

MASON COUNTY PLANNING ADVISORY COMMISSION

Minutes
January 26, 2004

(Note audio tape (#3) dated January 26, 2004
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: Bill Dewey, Diane Edgin, Steve Clayton, Mark Drain, Wendy Ervin, Terri Jeffreys. Bob Sund was excused.

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

3. APPROVAL OF MINUTES

The minutes from the November 17, 2003 and the December 1, 2003 meetings were approved as presented with the following requested changes:

November 17, 2003:

On page 2, first sentence under item #0488, it should read: ...'they're put all together'...

4. NEW BUSINESS

(#0045) Bill Dewey: The main purpose of our meeting tonight is to review, discuss and recommend proposed revisions to Mason County Development Regulations, Resource Ordinance, Title 16 Plats and Subdivisions, and Title 15 Development Code to include a variety of topics. Looks like we have several people in the audience that are here regarding the fire access standards so perhaps we should start with that. Allan, did you want to start off. I'd also like to note that Allan has passed out tonight for our benefit something that we haven't seen previously and that's the Staff Report. Allan has prepared a short paragraph on each of the items before us tonight summarizing what they're about.

(#0195) Allan Borden: I just wanted to say something as an introduction generally to the proceedings tonight. The Department of Community Development prepared a list of potential revisions in August of 2003 and those revisions were basically a list of revisions prepared based upon issues of inconsistencies in the development standards as we have been implementing them over the last year to two years. In the middle of December of

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2003, we prepared this list in the packet that you have in front of you and I thought that it would add a little better understanding to include a short statement on each one of the sections that's being revised as to why it's being revised and how it's being revised. In reference to bb) having to do with fire apparatus access roads, currently there are no local standards to provide these roads with adequate dimensions for new development. Such standards need to be adopted to implement certain sections of the Washington Uniform Fire Code. The Fire Marshall has proposed a new chapter to the Building Code and that's how it's presented here. This ordinance would set these needed standards to avoid safety and welfare hazards when fire apparatus may not gain proper access to development due to the kind of land use or intensity of development. The Fire Marshall can elaborate on those proposed changes.

(#0265) Steve Swarthout: Good evening, my name is Steve Swarthout and I'm the Fire Marshall. I've been here for about a year and a half and it's the first time I've had the opportunity to bring something before you. I'll give you some background on this ordinance and what we're looking at. It has been the standards that we've been using in the county since about 1997 or 1998. Although it's never been formally adopted and put in the code, it is one that we have used and is used pretty universally around the state and around the counties around us. In 1998 we adopted the 1997 edition of the Uniform Fire Code. It's the state fire code and when the state amended that code, they amended out the local fire apparatus access roads and what they did was they amended it out to say that each local jurisdiction, county, city, would adopt their own rules. We have not done that and that's why this is before you now. We do need to do something to get that into the ordinance form to meet the state code. We are adopting a new code in July and it will be the international fire code and when it comes from the state it will have the same requirement in it that you adopt as a local standard. What I brought before you is what we've been using with a few additions that I've put in there. I'm here to answer any question you might have. There are also Fire Chiefs here that would like to make a statement and I'll answer any questions you might have.

(#0330) Steve Clayton: In 17.130 regarding bridge construction, it requires an evaluation by a professional engineer but it doesn't require your or the local district's approval. I would seem to have concerns that sometimes you can pay for an engineer to sign off a lot and it might be nice to add, as you have in other sections, that it must be approved by the local fire district and Fire Marshall. Would that be reasonable?

(#0345) Steve Swarthout: That's a great suggestion. That should say that because what I want to have happen is I want the engineer to look at specific fire districts; each fire district has a little bit different equipment. They might have something a little heavier than the other ones so that would fit in their nicely.

(#0355) Steve Clayton: Similar to 17.110. On your pictures in your exhibits I have a question on your area required for turnaround. In the second sentence it says 'for instance, consist of pasture adjacent to a building and will continue to function as a viable turn around in adverse conditions'. I have concerns about unobstructed in that. The wording doesn't say unobstructed. You can have a pasture next to a building and have a horse trough in it and that doesn't make a turn around for you and this wording doesn't stop that.

(#0392) Steve Swarthout: What we're looking for is an unobstructed area for us to be able to turn around so that would be appropriate.

(#0400) Diane Edgin: Talking about this turn around, about three years ago I had actually spoken on behalf of some people that were trying to stop a road through losing its easement because of this very problem. One of the things I said is as fire districts grow and they upgrade their equipment, the equipment gets bigger and I made that point. Our local fire people said that wasn't a problem. Well, I thought it would be when you're considering they may have to make a hairpin corner. Who is going to have this expertise?

(#0430) Steve Swarthout: Turning radius are very important and I've talked about it several places in here. Where you get your expertise is from different areas. Bridges, load weights on the roads and that type of stuff and it comes from national standards which are the same standards our Public Works Department would use.

(#0445) Diane Edgin: We've got volunteer fire departments and some of these people are salaried and some of them are not. Are they instructed to follow those standards? They came in this very room and testified that it was okay and that they didn't need these things happening in the future.

(#0452) Steve Swarthout: That's another reason for having this ordinance in place. I would be the final

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authority on what's acceptable and what's not in conjunction with the fire districts. I've worked with the fire districts and we would look at it and come up with the most reliable way to take care of that road. There's going to be instances that this can't be met verbatim. It just won't happen. We've got so many roads in the county already and I've been fortunate in the last couple of years to be able to go out and work with somebody to get the best we can get with what we have. Everything we do in the county is from my office but also in conjunction with the fire districts and some of their equipment is specialized equipment and we'd have to look at what would work for them and what wouldn't.

(#0480) Terri Jeffreys: Where did you adopt these standards from?

(#0482) Steve Swarthout: Originally they came from my old jurisdiction through the previous fire marshal in Redmond in King County. Part of them come from King County and a lot of them come out of the fire code itself.

(#0500) Terri Jeffreys: You might be familiar with the fact that we're trying to figure out ways to increase densities in urban type areas and in the county that would be some of the hamlet's and RAC's and in order to increase the densities to accommodate the population, there needs to be some pretty high dense ...

(#0508) Steve Swarthout: Yes, skinny roads; I've had a lot of dealings with that.

(#0510) Terri Jeffreys: When you say you adopted these from the Redmond code, I'm assuming those are older codes without them maybe having done some changes to allow for higher densities?

(#0512) Steve Swarthout: No, there have been a lot of changes going on and actually you'll see the very last comment I put in there talks about traffic calming measures. They used to be called speed bumps. They have a whole new set of standards for traffic calming and how it can work with the equipment that's coming in and responding. It also deals with the weight of the equipment and how they're designed so I've had a lot of experience with that. That goes right into why it's so important that we get a standard like this into place and ready to go when we start getting big developments coming in. There are minimum roads widths in here for developments and it's also working with planners in order to develop a development so it meets everybody's needs.

(#0540) Terri Jeffreys: So a 12' width is an absolute minimum?

(#0544) Steve Swarthout: A 12' width is and that's standard for 4 or fewer homes and commercial has already been 20' and will remain at 20' for all commercial structures.

(#0555) Wendy Ervin: Looking at 14.17.130, the way that this is worded in the last sentence says 'determine the imposed load rating for the responding fire districts fire apparatus'. That does not take into account if you have a multiple alarm fire or if you have borrowed equipment or something like that. I just think it needs to be reworded.

(#0570) Steve Swarthout: To be quite honest, I struggled with that and that has gone through several different versions. I spoke with Jerry Hauth over at Public Works because we were thinking about just taking a standard they use, which is HS20 standard. He suggested maybe I talk to someone at WSDOT, which I did. He advised against putting in that kind of standard because it says it can be somewhat restrictive for the very reasons that you're talking about. How that bridge is going to be designed is somewhat difficult. We can put a set standard but often times the equipment, like the tankers, is sometimes over limit anyway per the state requirements. That's why I put in there that it would need to be evaluated by an engineer. Just like anything else, even sprinkler systems, we design them above the curve so in the worse case scenario if something is going to happen that's going to be worse then we've got that flexibility. I can certainly look at rewriting that to be more clear.

(#0622) Wendy Ervin: I think it needs ... if you're going to interpret it literally I don't think you're going to get ...

(#0630) Steve Swarthout: So you'd like to see a standard in there?

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(#0632) Wendy Ervin: No, at least the average of equipment in the county. Average length and average weight or something like that so that you can use equipment from a number of fire districts on that bridge.

(#0640) Steve Swarthout: Sure.

(#0644) Diane Edgin: That makes a lot of sense because we often have fires where we bring in other equipment and sometimes they're bigger than ours.

(#0646) Wendy Ervin: And some of our little fire stations have just small equipment and if you're only having a bridge that fits just a couple of little companies around close it's not going to be adequate.

(#0656) Steve Clayton: If it's required for approval from the fire chief and the Fire Marshall then we can actually build it an appropriate size and we don't over build it.

(#0665) Steve Swarthout: Right, and that is another issue. The thing is as most of the fire chiefs in the room can talk to you about it, there's ways of saying 'maybe we can get a pumper over that bridge' and there's probably bridges out there they wouldn't take a tanker over and so what they do is drop a line on the other side of that bridge and go up to where they have to fight fire and then pump from the tanker on the other side of the bridge so, yes, those are things we need to look at. Let me see what I can do about rewriting that and I'll get it back to you in a couple of weeks for the next meeting.

(#0690) Bill Dewey: Steve, one of the areas that we're also trying to work on is minimizing our environmental impact as we go and do more intensive development. There's efforts in sensitive areas to work towards low impact development which is looking at different types of stormwater management, less curbing, narrow roads, and different types of traffic calming; you're probably familiar with a lot of this. I know some of the counties that have had these ordinances for a while are running crosswise with low impact development. How do you feel that this addresses this? The 20' for commercial; you say it's always been that way so that's what we're adopting and what I'm asking is does it always have to be that way? Are there ways to try to accommodate that?

