

MASON COUNTY PLANNING ADVISORY COMMISSION

Minutes
January 27, 2003

(Note audio tape (#4) dated January 27, 2003
counter (#) for exact details of discussion)

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

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1. CALL TO ORDER

The meeting was called to order by Vice-Chair Steve Clayton at 6:00 p.m.

2. ROLL CALL

Members Present: Diane Edgin, Steve Clayton, Marilyn Johnston, Bob Sund, Mark Drain, Theresa Kirkpatrick. Bill Dewey was excused.
Staff Present: Bob Fink, Darren Nienaber, Allan Borden.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0035) Steve Clayton: This is a continuance of the public hearing from January 22, 2003 on the Comprehensive Plan and Development Regulations. We have a short agenda tonight but we need to add to it the LAMIRD's from last weeks agenda. Mr. Diehl had some comments on January 17th that we had not addressed that were from a previous meeting prior to January 17th. Those were regarding site setbacks from buffers and some wording regarding amendments and invalidity findings. Anything else we need to add to the agenda? We have some people from the Mason County Conservation District here so we can work with them with the ag exemption. We need to review the rewording that we had initially recommended last week. We got an e-mail today from Mr. Diehl and a letter of comment from Mr. Ken VanBuskirk on that item. Then we could go to rezone criteria to review the corrected text as proposed by the Department of Community Development. We can finish up on the rural development and then go to the two additional items that weren't listed but I mentioned earlier. Do we have a staff presentation?

(#0110) Allan Borden: I wanted to make sure that you acknowledged the one page memo regarding the three items that Community Development wants to bring to your attention. The order doesn't really matter that much. I may speak later on some of the other topics but on this one, the FWHCA ag exemption topic, I'd like to bring your attention to the handout that's titled "Recommendations to the BOCC" dated January 27, 2003. It has the current proposed standard for the Resource Ordinance that has to do with agricultural restrictions. It contains the language that we edited from last weeks meeting. I'll address the other topics later. The county did receive and give you copies of John Diehl's letter and Ken VanBuskirk's letter on this topic.

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(#0166) Steve Clayton: Let's open up the meeting for public comment on this.

(#1074) Jim Sims: My name is Jim Sims and I'm the Chair of the MCCD. With me tonight is John Bolender, who is one of the supervisors with the district. We are somewhat concerned with the proposed ordinance from the staff in that the staff chooses in their recommendation to obligate the MCCD without any discussion with the MCCD as to whether the role is appropriate or whether the role can be achieved. The MCCD is not a regulatory body. We advise property owners, we assist property owners where possible. As we read the proposed ordinance, in order to receive an exemption, the property owner would either have to prepare an approved HMP or prepare a farm plan and if the farm plan is prepared then the property owner qualifies for an exemption.

(#0220) Steve Clayton: This was in the section for ongoing activities? Not for new activities?

(#0225) Jim Sims: Right. Our concern is the farm plan is the responsibility of the property owner. It's not the responsibility of the MCCD. The MCCD will assist property owners in preparation of farm plans. We don't approve farm plans; that's not the role of our staff. Certainly it is a reasonable requirement that the property owner either have a farm plan that has been prepared or the HMP that has been prepared and approved. What we want to emphasize tonight is that it's not the role of the MCCD to agree on farm plans; we'll assist property owners in preparing them as our resources are available but we're not a regulatory body. There are many other bodies that also can assist the property owner. There's the Fish and Wildlife service and a variety of others. We would be concerned also with the proposal prepared by Mr. Diehl because that requires the MCCD to approve farm plans. We don't have that authority and it's not our proper role. We are concerned that this was proposed by staff without any discussion with the district.

(#0290) Bob Sund: You may be interested to know that we had quite a lengthy discussion last week on your very concerns about your being a regulatory agency. I think our concerns were that we wanted the farmer to be working with somebody and we talked a great deal about the fact that you would probably not see yourself in that role. We were being sympathetic to your role.

