had one comment on page 3 under 'Appeal to the Hearing Examiner' and then lined out or County Commissioners under A, Filing 'Every appeal to the Hearing Examiner shall be filed with the Clerk of the Board'. Is 'Clerk of the Board' still appropriate?

(#0530) Darren Nienaber: Yes, Becky acts as a clerk for the BOCC.

(#0540) Bill Dewey: Any further discussion on the motion? All in favor? Motion passed with 5 yes and 1 no.

Break in meeting.

(#0588) Bill Dewey: Allan, we're ready for the discussion regarding on-premises and off-premises signs.

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(#0590) Allan Borden: The Department of Community Development is just providing opportunity to visit a topic that came up in discussion while we were developing the rural commercial standards the later part of last year and the early part of this year. During the review of the rural commercial standards the Department had proposed dimensional standards for signs for each one of those rural commercial zones and rural tourist as well. We put the topic of sign standards on this agenda tonight so it would give you an opportunity to revisit that. I sent out with the packets some sign ordinance standards from different communities; three counties and three cities. That was just to give you an idea about how different communities have proposed standards. I also sent out a list of possible topics for discussion because from reviewing those standards from other communities these are the kinds of aspects that are paid attention to. I handed out something tonight that was just another way to organize your thoughts to go ahead and develop some sort of standards on signs in the county that you ought to be addressing things like definition of terms, what signs are exempt, which ones are prohibited, any speciality sign standards, how to address temporary signs, how to address nonconforming signs and then permit procedures and enforcement standards. Maybe the way to start would be would where do you want to start with the rural commercial dimensional standards, if that's all you want to address.

(#0692) Bob Sund: Do problems exist or is it anticipated?

(#0696) Allan Borden: It's sort of anticipated. We don't know what's going to happen in the UGA's where a lot of the commercial activities will take place.

(#0708) Bob Sund: Whatever we do here does not apply to any of the state highways, is that true?

(#0715) Bob Fink: It's not true.

(#0717) Bob Sund: It does apply to state highways?

(#0720) Bob Fink: Do you mean does it apply on signs within the right-of-way of state highways? It applies to signs off the state highway but a sign visible from the state highway would be regulated.

(#0730) Theresa Kirkpatrick: I'd just like to comment that I appreciate the packet you put together. Before we come up with a final policy, if that is the intention of this commission, it would possibly be good for us to review Shelton's sign ordinance, too.

(#0740) Bob Fink: We can provide that to you.

(#0742) Darren Nienaber: This is just a preliminary step. There will be a public hearing on this.

(#0745) Theresa Kirkpatrick: Will whatever we come up with be subject to a public hearing because I know, to the best of my recollection, the signage stuff that's on the books now was proposed by one individual without the opportunity for a public hearing.

(#0765) Bob Fink: Basically that's why we're bringing this back to you.

(#0767) Theresa Kirkpatrick: Thank you. That's great.

(#0770) Bob Fink: There are really two issues. You know that there are basically three planning processes underway right now. The City of Shelton is working on their regulations and intend to work with the county to come up with regulations to apply inside the UGA but outside the city. The Belfair Subarea Planning group is in the process of their detailed plans for that urban area and the Allyn community has been sponsoring planning and they have a certain vision for Allyn that they will send and in some cases, have sent in some information to the county for the county to act on in the future so each of the urban areas will probably be addressed through those other processes which will eventually come through here but probably don't need to address at this time. The main reason we brought this back to you is because of the changes that were made and adopted by the BOCC that were different than the recommendations you had originally made in the rural area. There's a second issue that has come up. The county has determined that off-premises signs are not allowed in the urban areas and it's possible to amend that regulation and that determination has been appealed to the Hearing Examiner. One of the things you may want to consider is whether you want to modify the language in the regulation in the public hearing forum. If you want to continue with that

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policy is there language we can propose that would be more explicit.

(#0848) Bob Sund: There is a policy?