(#0718) Steve Swarthout: Sure. There's always ways to work around the codes. There's always ways to mitigate. There's lots of things that we can always do to mitigate certain parts of the code that are going to get what we want. I'll address the 20': The 20' is what it takes for two pieces of equipment to pass each other and be unobstructed in doing that. In a commercial fire a lot of times you need that room to move equipment around. If you have a sprinkler system in there and you have a fire department connection out in the front there you have a pumper that connects to that; you have to have the ability for the other equipment to be able to get around that and go to the other sides of the building. So that 20' standard has been around for a long time and that's the reason it is. Usually what you'll find is that people want to design a lot bigger because then they incorporate parking and incorporate all the other things with that. So as far as that goes the 20' is a pretty hard set rule. Is there a way around that? We'd have to take a look at that on a case by case basis. When you're talking about residential, there are ways of working around that and there's ways of doing things that are different. If you look at the standard, I think it will help in some of those. You can have a situation where you have a 20' wide road going in but maybe you're going down to 1 or 2 homes at the end and for some reasons we have to bring it down to 12'. We can do that but what we'd do is incorporate a turn around at the end of the street. That's what we're looking at. We have instances right now and if you looked at the code you'd see that if you have 4 homes or more you'd have to have a 20' wide road. Well, you and I know that there are houses where there are 5 homes or you get the gentleman that wants to build a home down at the very end of the street and there's already 4 or 5 homes on there and the road is only 12' wide. Well, it's going to be pretty hard for us to go in there and tell him he's got to widen it to 20'. There's other things we can do within the code here to mitigate that and change that.

(#0805) Bill Dewey: You feel the way it's written now offers you the flexibility to do that?

(#0807) Steve Swarthout: Yes, I do. And it's because we have to be able to use that standard the way it is now and we've been using it for a couple years for the very reason I just told you. If I went verbatim by this whoever build that house at the end of that road and there was 4 homes already on there and he built the 5th home, then he would have to have a 20' wide road and that can't be done in a lot of cases. So what do we

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do? There's other things we can do to mitigate that.

(#0828) Mark Drain: On page 28, it mentions numbers or addresses. What do you mean by approved? Are there already other standards for that?

(#0830) Steve Swarthout: Yes, the county has address standards. For the size, contrasting color, etc. That's already pretty well published. I didn't want to have to rewrite that if it's already there.

(#0840) Diane Edgin: On 14.17.060, we're talking here about unobstructed vertical clearance of not less than 13'6". Is that all there is to this standard or is there additional verbiage somewhere?

(#0848) Steve Swarthout: For vertical clearance?

(#0850) Diane Edgin: For the sides.

(#0852) Steve Swarthout: My assumption is, we have the 20' or the 12' wide road and the clearance is going to be kept at 13'6" for the width of that road.

(#0860) Diane Edgin: I would actually put 'width' in there.

(#0878) Steve Swarthout: And you know why we have that vertical clearance is because of the height of the equipment. We can add that; that's a good suggestion.

(#0888) Bill Dewey: In thinking about county liabilities, one thing when you're just operating this and it's not a county ordinance, now say we adopt it as an official county ordinance and you haven't instituted the law of the ordinance and you've got a road that's 12' wide that should have been 20' wide and someone's house burnt down because a truck couldn't get past another truck and all of a sudden someone is suing the county because you didn't get yourself the leaway, you may want to an additional section that provides for variances by the Fire Marshall. Darren, do you have any advise on that from the legal side? If we lock it in with road widths, etc., and he goes about implementing it as he's been before it's been adopted and gives someone the leaway to have a 12' road when the ordinance says it should have been a 20' road, does it put the county in undue liability?

(#0922) Darren Nienaber: That's a good point. I'll take a close look at that.

(#0945) Richard Knight: My name is Richard Knight and I'm Fire Chief for District 5. We support the adoption of a private road standard and the exact verbiage I'll leave to you and the Fire Marshall. I was asked to appear tonight on behalf of the Mason County Fire Chiefs Association and I'd like to read into the record this letter. *(Chief Knight reads letter from the President of the Fire Chiefs Association, Jim Ghiglione, which was entered into the record).*

(#1035) Dave Salzer: Good evening. My name is Dave Salzer and I'm the Fire Marshall for the City of Shelton Fire Department. This issue is of importance to the city, and Steve and I have coordinated the adoption of our separate access standards as we move into the new code. Because of the area that we share in common, the UGA, implicit in that at some point in time areas within the UGA boundary may be annexed by the city. The standards that Steve has proposed are compatible with the city's fire apparatus access road standards now and we feel that it's an important distinction to make that as these areas come into the city over time that the infrastructure that's part of the road system be compatible with the city's standards so that properties coming into the city do not possess substandard infrastructure. We support it because eventually we may have to deal with these roads and if they're to our standards then it becomes much more practical for us.

(#1088) Jerry Goodwin: My name is Jerry Goodwin and I live at 161 E Fantasy Crest Lane. I'd like to know what the definition of a road is. Is it the shoulders? When we're talking about a 20' width here for vehicles and for vehicles to pass each other ... I live in an area where we have a private road and the asphalted surface is maybe around 12' wide but with the shoulders it probably does approach the 20' width.

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(#1116) Steve Swarthout: What we look for is the driving surface. That's what we would consider the width of the road; the driving surface.

(#1122) Jerry Goodwin: Would that include the shoulders?

(#1124) Steve Swarthout: If it's compatible with the rest of the road. In the situation you're talking about, we'd probably have a little difficulty if we had asphalt and then shoulder. If we have a driving surface that was even and able to support the equipment that would meet our requirement.

(#1140) Wendy Ervin: Is an unasphalted shoulder, which is level with the road surface, acceptable?

(#1144) Steve Swarthout: Yes and I'd probably take a look at that. The only requirement you'll see in there is that it has to be able to support our equipment.

(#1165) Bill Coleman: My name is Bill Coleman and I live at 431 E Enchantment Dr. My property borders on Enchantment Dr and Fantasy Lane. Fantasy Lane is the one that's in question. Road easements were created for a landowners most basic needs; ingress, egress and the utilities. When property is surveyed the property is done from the center of the easement but for construction purposes, you go from the center of the easement out to the easement. Ours is 60' so that would be 30'. That's considered to be the legal property line of the property for building purposes. What has happened in our area is that people had it surveyed, pulled the stakes, put in a 300' fence right down the easement; 20' minimum on one end. That's what we're trying to stop on this. It's a recorded easement; it was set up with the county. If it was a property line between my neighbors, that's a whole different ball game. That's a civil thing; I would take care of that but this isn't. This has to do with anybody driving up and down that road. The fire department, garbage truck; you can't take a garbage truck and a fire truck, at this time, the way it's set up and pass one another.

(#1238) Jack Janda: My name is Jack Janda and I'm the Chief of Mason County Fire District 1 located in Hoodsport. I'm just here to support the fire apparatus access standards that have been proposed. I've been a chief for ten years in the Hoodsport area and when I came on board as chief this was an issue then. Many times we have to come out and struggle with ... the town of Hoodsport is at sea level and everything else goes up so new development is a real concern for me because when we bring in engines and tenders we don't want them to come to a dead end and have no place to turn around. So I strongly suggest that you support this.

(#1274) Bill Dewey: Is there any other testimony related to this particular issue? Any final questions?

(#1285) Steve Clayton: Do we want to move on this or do we want to continue it for Steve to clean up some verbiage things until next time?

(#1292) Mark Drain: If he's willing to take a couple more weeks and do that I think that would be a good idea.

(#1296) Bill Dewey: And Darren wants to look at the liability issue.

(#1298) Darren Nienaber: I wouldn't advise you on that; I would be advising the BOCC but I will look into that issue.

(#1305) Bill Dewey: If that's something that we could fix before we pass it on to the BOCC ... we're going to be dealing with this for more than just tonight. Not just this issue but the other ones as well so we could table this and ask for the changes to come back before our next meeting and have something in final form that we could adopt.

(#1315) Wendy Ervin: I make a motion to table it until our next meeting.

(#1320) Mark Drain: I second the motion.

(#1322) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passed. Let's move on to our next issue.

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(#1365) Allan Borden: There's several people here on issue (aa) easements on page 25.

(#1375) Bill Dewey: Let's go ahead and take that issue up next.

(#1405) Allan Borden: What is being proposed is there are three sections of Title 14 (Building Code) where staff is recommending that text be deleted. Original wording was intended to protect easements but this proposal eliminates the building department's setbacks according to the county development standards thereby eliminating redundant and useless permits which are often required for development. The proposed amendment essentially reverts the treatment back to the 1997 Uniform Building Code, or to any later enacted codes. Easement protection is ordinarily the function of disputing landowners. In the course of enforcing current code, the county has been forced to act as referee between disgruntled landowners. Since landowners may sue in court with a civil action to enforce their easement rights, the county does not see a need to police other party's rights. This amendment can be fairly characterized as reducing governmental regulation by placing the enforcement of easements to private parties where it has traditionally belonged. The county's zoning regulations generally require setbacks for buildings from road right of ways, including road easements. The regulations as they are right now may lead to questionable results because technically landowners are not allowed to place fences on their lot boundary where the boundaries also have drainage and utility easements along the edge.

(#1535) Wendy Ervin: This proposal would solve that problem?

(#1538) Allan Borden: Yes, for the future. If somebody had a structure that they need to have built the setbacks of the proposed development would be either from the property line or the easement boundary whichever is closer.

(#1566) Diane Edgin: In his reading of this I feel there are a couple of words that he left and I think maybe it might be important for people who may not have received the staff report. Allan was talking about the 1997 Uniform Building Code, or any later enacted 'superceding' codes. Some people may not be aware that laws do change.

(#1595) Terri Jeffreys: So what you're proposing to strike out of the current code were enacted after 1997? So reverting back to the 1997 code?

(#1605) Allan Borden: Basically, that's true. What it tried to do with these current regulations was the building code was trying to provide a setback from property lines.

(#1618) Terri Jeffreys: After easement; the property line without the easement or with the easement? The legal property line or the buildable property after easement?

(#1630) Darren Nienaber: The setbacks would be from the easement. That was the original intent. That was before Mason County had zoning regulations.

(#1640) Allan Borden: In section 14.08.180 it says 'any construction within an easement is prohibited, unless it is intended for the installation and maintenance of utility and drainage features'.

(#1652) Wendy Ervin: That's where you're saying that fences and that sort of thing ... if you interpreted this ...

(#1658) Allan Borden: Fences don't require building permits.

(#1660) Wendy Ervin: By any construction; what is that ...

(#1664) Allan Borden: Certain fences don't require building permits; anything less than 6' high.

(#1670) Diane Edgin: But they still have to be properly placed.

(#1674) Allan Borden: That's correct.

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(#1686) Wendy Ervin: Am I understanding that basically this is just taking any discussion of easements out of the planning department and if there is a difference of opinion between landowners ...

(#1694) Allan Borden: It's taking it out of the building department.

(#1698) Wendy Ervin: Okay, so then any discussion between owners, instead of being dealt with in a permitting process, it goes back to the civil courts?