(#0325) Jim Sims: We appreciate that.

(#0333) John Bolender: John Bolender, MCCD. I would just ask if you anticipated an either or option where an HMP or a farm plan could be proposed to meet the requirement how did you anticipate evaluating and approving an HMP?

(#0345) Bob Fink: It would require an application to the county and there would be a fee and there would be a process set up.

(#0350) John Bolender: So you would have a biologist or someone review them?

(#0352) Bob Fink: Yes, a biologist.

(#0354) John Bolender: And would that person be appropriate also for approving a farm plan?

(#0360) Bob Fink: Other than this we have no provision for farm plans or review of farm plans in our regulations. This would be a new introduction.

(#0364) John Bolender: I think the MCCD is supportive of the option and where we are able to and have the resources I think we would be happy to assist landowners in preparing farm plans. The concern that we have is that there may be many more landowners seeking assistance for farm plans than has traditionally been the case. Therefore, we do not have the resources to be able to expand our scope significantly. Therefore, we would be helping craft a plan that would be presented to you for still requiring review.

(#0388) Bob Fink: If I understand correctly, are you saying that if a farm plan were an option for the farmer to pursue either as prepared with the assistance of the MCCD or with the assistance of some other professional that would not be objectionable to the district? You would simply be assisting the farmer as opposed to hiring a professional to do the same thing.

(#0404) John Bolender: That's correct; we would not be in opposition of that.

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(#0406) Jim Sims: I think that if we reached the position where we had more demand than we have resources then we as the supervisors would have to come up with a priority for the staff. We don't know what the demand would be but certainly as you all understand our role is to help folks and that's what we want to do.

(#0425) John Bolender: Farm plans are based on BMP's so what we can help people prepare is a plan based on those practices that may or may not comply with your agricultural regulations. It may be suitable for the agricultural industry but whether or not that plan complies with the intent of the regulations there's no assurance of that. It is helpful to look at a farm plan or an HMP but it may not come from the MCCD. It may come from an outside source if we're fully taxed in our ability to develop farm plans.

(#0454) Diane Edgin: I think the whole crux of getting the MCCD involved in this was a low cost to no cost option for the farmer.

(#0460) John Bolender: Along those lines, Diane, I think it would be appropriate to say a conservation plan on file with Mason County. You need to strike the words Mason County Conservation District. It would be a farm plan submitted to the staff for consideration that is not drafted by the district or is not even assisted. The intent of the option is good but I think you need to strike out the word 'agreed upon by the MCCD'.

(#0485) Steve Clayton: Our initial presentation was that we came up with noncompliance issues because of a blanket exemption and so we were looking for a means to give a low cost alternative for existing and ongoing activities.

(#0505) John Bolender: The way it's currently written it would exclude anyone but MCCD from approving the farm plan. I don't think that's your intent and I think it might be misleading to folks to think that this is the only place then can come to get them. Certainly we would like to help and we do that on a case by case basis so where people contact us and we have resources available we will assist. But there may be a demand greater than our capacity at some future point with the regulation being put in place. I think the farm plan option is a good option and would meet the intent of your regulation but I think it's misleading for folks to think that the MCCD is the only source for that.

(#0530) Steve Clayton: Does staff find that amicable to have an approved plan by the county and have the county be the one to do the approval?

(#0545) Bob Fink: If the county approved it then the county would need a process and some kind of standard to apply.

(#0555) Bob Sund: The suggestion that John made was to just strike 'agreed upon by the MCCD'. Would that read alright?

(#0558) Bob Fink: That would be fine for this section but we still need to have an ordinance of what that means. What is a farm plan? On what basis do we approve it? We have that for HMP's. It's prepared by a habitat biologist and it goes through a review process for approval. We could do the same thing for a farm plan but we need specific language that would be proposed and adopted that would actually go through that process.