(#0850) Bob Fink: There are regulations regarding signs and there are policies regarding signs, particularly off-premises signs. In Belfair there's a number of policies regarding signage that were adopted to the Comp Plan based on previous actions of the county and work of previous groups for that area. But there's not an explicit prohibition; it's more of a prohibition by the fact that the county permits certain uses and it doesn't allow the uses not permitted. If you're not on the permitted list then you're not allowed but there's room to include uses that are like the uses that are listed. So there's a certain room for interpretation but there's no statement in the sign provisions that by this we mean when we says signs and signs equal the size of the building we want to limit that to signs that advertise the business on the premises and not signs that even though there's a business on the site, signs that are advertising Mr. Smith's place ten miles away. That's the conclusion we came to that the off-premises signs are not allowed but you could always revisit the language. Someone thought it was questionable enough to appeal it; now we don't know if it will sustain the appeal or not but whether it does or not, if that's the policy the county wants, then the county could certainly make it more straight forward.

(#0934) Mark Drain: Bob, are you asking us if we think the county should have more in depth sign regulations or is the county feeling a need to define the regulations better?

(#0940) Bob Fink: I think the planning processes underway in Shelton, and Allyn and Belfair will result in more detailed sign regulations for those areas. For the rural areas, there's no planning process underway. But for the rural area the PAC had some concern about the changes that were made after your recommendation left your body; after it was sent forward there were changes made. You had concerns about it so we wanted to bring it back so we did.

(#0975) Mark Drain: Is it written up as a separate signage regulation or is it incorporated in each one of those?

(#0980) Bob Fink: It's incorporated in each one of the commercial areas . The language was adopted in each of the commercial districts.

(#0995) Wendy Ervin: Aren't we discussing for rural rather than commercial?

(#0998) Bob Fink: Rural commercial. We don't have any commercial districts except for rural commercial districts.

Allan hands out to PAC the rural commercial districts with the signage requirements.

(#1020) Bob Fink: In Belfair the list of uses allowed in urban areas do not include off-premises signs. They do not allow that use. If the use is not explicitly permitted it may be allowed if it's a similar use to one that is permitted or if the Comp Plan specifically contemplates that use being in that area. There is an application in for a sign that the applicant tells us was intended to advertise on the billboard, even though there is a business on the site, he claims the intention was to advertise some other business located in a different location. We said we can issue the building permit for the sign and it doesn't violate any restriction we have as far as a sign; the shape, location, but we would condition the sign on only being an on-premise advertisement sign. The person who appealed that objects to that and says that it was a wrong decision. The decision was based on the fact that it's not a permitted use and where contemplation touches on signs and off-premises signs are not allowed.

(#1080) Mark Drain: Unless they were there historically?

(#1082) Bob Fink: There's no provision to require them to be removed. When you get into sign regulation one of the issues is retiring old signs and under much case law typically you can require those signs to be removed ultimately but you have to allow a reasonable amount of time to do so.

(#1098) Allan Borden: Some of the ordinances I handed out either one of them has a five year limit and other

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ones really don't have a sunset date but they say that if they become abandoned they have to be removed.

(#1115) Wendy Ervin: You said that there are permitted signs and that everything else is not permitted but in many of these that we have here of other places that they also have exempt signs. You didn't mention exempt so I'm wondering about that.

(#1130) Bob Fink: That's something else you could get into particularly in the rural area. We have a very limited sign code in the rural area. There are a number of issues and Allan gave you a list of what some of those issues are that no one else is addressing right now in the rural area. The urban areas are probably being addressed in other forums but in the rural area that's not the case so if you wanted to address temporary signs, if you wanted to address other types of signs; even if you have no objections to the regulations that are currently there that say prohibit flashing signs, and there's the 10 percent of the face of the building sign and if you have no objection to that size ... it allows two signs, one on the face of the building and one free standing ... you may or may not have objections to particular provisions in the current code but there are certainly other standard provisions and codes that we could address that aren't being addressed elsewhere. If that's what you want to do we can work up a draft or you can give us some guidance as to what kinds of things you want to see and we'll work up a draft and bring it back to you in a public hearing forum or maybe in another workshop.

(#1186) Steve Clayton: So Shelton has a sign ordinance that's currently implemented and they're working to update it?

(#1190) Bob Fink: Shelton is updating their codes. I don't know that they're proposing any specific modification to their sign code but what they will be working on with the county is adopting a set of codes for the UGA outside the city. We recently signed a Memorandum of Understanding saying that we're going to plan together and the city is going to be the lead to develop a set of amendments for adoption by the county within its jurisdiction within the UGA. I think the expectation is the codes that the county adopts will be similar to what the city adopts and the idea being the city is making a transition within the UGA and you should have a consistency of development from inside the city to outside the city in the urban area.