(#1705) Allan Borden: That's right. Development within the easement is a private property issue. That's the thing about handling this issue first is that one of your proposed regulations listed on the first page is a clarification of the definition having to do with front yard setbacks and that's typically where the issue comes in because the front yard is typically the side of the yard that has the road or easement to it. So when this proposed clarification on the first page on front yard setbacks adds to the language, in addition to front line, it also talks about road easement boundary as being part of the setback. If these regulations of the building department are deleted there's a need to clarify the planning department regulations on what the proper setbacks would be.

(#1800) Wendy Ervin: In your language here under 1.06, it says 'the full width of the lot between a structure or building and the front lot line or road easement boundary'; now does that still apply if that easement is for drainage or utilities and does not contain a road? Are you measuring back from that or is it strictly a road easement?

(#1820) Darren Nienaber: Road easement. The clarification for that one is intended to make clear that it's not the pavement as opposed to the whole road easement itself. Oddly enough, sometimes when you have a road, and you may even say dedicated road right of way, but there's some case law that says that that's just an easement, too, and the property boundary is the middle of the road. We just want to make it clear that the setback is not from the middle of the road, which might be a lot line, but it's the boundary of the easement.

(#1850) Wendy Ervin: Sometimes the easement is entirely on that piece of property and sometimes it's shared between two.

(#1876) Jerry Goodwin: My name is Jerry Goodwin and I live at 161 E Fantasy Crest Lane. We've got a situation that involves some of the things that you've been talking about in that when I addressed you earlier I was talking about a private road that approaches the lane that I live on and I was concerned when you were talking about the 20' width situation of the private road that comes up to the lane supports a fair amount of housing in that area and the asphalt width ... that's what I was trying to get defined. Now we've got another issue that I'm also involved in and that's the lane that actually comes down to where I live, there is a property owner that did put a fence in the easement area. Bill eluded to that earlier that we have a 60' easement and the property owner that put the fence in built the fence on his side of the easement. If you put this imaginary line the middle of the road and it's a 60' wide easement overall, he's forgiving 30' on his side, in my mind. He built his fence within 20' of his 30' easement so all of a sudden we're crunched up here ... this is my estimation; I haven't measured it exactly but I assume that the fence is somewhere around to the middle of the road within 10' of what his actual property line is.

(#1958) Wendy Ervin: So you're saying the easement is squeezed to 40' instead of the 60'?

(#1960) Jerry Goodwin: But it's all squeezed to the other side.

(#1964) Wendy Ervin: But it's now 40'; he's taken 20' of your easement.

(#1966) Jerry Goodwin: He's taken 20' off of his side. The lot on the other side of the easement, as near as I can tell, is still forgiving what we need on that side. That's my concern is that we've listened to the fire people and I certainly have a concern there. I lived in a rural area before I moved to Mason County and I did have a situation where I did have to have fire equipment in there and thank goodness we had room to get them in there and that's certainly a concern. I think something the county needs to consider whenever it develops

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these codes is that you need to allow these people to get in. Also, I have a concern for the utilities. We need to be able to put the utilities in but another primary concern is this road is gravel. Where the fence is actually built now you couldn't actually take a road grader and grade this road and push ... we all know how the grader tilts it's blade and pushes the soil off to the side of the road and it makes a crown on the road so the road maintains itself a little bit. We're in an impossible situation there. The fence is on the grade; you can't push that material off to the side.

(#2055) Bill Dewey: Jerry, is this a private road?

(#2057) Jerry Goodwin: Yes, it's a private road. The road I talked about earlier is a private road coming up to another private lane and the asphalted private road supplies a lot of people. We have five driveways that come off of Fantasy Crest Lane. Earlier I was talking about Enchantment Dr that comes off of Purdy Cutoff Road and it's also a private road. It supplies even more houses.

(#2090) Steve Clayton: So Jerry, you have an easement recorded on your title for your property?

(#2094) Jerry Goodwin: Yes, I do.

(#2096) Steve Clayton: Is there a maintenance amongst the property owners to maintain the road? Do you have an association?

(#2100) Bill Coleman: There's a maintenance agreement but no association at this time. It's an older development and it's really starting to take hold. There's new homes going in all the time.

(#2110) Mark Drain: Jerry, I'm helping clarifying this for myself. As a result of the wording we're working through this evening, the county is saying they're not involved in that private property easement issue; it's your problem and you need to address that with your neighbors.

(#2130) Wendy Ervin: I think that simplifies his problem because rather than going through a bunch of paperwork and heartache with the county the solution is to go to the neighbors and tell the neighbors they need to put the fence back there and if they don't just simply take them to court.

(#2145) Mark Drain: You need to protect your rights for fire access, for future utilities, for proper road maintenance and probably for several issues.

(#2155) Jerry Goodwin: Is that the proper avenue under this situation? You develop codes and you're considering this thing with the emergency vehicles and things like that ... we know it won't meet that. If you look at it, it's obvious. What is the proper avenue? Is it better to just say that it shouldn't be or do we load up the courts more ... what's the proper avenue?

(#2186) Wendy Ervin: I personally think you ... this person has an easement and that is an agreement that they made that that 30' belongs to the community; that was in their deed. So all you're asking them to do is to live up to their word. If it comes to a civil suit, part of what you can use as demonstration for the need to enforce this is things like the fire codes and it doesn't seem to me to be a big problem.

(#2225) Jerry Goodwin: On the other hand, the fence has been there 95% done, in my estimation, since August.

(#2230) Bill Coleman: It's actually been there about fourteen months.

(#2235) Jerry Goodwin: We've been sitting here waiting for this meeting and ...

(#2248) Mark Drain: I don't think you should wait. You shouldn't talk to us either about it but you should be consulting an attorney.

(#2250) Jerry Goodwin: Why shouldn't you; it's written into the code. It seems ... I talked to the gentleman that put the fence up originally and I talked to a few neighbors and talked to the gentleman and when I approached him I asked him if there was a half way point we could meet? He said that if he had to move his

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fence he'd see me in court.

(#2298) Wendy Ervin: Well, you have your answer then.

(#2300) Diane Edgin: You do have your answer.

(#2302) Bill Coleman: The county put a stop work order on it four months ago.

(#2306) Jerry Goodwin: So you guys are recommending that we'll have to take this guy to court? Why do we make ordinances then?

(#2314) Diane Edgin: They're rules to live by but it doesn't mean people follow them.

(#2315) Wendy Ervin: The courts are for people who didn't.

(#2320) Mark Drain: It's part of your private property. It's something that you have to protect yourself. A lot of people have property that people build over onto, whether by mistake or on purpose, and you have to defend yourself against that. It goes on all the time. Here you have a fence that's on an easement and a lot of people deal with that all the time.

(#2345) Wendy Ervin: And that easement, you have a personal interest in that easement because that was the agreement that that was to serve how ever many houses down that roadway so everybody has an interest in that easement. It shouldn't just be one person taking them to court; it should be everybody on that road.

(#2365) Jerry Goodwin: I agree but it's also written in the papers and it just seems like the county should just be able to say ...

(#2376) Bill Dewey: I'd like to get some clarification from Allan or Darren. If the county has a stop work order on the project now, is it because of the existing ordinance?

(#2385) Darren Nienaber: There was a fence built in an easement and that was the way it was viewed; it was illegal according to the code. There was a tremendous internal discussion about whether or not the county should be spending a tremendous amount of county resources on policing private property rights that would ordinarily be between adverse parties in a court of law and was the county becoming a policeman of something that it didn't necessarily feel comfortable with. There was a discussion about why you have setbacks. One of them was about the fire access. So that's one of the reason why we rolled the fire access discussion into this so that we'd have standards for fire access being brought aboard at the same time to address at least that part of the issue.

(#2440) Bill Dewey: Does fire access apply to private roads as well as public roads?

(#2442) Darren Nienaber: Yes. So there was a code enforcement action brought in front of the Hearing Examiner but that was essentially continued until a discussion could be carried on on these issues before the PAC to see what you thought. It seemed like an issue that really needed to be discussed before the public and amongst you to see if this was really a good use of county resources.

(#2476) Bill Dewey: So if we opt to go with the staff recommendation and eliminate this code, this case isn't going to go away; they still get to pursue legal action to the county because that was in place at the time the action occurred? Is there opportunity to have the county help mitigate this particular situation to go away?

(#2495) Darren Nienaber: If you make a recommendation on this it will go before the BOCC. If the BOCC change the rule then the fence would become legal at that point. As a regulatory standpoint, in the county's eyes, from the Uniform Building Code.

(#2515) Bill Dewey: Despite the fact that the complaint came when this ordinance was in place?

(#2518) Darren Nienaber: That's right. Bear in mind that this was written as an amendment of a sort to the Uniform Building Code. When we adopted zoning and zoning setbacks you accomplish very similar goals. Is

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the county the policeman of fences in private easements? Is that something the county should be spending \$4,000.00 to enforce? Or is that something that really should fall upon the private parties? That's one of the reasons why we wanted to bring this before you.

(#2564) Wendy Ervin: I think expecting the county to police property lines, there are just too many gentleman's agreements between this one and this one and ... you share a garden or my fence is 2' in on your line but that's okay because we understand. There's just an awful lot of gentleman's agreements and I don't think the county can be trying to enforce property lines with all the other things we expect the county to accomplish. I don't believe that burden is reasonable.

(#2595) Jerry Goodwin: Think about this though; that fence was called upon while it was being built and it could have been stopped in the bud, but the county does, in my mind, assume some responsibility here. Let's put this into prospective. What if one of us as a homeowner has a fire, and we've been waiting all this time. If the county wants to step out of this but right now it seems like we're kind of in the middle of something and if there was a fire and this guy has this fence ... most of us on this road want to see this thing gone.

(#2636) Wendy Ervin: Didn't Allan say there was a stop work order on that fence? But it can't be continued to be constructed.

(#2642) Jerry Goodwin: It's 95% done; all the posts are up and it's in the way and if we have a situation where emergency vehicles need to get in and out of there and we're deliberating over this stuff, it just doesn't make any sense

(#2670) Bill Dewey: For the benefit of our discussion, I'd be interested in hearing the rest of the public testimony. I'd like to have that input and then start on our dialogue. There's some valuable opinions out there that might help us work through this.

(#2684) Jerry Goodwin: I'd like to make one last point and that is if you pass this law where you're going to back off this thing, I think it's lets just about anybody build a fence some places and give it a try; why shouldn't they?