(#0575) Jim Sims: We can work with staff to provide some of that language that could state the minimums that should be included in an appropriate farm plan. We'll also provide staff with a list of other resources besides MCCD and we can certainly get that accomplished tomorrow or the next day.

(#0586) Steve Clayton: So we could square away the RO language and that would be enough for compliance and then do the definition of what a farm plan is?

(#0592) Bob Fink: It would still be the same thing for existing. Obviously if it was approved by the county obviously no one would have a farm plan at this point in time when the ordinance went into effect. They could come forward with existing farm plans and have them approved and other people who didn't have farm plans could develop them and get those approved. The county has only limited resources and an

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action like this would probably be implemented primarily through enforcement and permitting processes. Enforcement is primarily driven by complaints so where there's an issue that comes up with the management of the land there would be a subsequent investigation and they would find out if they have a farm plan, are operating consistent with that farm plan and if there was no farm plan they would then be encouraged to come into compliance by developing a farm plan and having it approved.

(#0640) Mark Drain: The intent of our wording and inclusion of the MCCD was to work with specific farms and problems to come up with solutions for that farm rather than writing a list of specific regulations to cover every situation in the county.

(#0660) John Bolender: What we could assist staff with is identifying what a suitable farm plan and what is the minimum criteria for it. Then they have a guidelines to look at to determine if what is submitted meets that minimum criteria. That's a standard framework that we work with already. Then each of those are tailored to the specific site as the person develops their plan for that particular farm.

(#0682) Bob Sund: If you just list the criteria who is going to be working with the farmer on a one on one basis to determine that that criteria has been met or not met?

(#0690) John Bolender: If the farmer comes to the MCCD we will assist them in developing a plan that complies with that criteria. If a farmer chooses to develop a farm plan on their own and submit it to the county, the county would have to look at that plan versus the criteria and see if it is consistent with it. We're not going to have the opportunity to engage every farmer likely who comes forward with that need because we don't have the resources to be able to do that. I don't know what the demand is going to be but I suspect it's going to be fairly significant.

(#0720) Diane Edgin: We're talking about agriculture and we're assuming in the sense that people are engaged in a 'for profit' business but what I am more concerned about that is probably even more detrimental is the hobbyist horse keeper because one horse can just absolutely mow down any habitat that you have. This does not address that. But they don't consider themselves farmers and even though horses are classified as agricultural animals even to this day for tax purposes the people themselves don't think of themselves as farmers.

(#0755) Mark Drain: So why wouldn't this plan have some say over someone with a horse in their backyard?

(#0760) Diane Edgin: I think it just almost has to say that.

(#0762) Mark Drain: I don't know what they defined agriculture as but I thought we had decided that a one horse ownership was included in that.

(#0768) Jim Sims: I grew up on a small farm in South Tacoma and we had chickens and raised a couple of hogs each year along with two dairy cows and four kids on the family farm and that's how my parents survived. My reaction is that the three acres that I grew up on with that kind of activity probably should be included. When you've got 20 chickens and raise a hog or a calf every year or dairy cows; sure, it's for family but the damage to the environment can be just as severe as a small dairy farm with 20 cows on 20 acres.

(#0800) Steve Clayton: Is this the sort of clientele you normally deal with?

(#0810) Jim Sims: Kristin is here to comment on that.

(#0815) Kristin (MCCD): We range; we have people who have hundreds of acres and we have people that have one acre. My experience has been that the majority of the people that we work with are people that you're talking about. Hobby farmers who have a couple of horses, chickens, and a couple of cows. We do work with people who have several hundred head of cattle but I've done a farm plan for someone who has one horse. One of the things that determine most of the farm plans is the soils type that the land is on.

(#0862) Bob Sund: I thought that we were trying to make some allowances for the farms that were listed as long term ag area. It seemed like we were trying to help that situation out a little bit. There was a feeling like

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there wasn't any land that was particularly financially viable as a long term ag in Mason County.