(#1234) Bill Dewey: Looking at these examples and looking at what we have it makes some sense to me that we should have something more comprehensive. There's a lot of gaps in what we have. I'm interested in knowing from staff if this has presented an issue for the county. You've got an example of an appeal going on but outside of that are we frequently having controversies related to signage?

(#1250) Bob Fink: Actually no but there's certainly the opportunity for it. What you have to realize is that these regulations were just approved; they were invalid. The commercial regulations that have the signage provision were adopted but invalid until only about two weeks ago. So they've only been applied to existing businesses. Of course there aren't that many existing businesses in the rural area. It simply hasn't been that long since these have been adopted. No, there haven't been other problems that have come up but to the extent that you're interested in revisiting this issue and to the extent that we have a little bit of time while we're waiting for our annual amendments to come forward we can certainly consider something a little bit broader than simply looking at exactly what was adopted and seeing if you have a major concern with them. We can also roll this into the annual update and we can get some feeling now for what you might like and not have a hearing on it and come up with something to be considered with a package of things that will come forward. That package is still a couple of months out. Right now we have advertised and we have an open period for people to request changes and at the end of June then that docket will close and we'll start putting together a package of amendments and that package will move forward pretty much as a group. So there will be a lot of things on the table for consideration. This is one thing we might be able to do before then and get it out of the way. The only issue that's come up now is the off-premises sign and we could wait to see how that's decided by the Hearing Examiner. To resolve it through the appeal process could take a year or two and I don't know that we want to wait. If the county does want to keep the policy that off-premises signs shouldn't be allowed and our regulations aren't currently strong enough to make that happen then I don't know that we want to leave it an open question for two or three years until we find out in court that that's what the case is.

(#1370) Steve Clayton: We have the UGA's and the sign ordinance will be different there so I'm inclined to take Shelton's plan and more or less implement it for the three UGA's with wording such that when the other

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UGA's come on line then their's would supercede and that way it's not in limbo. I view it also that we've got RAC's and Hamlets and their sign ordinances would be a bit different than the rural commercial and then you've got home business that we may look at.

(#1395) Bob Fink: Right, there are certain standards for signs for home businesses that are fairly limiting.

(#1400) Steve Clayton: Maybe three or four broad categories to kind of address that. One of the county plans here did give different zones and I would think that would be better rather than just one size fits all.

(#1406) Bob Fink: Usually the standards are a little bit different for each zoning district and in some residential they might be prohibited all together except for things like political or temporary signs or garage sale signs. Sign ordinances can get very complicated and very sensitive. Often people in the business community are very concerned about what kinds of signs are allowed and what should be allowed and what do you do with the old signs and there are free speech issues in some cases with signs so it's a very complicated issue to dip your toe into. One of the things we're trying to find out is what do you want to tackle right now. If it's something we can bite off in a month or two we can try to come up with a draft and get it through the process before we have the annual amendments come forward. There's still the possibility that the GMHB will remand something to us since they haven't issued their final decision yet on compliance. They may issue something on compliance that we would need to respond to in as little as ninety days. They often do that particularly if it's a narrowly framed issue. They may give us as little as ninety days; they won't give us more than one hundred eighty days. Ninety days, as you are aware now, is kind of minimum time to take a regulation from inception to adoption so if we do that we will have to pretty much put everything else aside probably for a month or longer to try to get that through. So that's certainly a possibility, too. What's your thinking?

(#1500) Theresa Kirkpatrick: I would like to propose a motion that we revisit this issue with an opportunity for public comment after we have drafted some language that includes the UGA's and I would like to see this commission revisit that.

(#1508) Steve Clayton: That would come in the normal process.

(#1510) Theresa Kirkpatrick: Normally we would have a public hearing and these regulations did not and I would like to see that available to citizens. If we can do that by coming up with something that we all think would be good for the county ...

(#1518) Bill Dewey: Are you suggesting something in advance of the annual revisions?

(#1520) Theresa Kirkpatrick: Separate from the annual revisions is my motion.