(#2700) Steve Whitehouse: For the record, my name is Steve Whitehouse and I'm an attorney here in Shelton. I have a couple of different interests in this and one is that I represent Mr. Garoutte, he's the guy that is building the fence. I also, as an attorney in this town, have run across these ordinances several times and have had difficulty seeing what value they have and they have caused impediments on three different types of scenarios. The scenario that you've heard about so far is only one of three effects that this has. A second one has been eluded to and a third one which has not been discussed at all. The one that has been eluded to is if you have a situation where somebody has a utility easement down a property line where it's outside of a plat; you'll see the ordinance does cover plat situations but let's say it's outside a plat. The purpose of the setback, as is my understanding with the fire code situation, so you've got 10' between buildings. If somebody has a right to run a power line down a property line and say that easement is 5' in width, it adds another 5' to that setback because the setback has to be from the easement and not from the property line. That makes no sense whatsoever. The other scenario is on a number of different occasions where you have a property line and there are several attorneys in town, myself being one of them, who get involved with adverse possession claims. People built where they thought the property line was and then a new survey comes along and they find out they're wrong. In order to get adverse possession to some degree you have to occupy along the line and you have to be able to show that. But there's a different kind of case where there really isn't much along the line and it's overgrown and there really isn't a lot of adverse possession but you've got somebody who built an 'A' frame over the line and it's been there for quite some time and everybody recognizes that and any court wouldn't make them move it. So how do you deal with it? You agree that this person will have an easement over the property and that that building will be allowed to remain there so long as that structure remains in tact. If that structure ever has to be substantially remodeled or rebuilt then it will honor the property line. In doing that what you also do is a viable solution. You create a maintenance easement around it. The county says it is illegal to do that as a result of this ordinance.

(#2900) Wendy Ervin: Darren, I don't believe ...

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(#2902) Darren Nienaber: That's true.

(#2904) Wendy Ervin: Isn't the county saying this goes into the court and the court makes a decision?

(#2906) Darren Nienaber: No, under the current regulations that's true.

(#2910) Wendy Ervin: Alright, so what we're saying is that this discussion goes to a court and it is in civil court and there is a determination made between those parties.

(#2924) Steve Whitehouse: In this particular scenario there's actually case law that says the judge is empowered to do this and to do a maintenance easement.

(#2950) Bill Dewey: But with the existing county ordinance you can't do it.

(#2952) Steve Whitehouse: We could do it if a judge says you have a right to do it. But if we went to the county and simply said, without a lawsuit we want to do this, the county would say you can't do it. Even if everybody says this is a good solution and county says because of this ordinance you can't do it.

(#2975) Bill Dewey: So would your testimony tonight reflect that you'd like to see the action that staff is recommending in deleting that ordinance?

(#2980) Steve Whitehouse: Absolutely.

(#2995) Wendy Ervin: I think it's very important to point out the difference here in which a mistake was made and this situation is an adjustment to correct a mistake and the other situation they're talking about in which your client purchased property that had an easement already and now he wants to abandon it and ignore it.

(#3020) Steve Whitehouse: I agree with the first part but I don't agree with the second part and I'd like to speak to that. You have a misconception as to what an easement does. If you have an easement over my property for a certain purpose I still own the property. I still have a right to do with it whatever I want to do with it as long as I do not interfere with your rights. So if you have a easement and somebody is using a portion of that easement and exercising their rights of the easement but I'm not using the rest of it, the owner of that property still has a right to use it. When Mr. Garoutte built a fence on his property, if he's not interfering with the roadway he's completely within his legal rights. If he's interfering with the roadway, which I don't believe is the case, but you folks aren't here to determine facts like that, that's what a court is for, then they have the right to ask him to remove it. In the case I'm referring to somebody had an easement, they had a roadway, but the person who owned the ground wanted to build a slab within the easement area but it wasn't effecting the roadway, the person sued to ask to have the slab removed. The court said the slab does not have to be removed because it is not presently interfering with the use of the easement. The easement holders don't own whatever the strip is; they simply have the right to use it for a particular purpose. If at a later date that use needs to be expanded then they have a right to ask that that slab be removed.

(#3168) Wendy Ervin: Darren, isn't that fence setting up an adverse possession in that easement if it's sitting there for 10 or 20 years and then that road needs to be widened? Isn't this creating a situation ...

(#3188) Darren Nienaber: I'd need to know a lot more of the facts before I could give an educated opinion about that.

(#3192) Steve Whitehouse: The case also says that if people who owned the easement are entitled to some assurance that at some point in the future the encroachment will be removed if it needs to be removed. There's some debate in this state as to the question that you asked as to whether or not you can adversely possess against an easement. That's a complicated discussion. If you actually look at this ordinance the roadway that's on this property is illegal because it's something that's constructed and the ordinance says you aren't supposed to build anything in that easement area. It says you aren't supposed to put a mailbox in that easement area. What's apparent to me when this was written is that somebody raised some concerns and somebody put together an easement that didn't take into consideration that broader effect of it. What is a concern is exactly what you folks have addressed and that is do you interject the county into what is a private

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dispute? If a county is going to take a policy of doing that, which it doesn't ordinarily do, where are you going to stop? I'm not necessarily asking you to accept what I just said. What I am saying is where is the proper forum for that to be dealt with? Should the county be using its powers to promote a private right? In fact, is that illegal for the county to be doing that? If the owner of the Alderbrook Inn wants to move the highway down in Union for his own private benefit, he's not entitled to use the state's power of condemnation to do that. That's not what happened down there. The state said that they would agree to what happens down there but you've got to get all these people to agree to it and that's what happened. The state isn't in the business of promoting private property interests. If people have private conflicts between themselves we have places to resolve that. Allan and Darren shouldn't be in the middle of that kind of stuff.

(#3410) Bill Dewey: Steve, just out of curiosity, if we turn around and adopt the recommendations of the Fire Marshall and we need a 12' road there and let's say hypothetically that's a 10' road and that fence is a foot into the road and interfering with that, does the county then enter back into that?

(#3434) Steve Whitehouse: Yes, but that's a legitimate county interest. When this was discussed there are actually a couple of attorneys who interjected themselves into this discussion and who have also had some of the concerns. One of the attorneys had some concerns where this setback is being applied to instances where it was never meant to be but because it was there somebody felt it needed to be applied. But all three of the attorneys recognized that this is not really a healthy thing for the county to be doing and the staff also recognizes the same thing. Courts are good places to ferret out what the facts and the law are; county administrative proceedings are not. One of the things that attorneys sometimes wish they had a little bit more input in what is going on because they see the problems that get created by some of the stuff that happens and this is one of the few instances where I've seen that some of the local attorneys and some people from the county just absolutely 100% agree on this.

(#3590) Jan Ward: My name is Jan Ward and I live at 141 E Fantasy Crest right next to the Goodwins. I have a couple of concerns. We talked about this setback and the setback extending to the road easement or front lot line, whichever is closer. Would that in any way impact our situation as far as what makes a starting point? In 17.01.240 under definitions. I'm just wondering since you're taking the situation out of a certain part of the county codes and putting it into something else, I'm wondering if this in any way addresses our situation as a starting point of where the property owners line started.

(#0018) Darren Nienaber: The front yard setback would relate to buildings and structures and I don't think it was intended to regulate fences.

(#0025) Bob Fink: Right. It explicitly excludes fences no higher than 6'.

(#0030) Jan Ward: I guess my other concern is here we've been waiting fourteen months for the end of a stop work order that has been issued by the county based on county easements and other things that were in place when we all bought our property and saw the language that those who signed that and all future owners down the line will abide by that, we feel that we're kind of restricted and stuck and that we now may have to go to a private attorney and fight through the courts because all of this is now going to go through the courts. That's going to mean that his fence could stay there possibly for three or four more years before anything is ever settled on this and right now the fence is up onto the shoulder of the road; it does impede. It was interesting trying to traverse in the heavy snow down that road without sliding over into that partially built fence. I just feel like if you want to change the rule; I understand that but maybe not change it and make us go backward. Maybe change it from situations that start now and come up later. Not one that has already been in the process for fourteen months.

(#0078) Ed Klein: My name is Ed Klein and I live at 120 E Fantasy Crest. I'm probably most affected by the fence. I've already had to alter my driveway. I've had complaints from the people that deliver my propane because of their mobility to get up and down my driveway because of the fence. They lost basically 3' of swing trying to get into my yard. The same thing with gravel being delivered. My other concern now is if this stays in effect and a tree falls. It lands on the fence. Where does he come to to get his fence fixed? Me, because my tree that is also in the easement right of way fell on his fence. He's going to want his fence repaired and he's going to want it repaired by me. Now if he's allowed to do this then it's opening the road or the gate for me to move my fence line out equal to his fence line. I just had my property surveyed and my

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fence is on my property line. He moved his property stake to the top of the road when they strung the line for the fencing. After the fence rails were put up then he moved the stake back down into his proper area as noted in some of the pictures I passed around earlier. So my biggest concern is if the fence is damaged by either a truck delivering to my house or a tree falling on his fence, who is responsible? Now, where have my rights gone to? We had a stop work put on by the county so I think the county should stay with what they started with.

(#0145) Bill Coleman: My name is Bill Coleman. Correct me if I'm wrong, but we are taxed according to our survey corners and if you start allowing people to go out in the easement I see the county can start taxing for more money. I don't think you tax for easements so these people are going to get more land, create more problems for us and paying less taxes. I just keeps snowballing.

(#0195) Steve Whitehouse: You are paying taxes on the easement but the value of the land is a little bit diminished because it's encumbered by the easement. You're taxed on the fair market value of the entire piece.

(#0205) Jerry Goodwin: It's my best understanding that when we were talking about the potential fire codes that we're talking about these roads that went from 20' potentially narrowed down to the 12' and things like this. The fence is on the gentleman's property where this lane provides five residences; he's the first one of the five. It's my understanding earlier that we were talking about four or less and so if we have five people and he's the first one that's impeding with his fence and the rest of us are down the way, why do we have to go to court over this? The attorney here said the county should be stepping back in in that case.

(#0237) Wendy Ervin: Because of the fire code that we were discussing first is not in place. I believe looking at these pictures that if the fire code was in place and they've got five houses down there, that would require a 20' wide road and these pictures clearly don't give 20' so if the fire code is in place then that puts them in a position to say this is in violation of the fire code and to have the Fire Marshall enforce that road width.

(#0274) Darren Nienaber: It's entirely possible that I end up representing the county in a lawsuit on this matter so you're better off using your best judgment based on the laws that you have.