(#0888) Jim Sims: There are no more dairy farms in Mason County.

(#0892) Bob Sund: In this ordinance it deals with the ag activities in the FWHCA's and it's buffers. The ag that takes place in that. I guess we're trying to help that long term ag situation out. We've forced them into a box and we're trying to help them out a little bit by saying that maybe there are certain activities that can take place in that buffer. That's different that the hobby guy. We want them to be able to work with somebody that will help them to develop a plan in that area.

(#0950) Bob Fink: The RO defines agricultural practices as any activity, whether for commercial or recreational use, directly pertaining to the production of food, fiber or livestock including but not limited to cultivation, harvest, grazing, animal waste storage and disposal, fertilization, suppression or prevention of diseases or insects. Livestock is defined generally as domestic animals as in cows or horses raised for home or for profit. So the answer to the question which is if a person has a horse that they're keeping or raising then that would be considered an agricultural activity. So they would be a farm in the sense that they could develop a farm plan to ensure that the horses activities were controlled properly.

(#0984) Jim Sims: We're here to protect the environment. We're conservationists, not preservationists. We appreciate the opportunity to work with staff and with you with issues in the future.

(#1012) John Diehl: First with respect to Diane's concern; I don't think it would hurt to spell out all agricultural activities. Second, an issue that I don't have a firm issue on but I think it's important to have discussion is the fact that we're driven to turning to the MCCD by the desire to make life as simple as possible for farmers and yet to protect the resources that we're concerned with. What we're now talking about is going to complicate the lives of farmers a little more than we had anticipated last week. Maybe that's necessary but I just wanted to make it clear because previously the thing that drove us toward saying you could have a plan accepted by the MCCD is that then there wouldn't really be any cost to the farmer except maybe the cost of making a copy of his farm plan and submitting it to the county. The county would have the enforcement responsibilities but the farmer working with the MCCD would produce the plan. Now because the MCCD is saying that it doesn't really want to assume any kind of regulatory function it's saying that the county needs to approve these plans and that's alright; I'm not opposed to that but it does mean that the county is probably going to want to charge for every plan that it reviews. That's the nature of the county's activities and that means that even the 4-H project or the guy that's got a single horse is going to be paying some fee to the county in order to get this plan approved. Is that really what you want to do? We do need to have somebody accept some regulatory responsibility. I think that goes without saying. If the MCCD is not willing to say that it is going to review these plans to make sure that they satisfy needs that pertain to water quality and not simply serve as an aid and assistant to the farmer. If that role of the regulatory function must fall upon the county that means that all farm operations and all ag operations should be applying to the county for permits. I want to make it clear that's the direction you're going.

(#1172) Mark Drain: As a person with ag lands I understand that and I think the foot we started out on was to develop some kind of respect for these buffers but at the same time be able to keep agriculture viable in Mason County. I do think that we swallowed an unknown quantity at our last meeting when we accepted farm plans not knowing what kind of buffers, setbacks or what all that would entail. I just thought that was a better alternative than us sitting around here and saying everybody stays 150 feet back or whatever.

(#1210) John Diehl: It could be that the county in it's wisdom, even if they do charge for someone with a single horse, will have a graduated fee schedule.

(#1228) Bob Fink: John, what did you think about the letter from Ken VanBuskirk who suggests the three criteria that were very similar to what you had originally proposed?