(#1522) Bill Dewey: So trying to do that before as Bob as eluded to.

(#1524) Theresa Kirkpatrick: Or if it has to go on the back burner in the case that something gets remanded from the GMHB that would be okay but I would like to see signage handled as a separate issue because I'm of the opinion that very few things can alter the rural character of an area faster than signs and if you dispute that go take a look at our friends with the modular housing flashing sign down on 101.

(#1542) Steve Clayton: I was pretty surprised in that I forwarded on an e-mail saying the meeting tonight was on signs to all the Belfair folks and there's twenty five people on that committee and in addition I did it to a person on the Allyn planning committee and you can see nobody is here.

(#1552) Theresa Kirkpatrick: That is very interesting.

(#1554) Steve Clayton: So as a thought and those are the involved people in a crucial area of the county maybe it seems like Allan and Bob's presentation of it to the different groups that we're involved with it and let them know when our work sessions are and your thoughts of lets start to put some stuff in in rough lines and if people actually want to come and show up great but the formal hearing process might be a bit much.

(#1576) Theresa Kirkpatrick: My point is I would like to see it handled separately from the annual amendments because my opinion is that what we've got on the books right here was handled as part of a big

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lump and I'm of the opinion it didn't receive attention that can protect the rural character of our county and still serve businesses. For example, Joe's Septic or Bob's Logging or Judy's Dog Grooming, those little signs up in trees. I get this phone call and he says what are you going to do about the trash hanging in the trees? They're all over the county and I know enforcement will be a huge issue but I know it bugs people. I know a guy that takes a ladder around and takes them down because it really bugs him and he's not here tonight either.

(#1630) Steve Clayton: That was a thought that I hadn't seen in any of these other ordinances that there would be ... what are your thoughts on a requirement that the name of the posting person and phone number and or address is on the sign that's posted, be it a campaign sign or Bob's Well Drilling?

(#1642) Wendy Ervin: Most of them have an identification because that's why they're up there because they're advertising something. Political signs say 'paid for by committee to elect so and so'. Joe's Logging has his phone number on it.

(#1665) Theresa Kirkpatrick: But right now there's nothing on the books that we can call up Joe and tell him to take his sign down. What I'm saying is that there are a lot of issues that are not addressed and I would like to see this body address it as a separate issue.

(#1692) Bill Dewey: Do other PAC members feel that the county needs a more detailed sign ordinance than what we have?

(#1695) Wendy Ervin: I think that if this is all there is and I have read through all of these other counties and there's some very nice language in some of these and some disposable language it would be a good idea to pick and choose amongst the information we have here and whatever else and put together something .

(#1720) Bill Dewey: So you agree with Theresa that there needs to be something more comprehensive?

(#1722) Wendy Ervin: Yes.

(#1724) Mark Drain: Theresa has a motion on the table. Do we want to direct planning staff to start to formulate something?

(#1730) Darren Nienaber: Yes, the reason was to try to get a sense from you which way for planning staff to go. You're here to discuss it but maybe you just need a little more time to study it.

(#1746) Theresa Kirkpatrick: My motion was that this commission address signage ordinances separate from the annual review.

(#1757) Wendy Ervin: I second the motion.

(#1770) Bill Dewey: We have a motion and a second. Any discussion?

(#1772) Steve Clayton: I'd rather wait until next month comes and see what planning comes back with and with what GMHB comes back with because if it needs to be incorporated into our yearly update and it's a choice between putting it off for another year because we're waiting to hold it separately then ... that's my thoughts on why we would use Shelton's current sign ordinance in the other UGA's. Those UGA's are in the process of developing standards but they may be a year, year and a half or two years down the line. I'd rather get something on the books to work with. My general thought is to look at the City of Shelton's ordinance because it also doesn't apply to the rest of the Shelton UGA. I'm assuming that the City of Shelton's sign ordinance has some substance to it and more or less rubber stamp it for the rest of the Shelton UGA and also implement it for the Allyn and Belfair UGA's until such time as those plans come on board.

(#1830) Bob Sund: Shelton must have a pretty concrete sign ordinance. They required that one sign to come down.

(#1835) Theresa Kirkpatrick: Oh, Olson's Furniture.