(#0282) Bill Dewey: Any additional testimony on this? We'll close the public hearing and open it up for discussion here with the PAC.

(#0310) Diane Edgin: With this particular instance with what these people are dealing with it brings right to the very forefront why the county should not be involved in these types of situations. First of all, the expense, the county staff, etc., and it is clearly a civil matter and every state that I have lived in it would be up to the property owner to figure it out themselves or go to court. There's just not enough money for the county to be involved in these types of matters, let alone the liability. Now this one is a little strange because first we had the old code, then we have the new code, and now we have the adjustment to the code. Somewhere in the middle of this the county did put the stop work order on it until it was sorted out. And sometimes civil matters do take years. But that's not the county's problem. Right now I feel that the county probably did do the right thing by doing a stop work order until it's figured out.

(#0360) Wendy Ervin: But the solution to that is not for the county to necessarily say ... I think that having set the stop order it's only reasonable to continue with that but I don't think that should be an adjustment to our deliberations.

(#0375) Bill Dewey: My comments echo Diane's. I think this isn't something in the future that the county wants to be involved. I think my recommendation would be to take staff's recommendation and delete this section but as far as the current debate, my feeling is that the county has some obligation in that they got started in it ... I don't know if that would be part of our motion that ...

(#0390) Diane Edgin: I don't think that it should be.

(#0392) Bill Dewey: It sounds like it may get worked out regardless if we end up moving forward on this or the fire code gives them the tool to keep the county in on this issue. Are we near taking action on this?

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(#0405) Diane Edgin: I make a motion that we approve the consideration of the elimination or modification of Mason County Code Title 14's general prohibition of building in easements and requirements for setbacks from property lines and easements.

(#0418) Mark Drain: I second the motion.

(#0420) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. We have some other patient people in the room. Which issue are you here for? Provisions for cemeteries in rural residential? Okay.

(#0500) Allan Borden: As was noted we're looking at page 8 of the proposed standards. What's being proposed is basically to add the language for cemeteries to RR2.5, which wasn't stated previously and placing it as a Special Permit required use under RR2.5, also adding it to RR5, RR10, and RR20. On page 9 defining what is meant by cemetery under the DR's using the RCW definition which basically says any one or combination of the following land uses in a place used for, or intended to be used and dedicated, for cemetery purposes: 1) burial park for earth interment; 2) mausoleum for crypt interment; and columbarium for permanent cinerary interment.

(#0555) Darren Nienaber: What is that?

(#0558) Allan Borden: A columbarium is basically a vault which has places within it to store ashes.

(#0565) Darren Nienaber: What does cinerary mean?

(#0568) Allan Borden: Basically when an individual is cremated the remains are placed in a container and that container is the cinerary.

(#0580) Terri Jeffreys: Allan, does the definition of cemetery have a numerical qualifier on it?

(#0620) Allan Borden: There is state law about burying individuals on a piece of property. The way I proposed it, it was intended to interfere with that ability.

(#0636) Diane Edgin: So you're saying that ability still exists; to bury on your own property?

(#0638) Allan Borden: Right, but this is intended for when a property owner wants to intern multiple ... or a service. I just wanted to say that this came up because a church did want to have the ability to provide such capability on their property.

(#0665) Terri Jeffreys: Are they on a 2.5?

(#0668) Allan Borden: No, they're RR5. The reason why I added it to RR2.5 was because it was inconsistent. Why should it be 5, 10 and 20. RR2.5 is even closer to a UGA where a cemetery would be allowed.

(#0680) Steve Clayton: There is a number of uses that are different between RR2.5 and 5's, even on your page here.

(#0700) Linda Rush: My name is Linda Rush and I'm pastor of Christ Lutheran Church which is located at 3701 NE North Shore Road in Belfair. We have had a history of disputes with our neighbors on the use of our property and there was a park there that we used for a playground for our daycare that we agreed in a conversation with our neighbors to rip out that playground and move it. It lay dormant with no clear use for a while. I've just come into the picture with the church in the last three years and we've looked at that land and how we could possibly use it in conjunction with the needs of our neighbors and their constant request was that it be quiet. In the course of the conversation with them about our daycare and where the playground ought to go and whether or not we could have the use of another spot, it occurred to me that our church could use it for playground for other children if it wasn't used for the daycare and they know that. We've talked to the BOCC about that. In talking to our neighbors we asked them what they thought about a memorial garden where we intern ashes. There was some squeamishness on the part of one or two and a question about

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whether or not that had anything to do with the canal and the environment. I talked to cemetery business people in the urban areas and they said if it isn't a business for retail don't you have the right to do that? So I began questioning the county and there was really no regulation that covered it. I was very jealous of St. Hugh's Episcopal in Allyn because they fall under the UGA and they've already done this very thing and used their property to beautify it. They're already currently selling the little spots that has a cement case and the members, just at cost, put their ashes there. As a pastor, I really feel this is a service because we have members who cannot afford today to buy cemetery plots and they cannot afford caskets and they feel they're giving their family a break by being cremated but then the family has the ashes and they don't know what to do with them. We want to make an ethical option for people, not to make money; we don't want to bury bodies. I'm a little confused as to what will happen if the definition of cemetery includes a burial park or mausoleum. Will that stop us in some way when we go to get a Special Use Permit because we would be given this capacity and we don't even want that. We just want the capacity to put ashes in this strip that's a quiet zone in agreement with our neighbors to be able to use our property. I'm asking that standards for cemeteries in RR areas be established so we can move forward in creating this memorial garden on our property and that if cemeteries are going to include all these things, that's great for my neighbors who have larger properties, but I'm not sure how that's going to affect our case. We just would like to be able to use our land in amiable way with our neighbors quietly and for a service that is good for the public. Just driving through the countryside you'll see that rural areas have traditionally been the location of cemeteries in churches forever and we're just asking that it be dealt with in a way we can do it, too.

(#0872) Steve Clayton: The distinction is that St. Hugh's is in a UGA and you're several miles outside Belfair. You're in an intensely developed area and Wagon Wheel Estates and there are retirement houses that are bumped up against you.

(#0882) Linda Rush: We have a history with Wagon Wheel Estates of contention over the use of our property. We also have a retreat center there and so coming to some kind of a conclusion on how to best use our property in a way that is appealing to both of us is a really exciting idea.

(#0902) Steve Clayton: So the property is pretty well built out; you're pretty full on that property other than the open area to the front. So there isn't a place where ... you could put perhaps 50 monuments or 50 ashes or whatever the number would be but it really isn't something that can expand into the future be it a short term fill up and then it's there forever.

(#0915) Linda Rush: Having seen the one at St. Hugh's and seen the way they're laid out, if you have these little boxes pretty close to each other you could go a long time. I've dealt with several families in the last three years that ended up with the situation of not having a lot of money so they just cremate the bodies and then they have the urns sitting around their house and they're just really uncomfortable situations that we could offer a solution to. A nice dignified resting place that costs them no more than the cost of the actual facility and whatever it costs us to put it there. We would like to have a place where ashes could be dispersed on the ground. The idea of maybe a rose garden where maybe they wanted to avoid even the cost of the box in the ground. Rather than illegally casting them into the canal, they could cast them into this earth area. We've already started the discussion with our neighbors before we realized we didn't have a way to get this done legally and they asked only that the county approve it for us to proceed.

(#0972) Wendy Ervin: Allan, it seems to me that when they make an application for the SUP that they're going to stipulate that this is strictly for cinerary internment so that way their application and their permit is not going to allow coffin graves and monuments, right?

(#0995) Allan Borden: That is correct.

(#0996) Linda Rush: If we did it specifically for that it would get us past the potential that we could ever do something else. We don't want to use our land in that way. This is a useless piece of land and we could turn it into a real gift because of the location.

(#1010) Darren Nienaber: Bob, for the purposes of developing the record, could you make a comment on the consistency with the rural character. As a Planning Manager, do you think it's consistent with the rural character?

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(#1024) Bob Fink: I would think so. It's small scale, at least this proposal is, this one would be a little more intensive than the normal cemeteries. If you think of cemeteries, they're usually not that intensive of a use. They're garden like where the natural environment dominates over the built environment, which is one of the defining elements of the rural character.

(#1045) Linda Rush: We'd really be hidden between the back of our church and the fence line of Wagon Wheel. It's invisible from the road. The only one that can see it is from our church. If it would help we're thinking of patterning it after what has been done at St. Hugh's in Allyn.

(#1072) Diane Edgin: I think the only possible problem, and it's not really our forte to get into, and that is the idea that you wanted to put the ashes into a garden area. I think there's probably some regulations regarding that. Loose scattering of ashes, I think, has some regulations.

(#1105) Bill Dewey: Allan, I have a question for you. On the top of page 8 you have 1.03.027, Provisions for Cemeteries. It seems like that needs a paragraph; what are the provisions?

(#1115) Allan Borden: That line probably shouldn't even be there. I had intended to delete that. The words Provisions for Cemeteries should stay but the 1.03.027 should be deleted.

(#1135) Linda Rush: So if this went into place when we went to do our SUP we'd have to answer that question you raised as to the scattering?

(#1142) Diane Edgin: Anything having to do with any type of burial, there's a whole set of regulations that go along with that.

(#1152) Wendy Ervin: That's a law that can't be enforced. You take it up to the woods or you dump them on a beach or whatever. You can't enforce that so frankly ...

(#1158) Diane Edgin: Well, they've got a neighbor they're concerned with.

(#1160) Linda Rush: We need to be straight with our neighbors as to what we're doing there. They have asked us to come to the county to get their approval and then they said to go for it.

(#1185) Allan Borden: One thing I wanted to say was if you as the PAC feel that the definition on the top of page 9 is too broad there's a possibility that we could revise that proposal so that it does or does not include burial park or mausoleum.

(#1205) Mark Drain: I would think that if there's some kind of structure involved that has to be dealt with through the permit process.

(#1215) Terri Jeffreys: As the Pastor indicates, this is a service that a church wants to offer their parishioners then probably all the option ought to be open to them.

(#1222) Linda Rush: Somebody else might have more land and might want to do something more.

(#1228) Wendy Ervin: Her wish or proposed use doesn't exactly fit unless you say burial park for earth interment of ... she doesn't want the columbarium so she doesn't want to apply to have a columbarium. She wants to apply for the earth burial of cremated remains so maybe if you put a fourth definition in there ...

(#1250) Allan Borden: Basically she is creating a vault that has a series of places which ashes are placed.

(#1255) Wendy Ervin: Columbarium, to me, sounds like columns and we're talking about a structure.