(#1235) John Diehl: I was willing to go that direction and I think the reason for those three criteria there was that somebody gave him a copy of my original proposal. I didn't speak with him personally. I did comment because I think he had a slight misunderstanding. The final sentence in his letter he talks about singling out agriculture. He didn't realize that the problem we're facing at the moment is that agriculture was singled out originally and given an exemption. The GMHB said you can't have a blanket exemption and so our problem

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now is we're not going to give them a blanket exemption but we want to treat them more fairly. I'm pleased to see Ken endorse my ideas. If you decided to revert to that original suggestion I would not be unhappy. It's a somewhat simplified program but it also is a little more certain program. It would have had the virtue of minimizing the fees that had to be paid. I did want to comment on a couple of other things. I had spoken with Bill Dewey after his initial concern that aquaculture was engaged in an agricultural activity, after all, and did we need to have some regulation pertaining to aquaculture. Ideally in the long run there should be BMP's adopted by aquaculture. There is some question about what those were and how to implement them. After talking with him outside the meeting it seemed as though we had reached a reasonable proposal. The proposal that's before you tonight in the form of my memo is another exception. The general concept being that if you don't have an HMP then either you have to have some kind of approved farm plan or you have a permit from a state agency. That seems to apply pretty widely to the people involved in the shellfish industry. I think that would get them off the hook. I did notice in the ordinance adopted by the county we have a special provision for activities that might impair eelgrass or kelp beds so that's the reference in the language I'm suggesting to Section 17.01.110G.2.g. The other part of my memo was to try to sort this stuff out a little bit better. The way we left it at the last meeting all of the language was in a category under G where these were activities that required a Mason Environmental Permit and an HMP. I think, after talking with Bob this afternoon, it might make a little more sense to parse it not necessarily retaining all the language but with a provision for a general exemption with certain qualifications but then a referral back to that section in G. I'm not trying to do anything fancy here; I'm trying to make life a little easier here for people having to abide by these regulations. I hope it meets with your approval.

(#1515) Warren Dawes: A lot of these farm plans are being driven by a third party in the form of the State. I'm referring to the TMDL action that's ongoing now in the Skokomish Valley. I've learned also that DOE is recommending a TMDL program for Oakland Bay/Hammersley Inlet in the near future. Total Maximum Daily Load. The MCCD has been working hard with the farmers in the Skokomish Valley and with good success in getting these farm plan written.

(#1566) John Diehl: If you decide to modify the language to provide that it's just farm plans that are subject to approval by the county I do think that it would be appropriate to assure that the county doesn't just rubber stamp anything that comes in and to include some language to indicate some plans to include the following: keeping livestock out of the streams, keeping manure from running off into the streams, and similar provisions. It occurs to me that in the context of this discussion we all know what we're talking about but when it goes to the GMHB simply having it subject to county approval is no assurance that it's approved relative to the criteria appropriate to the GMA.

(#1635) Bob Sund: Some kind of a statement that said the accepted plan would include your three criteria?

(#1642) John Diehl: At least that. I think Allan had some references to these kinds of things and that's the kind of thing I'm speaking of.

(#1670) John Bolender: When the MCCD works with farmers to develop farm plans they use standards and specifications that are actually published by the National Resource Conservation Service. Those are the criteria that we use in helping farmers identify what needs to be in the farm plan for that specific site. If you wanted to use the term farm plans that conform to or met the specifications and standards as published by the NRCS that gives you the measurement tool. That doesn't require the MCCD to be involved necessarily on the landowners behalf. That is information that anyone can go out and get and look at and develop their farm plan for their site in the event the MCCD does not have staff resources available to help.

(#1705) Kristin (MCCD): You would have to designate which of those practices you were talking about. Basically how it works is each BMP has a specification and standard so you would have to identify the specific practices that you wanted to include.

(#1725) John Bolender: So as they apply to fencing; as they apply to grazing; as they apply to tilling, whatever the issues are that you're focused on.

(#1732) John Diehl: Are there any of them you not employ in devising your farm plans?

(#1740) Kristin(MCCD): It depends completely on the site and the landowner. It depends on what their goals are and the uses of their land and what's being done there.

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(#1744) John Diehl: So you don't yourself always adhere to the standards set by the NRCS?

(#1748) Kristin(MCCD): Yes, we do. It just depends on which one we're using. We don't use every BMP in every farm plan. Sometimes they wouldn't apply.