(#1836) Wendy Ervin: He just put it right across the city limits in the county.

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(#1842) Theresa Kirkpatrick: I'm talking about a safety issue as well, for example, up at the top of the hill, trying to see around that Denny's monument is really scary if you're in your car. In my opinion, it's a traffic hazard. I'm looking at it as a safety issue as well as an aesthetic issue.

(#1858) Wendy Ervin: I think safety is one of the biggest things that needs to be addressed with signs.

(#1862) Bob Sund: But we wouldn't have anything to do with that sign, would we?

(#1865) Theresa Kirkpatrick: But if that's not specifically addressed ...

(#1868) Wendy Ervin: She's just saying that's an example of a safety issue.

(#1874) Bill Dewey: Yes, I believe the safety issue is first and foremost. Some of these examples here addressed that.

(#1878) Steve Clayton: What Bob's inferring is that people haven't brought up controversial ones but the door is wide open for them to come. So the sooner we get something on the books as far as generalized then people can come and complain and we can alter it based on reasonableness.

(#1890) Theresa Kirkpatrick: Absolutely but the fact that it's not on the books any business in a Hamlet or a RAC or wherever could put one of those monument signs and the next thing you know people are having wrecks in their cars because they can't see it.

(#1900) Bill Dewey: We have a motion going but I'm not sure if Steve's concerns can be incorporated into the motion as a friendly amendment ...

(#1905) Steve Clayton: It's not a concern and I'm sure Allan, by next time, will probably bring us Shelton ordinances and we can look at those.

(#1915) Bill Dewey: So any further discussion on Theresa's motion? I don't know ... in that motion are we asking for staff to get busy and preparing something?

(#1925) Theresa Kirkpatrick: I was trying to establish the will of this commission to address this issue and I understand that it's not an A number one burning issue if a remand should come back. That's why I didn't put a time limit. Yes, I would like to see more background material, including whatever Shelton has on the books and whatever Allyn and Belfair may have in process, if that's possible.

(#1940) Bill Dewey: Do we want to try to give staff some guidance? All of us have read through these different examples that came out and some things stand out as good and others as not; do we want to give staff some guidance tonight based on all this as it's still fresh in our minds after having read it? Or do you not want to bother with that?

(#1960) Steve Clayton: Why don't we deal with Theresa's motion first and then go from there?

(#1962) Bill Dewey: Any further discussion on Theresa's motion? Hearing none, all those in favor say aye. Opposed? 5 aye's and 1 nay. Motion carries.

(#1980) Mark Drain: Was it your concern, Steve, that we wouldn't be able to incorporate ideas that the other cities are working on?

(#1982) Theresa Kirkpatrick: You want to do it as part of the packet, right?

(#1985) Steve Clayton: No, I just want to deal with it ... see what they come back to us with and find out what GMHB says and next month we figure out where we're going to go.

(#1998) Theresa Kirkpatrick: I'm just trying to establish will that we will address it and with no time limit on it. I do think it needs addressing.

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(#2000) Bob Sund: It's not a pressing issue.

(#2002) Theresa Kirkpatrick: As Bob says we have a little time right now so let's look at it and if we get stuck back from the GMHB we will be talking about it at a later date.

(#2015) Darren Nienaber: Did you want the planning staff to come back with several different alternatives with no specific recommendation for purpose of discussion because right now it's like bring back what?

(#2025) Bob Sund: The way I feel about it is I don't want a great big long document. I want something that's short, brief and simple.

(#2035) Darren Nienaber: Maybe some brief alternatives.

(#2037) Bill Dewey: Jefferson County was good and so was Grays Harbor.

(#2040) Darren Nienaber: Maybe like a six page summarization?

(#2048) Bill Dewey: Something with safety issues in it.

(#2050) Theresa Kirkpatrick: And also about the litter issue, too.

(#2058) Steve Clayton: Did you have one of these plans that stood out to you, Allan, more than others that you thought would fit?

(#2062) Allan Borden: I did think that Jefferson County was similar in what I anticipated was our scope. The three cities, you can tell that their design review staff have added a lot of detail on their visual design but I think that if we can set some clearer standards so that when a person or company comes to the county they know when they need to apply for a permit. If there's a standard on setback or size and any other information that that's addressed.