(#1260) Allan Borden: No, columbarium does not have to do with columns. It has to do with doves. It's basically a derivative ... it actually has to do with a place to store ... the emphasis is vault ... a place where remains are stored.

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(#1295) Steve Clayton: I'm in favor of the SUP and that allows neighbors to give comments on particular uses and narrow down the uses. From a planning aspect, I see the RR2.5 that that's supposed to be relatively highly developed residential and that it's probably not compatible with the cemetery. I would see it being compatible with uses defined in the 5's, 10's, and 20's. What I'm seeing from the planning side is that if we have burial ground here, and here, and here, and all these parcels long term it really breaks up the community. I'm not talking ten years from now; I'm talking fifty or a hundred years from now having to remove remains ... what we've already determined is that's it's a dense area and now we have burial grounds in what is determined to be dense areas.

(#1338) Mark Drain: I don't think that's a problem. There are large cities with large burial grounds almost in the center of them that have been there historically for years and the city just goes around them. A piece of property to be compatible with neighbors perhaps it will have to be 10 acres in size within RR2.5. There's so many ways it can happen and the fact that it's a SUP will require public input, I don't have any problem with it.

(#1365) Allan Borden: My thought in adding that was that because you have a community with a lot of small lots a person may want to dedicate a parcel for community burial use. There's a cemetery in Union; there's a cemetery in Hoodspout.

(#1390) Wendy Ervin: You're saying that the RR2.5 is too dense to allow a cemetery and yet, as it stands, the only place you can put a cemetery is in a UGA where you have even more density. It doesn't make sense to say that 2.5 is too dense a residential use to allow the cemetery when it's already in the UGA and that's where it's been encouraged to be.

(#1410) Steve Clayton: Going along those lines of those arguments is that, yes, it's in the UGA because it isn't defined to be anywhere else. Is it appropriate to have a cemetery in a UGA? That's kind of questionable; it's urban. We're looking long term to develop the area. Ideally, it would seem, that planning would put a cemetery in a larger parcel that's out of the UGA.

(#1425) Mark Drain: Perhaps a cemetery is just as appropriate as a grocery store or a gas station or anything. It's relatively close for people to visit and it belongs there.

(#1438) Wendy Ervin: I drive through McCleary at least once a week and McCleary has the most utilized cemetery I've ever seen. That little cemetery, and it's right in the middle of town, it has flowers on every grave every time I pass. On any holiday they've got it all decorated. That is part of the community and it's right there in the middle of that town. I think it's an entirely appropriate use. I make a motion that we approve adding cemetery as a SUP for RR2.5, RR5, RR10, and RR20 along with the definition for cemetery as defined in RCW 68.40.

(#1490) Diane Edgin: I second the motion.

(#1492) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes.

Break in meeting.

(#1630) Bill Dewey: We'll now take up (k) which is addressing the use of shipping containers.

(#1656) Allan Borden: In my comments here, I'm just reiterating what the standard is stating that currently there's no implementing regulations concerning shipping containers being used for storage on properties in the county. The proposed regulations would limit the use of these structures or containers so that they would be prohibited in all zones except on lots zoned Rural Industrial or Rural Natural Resource. In these two zones where they would be allowed, they are considered outdoor storage and they have to be properly setback from the property line and screened from view. The first line of the regulation itself does permit the industrial shipping containers to be parked on a lot for a two-day period when loaded on a vehicle. So basically it allows a truck that has a shipping container on it that's transporting it's contents can be on the property for two days. If they're on a lot that's RI then that limitation doesn't apply.

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(#1730) Terri Jeffreys: Can you talk to me a little bit about the history of this? Is this a department request or is this a request by a citizen?

(#1735) Allan Borden: This was basically generated by us.

(#1740) Terri Jeffreys: Due to complaints or what?

(#1742) Bob Fink: We've had a few inquiries from people in the public asking if we regulated them where neighbors are concerned about having them placed on an adjacent property. We don't specifically regulate them so that's why we're proposing this. It's a concern and something that is occurring on a more frequent basis and so it might increase in the future as they become more readily available.

(#1765) Terri Jeffreys: Is there a public health hazard? So it's more of a visual ...

(#1770) Bob Fink: It's an aesthetic issue.

(#1772) Diane Edgin: I think the aesthetic issue is something that ... I don't even like to see us go down that path. These containers do make excellent lockable storage sheds, a lot better than a little old aluminum shed. Are we at the point where we're going to regulate aesthetics?

(#1800) Allan Borden: You could say, are the structures suitably meeting rural character?

(#1820) Bill Dewey: So you're saying in RI and RNR it doesn't apply?

(#1828) Allan Borden: Right.

(#1832) Bob Fink: One difference about these is that there's no review of the condition of them when they're put on the property. There's no assurance that they won't collapse on people. Besides the aesthetic issue, there is a safety issue.

(#1848) Wendy Ervin: They're strong enough to carry all kinds of freight and go down the highway and be stacked ten high on a ship. I don't think there's a problem.

(#1855) Steve Clayton: At some point in the future I think is what Bob's planning for.

(#1858) Wendy Ervin: But at some point in the future anything can fall in.

(#1860) Diane Edgin: I think the main thing is if somehow they can be treated as an accessory building under the same type of setbacks we do with garages or whatever and if screening could be put in place, I don't think that's our job to tell people because of the aesthetics of it they can't have these things.

(#1878) Steve Clayton: When we talked about junk cars we're talking more about fluids and environmental and the reputation cars have for rusting in place. This is an entirely different thing and as you say it's more aesthetic. Now do we start regulating that you can't cut down the trees on your property next to me because I like the trees there. Well, it's my trees. Was your intent here, Allan, to restrict it also out of UGA's? Did you intend to say all rural zones?

(#1905) Allan Borden: The idea is that the UGA's would decide on their own.

(#1920) Steve Clayton: What about RAC's?

(#1916) Allan Borden: RAC's are in the rural area.

(#1920) Bob Fink: RAC's do have some RI areas so it could be allowed. The idea that these are industrial facilities and they belong in an industrial area where they would be permitted for outdoor storage.

(#1935) Bill Dewey: We use them out at Taylor's. We've used them as we've needed to expand our freezer space. We bring in freezer containers and plug them in.

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(#1942) Bob Fink: And that's appropriate. We're not saying they're not appropriate in industrial processes or RNR uses or ag uses. What we're suggesting is that it's appropriate for those types of activities but it's not appropriate in residential areas.

(#1958) Bill Dewey: Are we going to screen them from view?

(#1962) Bob Fink: You'd have to look at what the code requirements are for outdoor storage. They'd have to be screened from view from outside your property.

(#1975) Allan Borden: It says 'outdoor storage of materials shall be screened and not visible from adjacent properties by the use of landscaping, berming or fencing'.

(#1982) Bill Dewey: The other thing is that the way this is worded 'industrial style containers used for shipping freight'; our company uses them extensively. We stack them four or five high out in our driveway and they're moving through all the time.

(#1995) Wendy Ervin: But those are actively in use for freight. This is only talking about ...

(#2005) Bob Fink: The difference between a grandfathered use and new development ... your facility has been there for a long time and your operations have been there and you're grandfathered in as far as what would Taylor United be required to do. It's like other businesses that are already operating and according to certain practices this wouldn't affect their current operation but it would affect perhaps an expansion or the establishment of a new business.

(#2035) Wendy Ervin: When you were saying you were using them in the driveway, are you talking about fork lift loaded things?

(#2040) Bill Dewey: No, while we're waiting to build a new facility and we've needed new freezer capacity we've installed these permanently in the driveway and hard wired them in and used them as freezers.

(#2050) Mark Drain: Allan, if I wanted storage on my property and my house is out in the rural area, I can only build something 200 sq ft without getting a building permit or is there something about it that's on skids and portable that you don't need one? They circumvent the building codes and the permit process?

(#2070) Bob Fink: Essentially they do in most ways. There may be certain regulations that might apply but ...

(#2080) Martin Zazueta: I had to get a building permit for mine.

(#2082) Bob Fink: To place it?

(#2084) Martin Zazueta: Yes. It cost me \$300.00. I think I was the first one to get one.

(#2092) Mark Drain: So that means they must meet some kinds of standards.

(#2098) Darren Nienaber: I think the Uniform Building Code allows for alternative building methods as long as you can prove they meet the strength requirements. Clearly they would.

(#2105) Bill Dewey: We've got a couple of people here who would like to offer testimony on this so let's take their testimony and have their input and then we can continue with our discussion.

(#2120) Martin Zazueta: My name is Martin Zazueta and I live at E 20 Snowcrest Lane. I have a shipping container and I had to get a permit for it and it cost me about \$300.00. I also had to get it engineered to be put on railroad ties per county requirement for the building codes. I know the one I have you can put 60,000 lbs in them and you can stack them six high on a ship and I know they're not going to fall apart. I also wanted to know why this was even coming up. Bob said that people were inquiring about them. They don't like looking at them or what? Would they rather see everything that you don't want seen outside or would they rather see a shipping container with everything hidden away. I know that a 40' by 8' is about 320 sq ft and

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they're so affordable. They're only about \$4.00 a sq ft. Then they tax you on them.

(#2180) Terri Jeffreys: Property tax?

(#2182) Martin Zazueta: Yes.

(#2185) Wendy Ervin: As a structure rather than personal property?

(#2188) Martin Zazueta: Yes, they valued it at about \$3,000.00. I also had a question about the fact that they needed to be screened. How would you screen them?

(#2210) Bob Fink: You could put trees in front of them or brush; depends on high you stack them.

(#2224) Darren Nienaber: Yours would be grandfathered.

(#2226) Martin Zazueta: You guys have a problem with that word and me in the same sentence.

(#2240) Allan Borden: He has an existing structure that would become nonconforming.

(#2244) Bob Fink: There's nothing in this provision that would prevent someone from being grandfathered. So they would be nonconforming as currently written.

(#2260) Martin Zazueta: I plan on getting another one but now you're saying they might be made illegal?

(#2266) Bob Fink: The existing ones with the grandfathering and what that means is that we have a category that is legal, nonconforming uses and structures and unless there's provisions to the contrary, existing activities and structures are all allowed to continue as legal but nonconforming. There's nothing in this proposal that does not allow the existing storage containers to remain as legal, nonconforming structures.

(#2300) Wendy Ervin: Am I getting this straight, then, because there's been a few complaints about these shipping containers we're going to write a law that doesn't apply to the existing containers that were complained about?