(#1788) Steve Clayton: So we do have a source for standards for BMP's. That's what we were looking for before.

(#1796) Theresa Kirkpatrick: And Mr. Sims did offer to help the county draft the language.

(#1830) Darren Nienaber: Obviously this is an issue we'd like to deal with tonight. Maybe I can grab them so we're not distracting you and try to draft up some wording. It might only be ten words by using Diehl's language and inserting those standards.

(#1850) Kristin(MCCD): Our charge and our mission is that we are there to assist the landowner. We do not want to regulate. We're not responsible for telling EPA or DOE about violations; we are simply there to help landowners. We like to do that in a way that's positive.

(#1910) Steve Clayton: We will table this and see if Darren can get some new language written up. Rezone criteria. Allan gave us a memo today dated January 27, 2003. Did you want to speak to that, Allan?

(#1985) Allan Borden: Basically in the December 16th PAC meeting John Diehl had proposed language that addressed the rezone standards. Although in the meeting we went through most of the criteria much of the discussion had to do with rephrasing the former version which was not written in a style for the county to verify whether an applicant was meeting a certain standard. John Diehl rewrote those so that it asked the question and that way the county could validate whether it meets that standard. A lot of time was spent on that but when we got down to the paragraph on Rezone Characteristics the language that was proposed by Mr. Diehl didn't include a sentence and a half that the county feels is important. It was never discussed at the January 16th or at the January 6th meetings. If you go to my memo on page 3 under B it's the unitalicized sentences that say 'in rural activity centers and hamlets, any rural land use rezone may be appropriate provided that the criteria is satisfied. Outside of rural activity centers and hamlets' ... then it goes on to say 'not to exceed five per calendar year'. The way it was written before this proposed language 'rezones in rural activity centers and hamlets' areas that we know are collections of properties; areas of property that have a mixed amount of land use both residential, industrial and commercial. Since there is a logical outer boundary drawn around those areas it's not anticipated that a change in zoning would cause any significant impact. It may be an impact to the adjacent properties but that's the chief reason the text has gone along until this January 22nd version including the rural activity centers and hamlets as not counting in the maximum number of rezones per calendar year. That text was in the previous version; it was just overlooked and so we want to make sure that it's carried through. The order by the GMHB had no problem with rural commercial development inside of those rural activity centers and hamlets.

(#2180) John Diehl: This change has the effect of making the 50 acre per year allocation a little more lenient. In that respect I'm not enthusiastic about it but I think it probably fits within the parameters of your earlier discussion and after talking with Warren Dawes I think it's something that we can accept as a reasonable compromise. The important thing is to keep down the total acreage of the sprawl that occurs in the rural areas.

(#2252) Diane Edgin: I was reading over this and everything we had discussed last week is pretty much in here but there's one thing we slipped up on. On page 4 under Special Provisions. We say RV but I think it should say RV/Owner/Resident of that RV. I think if we don't put it in there that's room for maneuvering. If we're going to grandfather the RV or the person then as soon as that person vacates, be it the person in the RV or the RV, that's when you should start the 120 days. That's our intent.

(#2380) Bob Fink: So, Diane, if I understand you correctly, what you'd like to do is in that sentence which talks about park management maintaining daily rental records identifying each RV you would have it say RV, Owner, and or Resident so that you could address the issue of the tenant as well as the RV being present.

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(#2400) Diane Edgin: Yes, that's correct. A lot of times they may leave the unit there and family members use it but if our intent is that we don't want a permanent resident then we need to figure out the language to make it that way. Are we going to make the RV the resident or are we going to make the ownership the resident? I think the intent is that we want to see the unit move after 120 days.

(#2436) Steve Clayton: It's worded right now that they would have to move the vehicle.

(#2438) Marilyn Johnston: Yes, and I thought that was our intent.

(#2450) Mark Drain: I don't think you'll get your finger on all of it. The renters name will change but it may still be the same family. You can only fill so many loopholes.