(#2115) Bill Dewey: I personally found the definition section helpful because I think sign terminology is not common to the lay person and I think it's useful to have.

(#2125) Allan Borden: Yes, because right now we're just using the uniform sign code and what I gave to you is just the definitions. There are different kinds of signs besides the monument signs which is freestanding and the wall sign that's attached. Some of those regulations talk about signs being a part of the roof, whether it's facing the front or turned sideways.

(#2155) Bill Dewey: There's another case that I'm seeing more and more of that I would like to see addressed by the ordinance and that's people getting around sign ordinances by using vehicles and putting a sign on the side of an old junk truck and putting the truck out along the side of the road.

(#2180) Steve Clayton: And the walking billboard that Silverdale's having troubles with as far as people wearing yellow coats and advertising the mattress factory and carrying umbrellas standing on the corner.

(#2190) Theresa Kirkpatrick: I would like, if it's possible, to receive a copy of Shelton's current ordinance or whatever is being developed within the next week or so and if any documents are available from Belfair and Allyn. That way we could be prepared when we come back here that we've all gone through and lifted what we like or scratched what we don't like and then have a more coherent discussion.

(#2255) Wendy Ervin: I'll submit to you a few paragraphs that I thought were better than others.

(#2280) Bill Dewey: Any other guidance to staff at this point?

(#2290) Theresa Kirkpatrick: Just that I'd like to see the Shelton ordinance as soon as possible.

(#2300) Bob Sund: Shelton's regulations would be a lot difference than county regulations.

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(#2304) Theresa Kirkpatrick: Yes, but it would give us something to go by. For example, some of the things on Shelton's regarding political signs is quite detailed, I understand.

(#2312) Steve Clayton: It would give us something because ultimately I would assume that our sign ordinance would recognize the local UGA ordinance.

(#2330) Wendy Ervin: There recently was a sign on top of the hill where the Red Apple is and the Texaco and the Shell Station. A number of these things say you can't have anything moving, you can't have this or that, that Shell Station changed hands and now is a Now and there was, for a couple of days, a balloon figure that stood on top of the roof. Does anybody know anything about that? It's gone now and I don't know if it was only intended to be there for a few days or was it removed?

(#2355) Allan Borden: Those are attention getters. You see them in a lot of places where they just want to get your attention to look at that spot so the next time you go to look for that red figure you see a sign that says a gas station and then you'll remember it.

(#2370) Wendy Ervin: So it was the intention that it was only going to be there for a few days and then gone.

(#2376) Allan Borden: Right.

(#2378) Steve Clayton: In some of the ordinances they had a limit of fourteen days per year, with two sessions, that they could have these obscure things up for a week at a time twice a year.

(#2385) Wendy Ervin: My personal opinion is that those things that are announcing a change of business or a new business or something like that that there is more of a first amendment issue as far as whether you allow it or not.

(#2400) Mark Drain: There should be come allowance for a special promotion.

(#2404) Steve Clayton: I thought the wording was good in a couple of them where you could put it up for a couple of weeks per year just as long as you don't have it up fifty-two weeks a year.

(#2418) Bill Dewey: Anything else on the sign workshop? Thank you, Allan, for putting this together. It was a big help. With that I think we're ready to adjourn the meeting.

(#2425) Steve Clayton: Anybody going to miss the next meeting?

(#2428) Bill Dewey: There's a chance I might and I'll try to get back but I won't know my exact schedule for my flight for a while.

(#2438) Allan Borden: The next meeting is the 21st of July.

(#2444) Bill Dewey: I'll let you know if I have to miss the meeting.

(#2448) Bob Sund: I had a question about when you leave a message and you say if you can't come please call me back and if we're not home and we don't get the message we won't be able to call you back. So if we don't call you back you'll think we're going to be here.

(#2465) Susie Ellingson: I feel it's a courtesy that if you know you're not going to be at a meeting you'll let me know. The meetings are always on the third Monday of the month you should be able to know if you'll be attending the meeting or not, not for you to wait for me to call you and you're gone and didn't have any intention of attending the meeting.

(#2485) Allan Borden: You could call by the Thursday or Friday of the week before the meeting.

(#2490) Meeting adjourned.