(#2315) Darren Nienaber: That's pretty much the way with all regulations. Almost all of our zoning regulations are that way. Actually you'd have problems with 'takings' if you immediately made something illegal that's already on the land except for if there's a phase out period.

(#2370) Diane Edgin: You say here they may be parked on a lot for a two-day period when loaded on a vehicle. I know a lot of people, especially people who are building their own homes, get these things because you can really lock them up. I don't want to see that illegal. A lot of these will disappear once the home is in place and others will probably stay around.

(#2394) Steve Clayton: Allan, you mentioned they're considered outdoor storage and must meet the proper setbacks, etc., so we already have setbacks established for outdoor storage in all the rural zones? Do we have a current regulations on outdoor storage?

(#2420) Bob Fink: Storage of certain things outdoors are regulated in residential areas. Storage buildings would be regulated as accessory buildings and there would be setbacks and other limitations to them.

(#2440) Steve Clayton: But we don't have a limitation that they should be screened from view so we don't have anything currently on the books for needing to be screened from view?

(#2455) Darren Nienaber: Right now all we have are the health department regulations for hulk or junk vehicles.

(#2465) Bob Fink: Right. There's a different cap on hulks and junk vehicles that are related to the number and the screening requirements.

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(#2505) Martin Zazueta: The other thing I brought up is that they're made out of steel and they're not flammable at all. They're an affordable alternative to buying or building a small shed. If you get a building permit, I don't see what the problem is.

(#2540) Tim Sheldon: My name is Tim Sheldon. I assume that through the discussion that this is perspectives and that existing containers on property ... if this was passed as it's written that on property that is not RI or RNR could continue. I've had one since about 1972. Containers come in a variety of sizes. The one I have is 20' long by 8'. It's made out of plywood. It's handy you can build shelves in it and it's got a metal frame. It probably weighs 5,000 lbs. I've moved it once but you can move it and put it on blocks. As Diane said they're very handy to store things and you can lock it very tight. You see them a lot for that use and I think they're a good use for the community because it keeps things out of site and it keeps it stored airtight practically. You mentioned the size, the Port of Seattle will be compared to the Port of Longbeach and they look at a standardized size of container. I have a 20' container and there might be a 40' containers and Boeing is now developing a super large container to bring in parts for the 7E7 so some day you might have a container that's 60' long and 30' high. That's my concern that existing containers would be able to continue and not have to be moved. You might look at the idea that a particular piece of property could not have more than one or two of those and limit the sq ft. The one that I have is assessed at \$500.00 by the county so I've been paying taxes on it for 30 years.

(#2695) Diane Edgin: In a rural subdivision they have their covenants; they're going to say whether or not something like that would be allowed and that is their business. When we come back out into the rural area where we're talking ag or 2.5, or 5, etc., and the way that our county has traditionally developed ... I don't want to see them being prohibited but at the same time I think that we need to come up with some language if somebody decided they want to keep one of these things on their property as an alternative structure. That would be the screening and the size, etc.

(#2750) Wendy Ervin: Right now apparently you have to get a building permit for them and place them safely on some kind of foundation and rather than outlawing them I think the proper thing to do is to continue requiring a building permit to place. That gives enough control and if somebody doesn't like it in the neighborhood they can complain and the covenants keep them from happening in a development; I think that's adequate control rather than just saying you can't have them except in here and here. I think a permit is the way to go; just leave it as it is.

(#2815) Mark Drain: I would agree. I think there should be limitations probably on the sq ft of them; maybe you could have a couple of 20' or one that was 40' and then if you wanted to get complicated maybe for larger parcels you could allow one more.

(#2840) Steve Clayton: What would you think of a limitation of maybe two to an acre? Or say 400 sq ft? Although at that I have my reservations because if they're going to pack 50 of them on an acre and then it's a business and then you can get a ticket and get them out of there.

(#2850) Diane Edgin: We do have a lot of small businesses in the county and this is a very inexpensive alternative to putting up a building for storage.

(#2885) Steve Clayton: Maybe next time Allan could come back with the particular requirements that defines a storage container and defines that a building permit needs to be done.

(#2895) Diane Edgin: And screening and setbacks.

(#2900) Steve Clayton: Do we need screening?

(#2902) Martin Zazueta: They just told me it was setbacks.

(#2905) Steve Clayton: Maybe we should find out that what Martin has gone through is in the regulations and address those aspects because I think we're pretty well in agreement that if you're paying taxes for it and it's on your property then we're kind of done with the issue.

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(#2922) Bill Dewey: So do you have enough direction, Allan, with that?

(#2928) Allan Borden: Yes, I'll find out what the current statutes are with building. Basically it's building requirements and if they're recognized as an accessory building then they only need to have setbacks unless it's a home occupation. It could be a storage container that has a cabinet shop in it.

(#2985) Martin Zazueta: The only other thing I wanted to say is should you put a limit on them? I'm allowed to build a 40' by 100' building on my property.

(#3000) Wendy Ervin: I think the permit process puts a limit on that and I don't think it's necessary to go further than that.

(#3020) Tim Sheldon: You might want to make a distinction between refrigerated containers and shipping containers. Refrigerated containers often set on wheels but they all have a compressor. The issue becomes how long is that compressor going to run; from 2:00 am to 4:00 am? That could become an issue. If you look at a 20' container it's very useful but it's still less than 200 sq ft. So would I need to get a permit for a shed because basically that's what it is so I think if you're under the 200 sq ft for a shed I don't see why you would have to permit a 20' container.

(#3060) Allan Borden: It's actually 120' is the maximum.

(#3090) Steve Clayton: I make a motion that we continue this until next time around for Allan to come back with some more information.

(#3100) Mark Drain: I second the motion.

(#3102) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Opposed? Motion passes. Tim, what else were you here for tonight?

(#3165) Tim Sheldon: I have two comments; one is on page 3 with the Matrix of Permitted Uses and the last comment I have is on page 21 under Enforcing Official.

(#3168) Bill Dewey: Allan, do you want to give us the staff reports?

(#3195) Allan Borden: The provisions on page 3 is an existing section and mainly the changes are for clarification. In 1.03.020, Matrix of Permitted Uses, we're changing the word from appropriate to applicable because appropriate is too general; applicable policies is the language used for indicating what policies will come into effect that are suitable. The rest of the edits have to do with just plainly stating that the matrix identifies what the permitted uses are in the urban and resource land areas in Mason County. The editing toward the end of that paragraph, basically it's written in such a way that the general public can't exactly understand what is allowed and what's not allowed so the current way it's written is ambiguous.

(#3300) Darren Nienaber: Plus, we got sued on it, too.

(#3310) Allan Borden: Somebody had an interpretation that was not correct.

(#3325) Darren Nienaber: Their argument was that nobody reading that would know what's allowed and what's not allowed because it sort of gives unbridled discretion to the county to say what's similar and what's not. So we just decided to say what's allowed and if you see things that should be allowed like cemeteries, then we take them on a case by case basis.

(#3355) Allan Borden: We then modify the regulations through the public review process.

(#3366) Steve Clayton: What would be the chances of getting the matrix back up to us for the next meeting so we can take a look to see if there's any obvious ones that we could insert at this time?

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(#3376) Allan Borden: How much time do you have? Do you want to go til June or July?

(#3382) Darren Nienaber: There's a part in our code that already says any uses not expressly allowed is prohibited. So we've got two completely conflicting parts of the code.

(#3400) Wendy Ervin: Do you think that anything that's not expressly allowed, do you find that that's a legal position that's easy to work with?

(#3420) Darren Nienaber: Oh, yes.

(#3425) Allan Borden: The section he's talking about is located between 1.03.020 and 1.03.023 in the DR's.

(#3445) Mark Drain: What is wrong with the person that thinks that he has a unique situation presenting additional information for review to help make his case?

(#3458) Wendy Ervin: Because as I understand it, the next thing that we're not seeing is that it says that anything that is not specifically prohibited is allowed and so therefore you don't have to come and ask if it's okay. If it doesn't say you can't do it then you've got it. So instead of going into all the description, it's just blanket allowed.

(#3486) Miscellaneous discussion.

(#3505) Wendy Ervin: Is there also a special ... you've got your matrix of specifically permitted things, if it's not specifically permitted it is disallowed, then is there an application process for a special permit use for something else?

(#3535) Darren Nienaber: We've got a special uses permitted section in our DR's but those are expressly provided for, too.

(#3548) Wendy Ervin: So these couple of paragraphs there are not the end of the day ...

(#3555) Terri Jeffreys: They're saying that the next step would then be to ask for a comprehensive plan amendment and insert that use in that zone.

(#3570) Tim Sheldon: My name is Tim Sheldon. I just wanted to make a comment that by taking out all of the administrators authority to look at similar uses, I think we're making the ordinance much too restrictive. I've never been a fan of the matrix even when we started several years ago because no one can ever anticipate all the new uses. Nobody used a cell phone six or seven years ago. Same with computers. Life changes and I think there should be some discretion on the system. If you look at that matrix I don't think anybody could say that is all the uses that should be there. If you have a director that has some discretion I think you will encourage some business development. This process is much too cumbersome. I've been waiting for over two years on one zoning change; it just takes too long and that doesn't encourage any business. What we've done with zoning is that we've said that these are the things that you can do and I think we're just totally opposite of the rest of the world with zoning when they say these are the things you cannot do. It's just so much easier to have a list of things that are prohibited than to list the things that are allowed.

(#0022) Steve Clayton: What would be your thoughts on a direction because this talks about urban and resource land. In the urban areas, like you say, put together a list of things you can't do, which would be relatively short, and basically the urban is open for whatever. We already have in a separate area for our rural area specific things that you can do, which is perhaps, appropriate.

(#0045) Tim Sheldon: I just think traditional zoning is where you say you can't do things, in my thinking. I think this matrix of permitted uses is a trap to not do anything new or different.

(#0055) Bill Dewey: By deleting that Similar Uses section you're restricting it too far, is that what you're saying?

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(#0060) Tim Sheldon: Right, and the director has no discretion. There's a building in Potlatch that was a post office, it was a beauty salon, it was a second hand store; but when you looked at the matrix it couldn't be a lawyer's office or a coffee shop and what is the difference of what goes on inside the building. We started on the wrong step years ago with this matrix. There was a very controversial vote on this and it was Mary Lynne Evan's idea; she and Mike Davolio and it was a compromise at some point in the development of our Comp Plan and it's just hung around. I think it's time to get rid of it.

(#0102) Darren Nienaber: The matrix will be entirely gone in about four months.

(#0108) Bob Fink: The Shelton UGA is probably more than four months out; it's more like a year out.