(#2465) Bob Sund: What are we trying to accomplish?

(#2468) Diane Edgin: We want to make sure the unit itself moves after 120 days.

(#2470) Bob Sund: Why do you want to do that? Why are you objecting that somebody lives there more than 120 days?

(#2475) Diane Edgin: If they're there right now we're letting them stay there. Let's say down the road that several years from now they want to do something different so they leave the unit there and they sublease it to somebody else. Is that our intent? I don't think so.

(#2492) Theresa Kirkpatrick: One benefit of having them move is that frequently if they're in an RV living as a full time permanent residence it can create issues of waste, septic; human waste as well as garbage. Also it's been my experience some of these long term RV's in a park pretty soon they're adding on a little porch and then pretty soon they have a roof over the porch, etc.

(#2515) Bob Sund: That should be up to the RV park. We're getting into running the park.

(#2525) Diane Edgin: We're talking about Rural Tourist Campground. If they're there year round then it's not tourist.

(#2528) Bob Sund: What happens if someone comes in as a manager and lives in his RV and manages the park? Are we going to require him to leave after four months?

(#2542) Steve Clayton: It was addressed last month and it says here that it's for rental purposes. So the manager, we determined, would not be in there for rental purposes. Bob, could you explain where this came from?

(#2560) Bob Fink: This is a modification of a provision the county adopted earlier last year. The provision is intended to address the establishment of an RV park as a residential community so that the residential density that's appropriate in the rural area wouldn't be violated. There are some RV's that are classed as RV's, park models that have all the amenities that a small single wide modular housing unit would have. If someone were to establish an RV park with these units then they could be used as residential sites and not as tourist sites. We saw that as a violation of the GMA. It would be essentially creating a residential multi family development that purports to be a tourist activity.

(#2700) Bob Sund: I can live with that but I just want you be aware of the fact that there is an increasing population that has pretty nice RV's and they spend six months up here and six months in Arizona or Southern California. That is their home.

(#2798) Bob Fink: They could easily drive off and leave for a day and come back. It's a 120 consecutive days. Or 180 days within any 360 day period. Since they have a mobile RV they can drive it off for a time and bring it back to the same park and then stay for the remainder of the 180 days so they would be here six months and somewhere else six months.

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(#1825) Steve Clayton: Your proposal is to change it from identifying each RV to identifying each RV, the owner and the tenant.

(#2836) Diane Edgin: Right, for the 120 days. I'll make that a motion.

(#2842) Marilyn Johnston: I second the motion.

(#2844) Steve Clayton: We have a motion and a second. Any further discussion?

(#2846) Allan Borden: I had a question. Do we want to use the same term 'tenant' or 'tenant and resident'?

(#2862) Diane Edgin: I think the word 'occupant' would work.

(#2940) Bob Sund: I was in the RV business and I don't want to go knocking on doors and see who's living in that RV on a daily basis.

(#2950) Diane Edgin: You're right; daily would not work. But for the ...

(#2960) Bob Sund: If the rent is paid for that unit and the people are not causing any problem in the park as an owner of the park ...

(#2975) Diane Edgin: Then let's take daily out.

(#3000) John Diehl: I think maybe as a landlord myself I know what Mr. Sund is referring to. Maybe it would serve your concerns if it read 'the RV park management shall maintain rental records identifying each guest and shall present them to the county upon written request'. In other words, you have to keep track of who your registered guests are and it's those people that we're asking not to be permanent fixtures. We can't very well be sure that there won't be some games being played here and there but at least the people responsible for having the vehicle there are the people that are paying the tab and are the registered guests.

(#3105) Diane Edgin: I think that would work a lot better. The purpose is the RV has got to move and the person who registered it is going to ultimately be the one responsible for doing that.

(#3130) Steve Clayton: You don't have to go out and knock on their door every day. It just says to maintain daily records and that just means that if there was a break in on December 12th you need to be able to say who was in your park in that stall on that day.