(#0112) Darren Nienaber: But Belfair and Allyn are coming up.

(#0114) Bob Fink: We're working on proposals for Belfair and Allyn to have other codes for them instead of this matrix. The Belfair draft is already distributed publicly and the Allyn draft is still being worked on by the community of Allyn. Those would replace the matrix as far as use regulations. The City of Shelton is working on their process. We have an agreement with them that they will be the lead on that process. They probably won't have a draft ready until the end of the year.

(#0144) Tim Sheldon: Will the matrix still exist for other areas of the county?

(#0146) Bob Fink: If we no longer needed it for the urban areas we would probably ... the only other thing in here that's really addressed are ag resource lands and forest lands and we would want to probably treat those separately. The ag resource lands went through an appeal process as far as the uses are and I don't know that there's any push to change it at this point but it would be reformatted. We'd probably set up a new chapter specifically for ag resource lands and for long term forest land.

(#0180) Steve Clayton: So this is just a short term fix until the UGA's come on line.

(#0182) Bob Fink: Yes.

(#0190) Tim Sheldon: I've got to go but I just wanted to make one last comment on another issue. It's about the Enforcing Official on page 21. It's under (B) on page 21, Right of Entry. I just don't think you can have a rule with a review authority or their designee enter on to any land or make any examinations without the owner's permission or a warrant.

(#0215) Bill Dewey: So you're opposed to the new language for Right of Entry?

(#0217) Tim Sheldon: Right.

(#0222) Diane Edgin: This GMA policy statement that Terri e-mailed us it talks about in the LAMIRDS of the GMA working group policy and they talked about local jurisdictions giving the flexibility and implementation of LAMIRDS to prevent erosion of rural economies. I think Senator Sheldon made a good point that I think in light of the time it takes to do some of this stuff that the administrator could cut some time out if they determined it was a feasible use.

(#0255) Steve Clayton: Could you enlighten us as to what the lawsuit was that we know the ramifications of why you're trying to clean this up?

(#0260) Darren Nienaber: The lawsuit had specifically to do with allowing signs in Belfair and we prohibited billboards in Belfair and in the UGA's. They said that that was a reasonable restraint on free speech and they pointed to that very section and used the argument that the code essentially allows you really to do anything and that you claim that they're prohibited by the matrix but that really the matrix isn't the law. This says that you can allow other uses so ignore the matrix and look at what's permitted and make your best argument about what else is permitted. There's some decent points to that argument. It does set yourself wide open for arbitrary and discriminatory decision making. To my mind I don't think this provision has really been helpful to the county before. I don't think it's served any good purpose and we've had it for a while now but it

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does invite lawsuits and we did get sued on it in Superior Court where we're in the discovery stages of it right now. It may be that the county ultimately wins but maybe we win on different grounds. From the first day I saw it I never felt comfortable with it. I think Tim's wrong in the sense that you could articulate what uses are to be prohibited because ... in almost every zoning code I've ever seen it's always what is permitted and what is not expressly provided for is otherwise prohibited; that's the rule I've seen throughout. If you had to list everything that's prohibited, you'd have a hundred uses and talk about over regulation, then you'd have a serious problem.

(#0342) Diane Edgin: I can see where that would come in. Then I think if somebody felt that they should be permitted then they would have to make the case for it.

(#0348) Mark Drain: That might be just as bad as this way.

(#0350) Wendy Ervin: It seems to me that if you're listing permitted uses and saying that the illegal ones is a long list the reverse could also be true.

(#0355) Bob Fink: The way that you deal with that is you deal with classes of activities so that instead of being specific to selling VCR tapes, renting VCR tapes, renting DVD's, you're more general. So you have retail activities, you have industrial activities; and then if there's some specific subcategory that you want to prohibit then you would specify all allowed commercial uses except for a, b, and c. Most of the codes that you look at will have both permitted uses and prohibited uses and conditional uses. If they don't list a use at all then it's usually prohibited but if they list a use it will be prohibited in some areas, it will be permitted in other areas, and then it may be conditional other places. That's the standard way of presenting zoning.

(#0398) Wendy Ervin: In Tim's example of the place of Potlatch which would allow a little retail store, a beauty shop but it wouldn't allow a lawyer's office, seems to me that the permitted uses, it's more important not to say specifically what kind of use this can be; can it be a beauty shop or a lawyer's office, but how much activity is going on there. In the beauty shop you have two customers at a time and they're there for two hours a piece and in a lawyer's office it's roughly the same thing. You're not going to have that much coming and going more from a lawyer's office ... to judge the impact of the activities rather than the specific activity.

(#0428) Bob Fink: Impacts are evaluated elsewhere. Through the SEPA process in particular projects where you specifically deal with what are the transportation impacts. You can also deal with it when you're concerned by the conditional or special use permit processes where you can set up specific conditions when you have categories and activities with greater than usual impacts. Usually the way you'd deal with beauty shops and law offices is you could have ... you deal with broad categories; instead of saying beauty shops are allowed you could say personal services are allowed, which is not only beauty shops but other types of services. You could allow professional. You could allow retail. Once you allow retail it doesn't matter whether you're selling DVD's or you're selling anything else. When you start breaking the county into zones like commercial areas and industrial areas what you do is permit a broad range of industrial uses by using broad categories. Then if there's some particular category, for instance under industrial uses, you'll see mining. So you'll say we don't want mining in this area so we allow all industrial uses but mining. So you usually have both permitted and prohibited and conditional and then things that you don't list and don't fall under that broad category or under the more narrow category are prohibited. If someone comes up with something totally new or different that you didn't consider and if it's something the community wants then you put it through the public process as quickly as you can to get it approved. If it's something the community doesn't want at all then it would be prohibited. Let's say there was a legitimate concern over these storage facilities. A lot of rules are written because something bad happens. So they pass a law against it so nobody ever does it again but what happened did happen. That's another benefit by prohibiting uses because you don't have to worry about things coming in that simply were not anticipated but they're not good or not compatible and you wanted to prohibit them but never thought of doing it because you've never heard of it before. If you really want them you can expedite them through the public process to allow it. The language that we currently have in the regulation does allow a lot of administrative discretion. One of the goals of the GMA and our Comp Plan is that our regulations be predictable. You hear that a lot from business people; tell me if I can do it or not; don't tell me maybe I can do it. Tell me what I have to do to be able to do it.

(#0585) Wendy Ervin: I just want to feel assured ... in the paragraph of Matrix of Permitted Uses, it seems to

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be drawing a line and those things ... the new use, the oddball use, this is something ...

(#0600) Bob Fink: Tim was exactly right when he was saying that the matrix was written at a point in time and one of the reasons why the uses are fairly specific in it is because we were dealing with rural land use issues. One of the ways of doing that was to be fairly narrow as to the type of activities that were allowed. If you look at the urban uses you see an 'x' in almost everything. That wasn't true at all in the rural areas and the reason for the structure for this matrix is because of those rural issues. They were trying to limit activities that could be allowed in the rural area to uses that are somehow related to rural activities, to serving the rural residents. Those issues have been dealt with otherwise now; the matrix is like the appendix to our regulations. It used to serve a function that it no longer serves.

(#0648) Wendy Ervin: And if I understand this it's going to be surgically removed in the next few months anyway.

(#0650) Bob Fink: Most of it, yes. It applies to less and less area of the county. When Belfair and Allyn come forward it won't apply to those areas. It will apply to Shelton for a couple more months and then it won't apply to Shelton. Then we're probably go ahead and reformat it for the ag areas and get rid of it altogether.

(#0665) Wendy Ervin: Then why take the time and trouble to change it now?

(#0668) Bob Fink: Because we could be sued about this any day.

(#0675) Diane Edgin: I make a motion that we accept the language of the Matrix of Permitted Uses in section 1.03.020.

(#0680) Bill Dewey: Does that include deleting 1.03.023?

(#0682) Diane Edgin: No, in light in what's going to happen I don't think so.

(#0688) Bill Dewey: So your motion is to accept staff's recommendation on 1.03.020?

(#0692) Diane Edgin: Yes.

(#0695) Darren Nienaber: May I make a friendly amendment? Maybe the motion could be 'I move to strike references in section 1.03. Of the DR's where it allows similar uses'. The reason why is there are a couple minor legacies that I noticed aren't in the regulations that you have that are also of similar wording.

(#0725) PAC: Now we're confused.

(#0728) Darren Nienaber: Let me read 1.03.022 which you don't have. 'The list of all uses set forth in Figure 1.03.020 is not intended to be all-inclusive. If an applicant proposes a use which is not listed, the Administrator may, but is not required to determine , etc'. So you've got that ambiguity wording in there, too. So I was trying to come up with a motion that would take care of that or we could continue this until next time.

(#0748) Bill Fink: I would suggest that we rewrite it and bring it back to the PAC.

(#0755) Darren Nienaber: That seems the easiest. The only reason why is that you have a full plate already and the more you continue the bigger your plate grows.

(#0760) Bob Fink: They need to have language that they can adopt.

(#0762) Darren Nienaber: That's right.

(#0765) Diane Edgin: I'll withdraw my motion.

(#0768) Bill Dewey: Is there a new motion?

(#0770) Wendy Ervin: To table this until more complete language is written? I'll make that motion.

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(#0772) Diane Edgin: I second the motion but to continue it.

(#0774) Bill Dewey: So we're continuing it for more complete language prepared by staff. Any further discussion?

(#0780) Terri Jeffreys: I don't know if this is the place to do it but I tend to agree ... I just hate to see any kind of flexibility being taken out.

(#0786) Bill Dewey: That's my thought, too.

(#0790) Terri Jeffreys: If in the changes that you bring back you can find someplace that legally you think you can hang onto that would still allow some flexibility....

(#0796) Darren Nienaber: The county has given deference to terms that it uses in the code so where you've got a permitted use ... we've given a little bit of reasonable leverage as those terms are expressly used so there is some flexibility within that framework.

(#0812) Mark Drain: The language you come up with also include 1.03.022 ... everywhere where this comes up.

(#0815) Darren Nienaber: Yes.

(#0820) Bill Dewey: Any further discussion? All in favor? Opposed? Motion passes and it's continued.

(#0830) Wendy Ervin: I'm going to be out of town from the 3rd til the 17th so that means that I'm going to be missing the next meeting.

(#0838) Bill Dewey: I need to be excused from the 9th as well.

(#0878) Steve Clayton: We need a chairman for this year. Should we reappoint Bill?

Motion made, seconded and passed to re-elect Bill Dewey as Chair.

Meeting adjourned.