(#3210) Diane Edgin: I will restate my motion. 'The RV park management shall maintain rental records identifying each RV and registered tenants and shall present them to the county upon request'.

(#3250) Theresa Kirkpatrick: I second that motion.

(#3255) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. Now regarding Allan's wording under B in Rezone Characteristics do I hear a motion to adjust that language?

(#3294) Diane Edgin: I make a motion that we accept that language.

(#3296) Marilyn Johnston: I second that motion.

(#3298) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed.

(#3315) Darren Nienaber: Darren Nienaber with the Prosecutor's Office. So for Diehl's e-mail dated January 27, 2003 the wording that we came up with for 17.01.110 f.3. - 'Activities which do not require a Mason Environmental Permit. 'All new or existing agricultural activities within a FWHCA or its buffer complying with a current conservation plan that is consistent with the standards and specifications of the NRCS and submitted to and approved by the Administrator or operating in conformity with a permit of a state agency except as required by Subsection G.2.g below'.

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(#0015) Mark Drain: Is calling it a conservation plan more appropriate than calling it a farm plan?

(#0020) Kristin (MCCD): Conservation plan is what we typically use now.

(#0025) Steve Clayton: And Mr. Diehl gave his approval on this?

(#0028) John Diehl: I think there's a second half to that.

(#0030) Darren Nienaber: Yes. Under 17.01.110.G.1.j it says 'A Mason Environmental Permit and an HMP shall be required for these activities. All new or existing agricultural activities within a FWHCA or its buffer, unless exempted as provided in Subsection 17.01.110.F.3'.

(#0095) John Diehl: Would you entertain as a friendly amendment that instead of 'is consistent with' use 'conforms to'?

(#0102) Darren Nienaber: That's fine with me.

(#0118) Steve Clayton: Any other public testimony on this? Do I hear a motion?

(#0120) Theresa Kirkpatrick: I move that we approve the language read by Mr. Nienaber and helped crafted by MCCD. Those would be 17.01.110.F3 as well as .G.2.j

(#0132) Marilyn Johnston: I second the motion.

(#0134) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. Rural Development Standards. Let's go back to where we left off. Last week we were working on Mr. Diehl's adjustments to them. As far as what we've approved; on page 1 on the RC1's. It shows we down graded the size. Did we intend to do that?

(#0175) Bob Sund: We stayed with staff recommendations on the size.

(#0200) Bob Fink: As I recall you left RC1, RC2, and RC3 the same as the existing language.

(#0220) Bob Sund: I make a motion to change the building size back to 4,500 sq ft.

(#0222) Diane Edgin: I second the motion.

(#0224) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. On to RC4's on page 5. It's listed here as being struck out. If I recall correctly, staff recommended to start a new land use designation, RC4, and incorporate it. That's why this entire section is italicized. Mr. Diehl in his recommendations recommended that we not have an RC4 at all so that's why this is italicized and struck. Staff recommends incorporating this entire unit and Mr. Diehl says we don't want it.

(#0275) John Diehl: On this I approach you in a spirit of compromise as I have on just about everything else this evening. There was criticism that was levied against my comment that it really didn't seem necessary and I stand by that. However, I believe it can be done in other ways as the staff memo on January 14th on page 5 indicates. Referring to me it says 'he didn't like that the purpose language of the RC4 zoning district referred to assigning of this district in isolated areas but for future rezones its use is limited to RAC's and hamlets'. I'm not convinced that we need RC4 zoning but if the staff feels that there are situations that they are needed ... As I remember, the primary purpose of it is to have the very low floor area ratio and if the staff sees some value in that I'm not necessarily opposed to having the zoning and I accept this as a suggestion as the way to go. Just improve the language relating to the applicability of the RC4 zoning.

(#0332) Darren Nienaber: What the Planning Department had proposed was we'll take a look at the big lots that are isolated and we'll apply that designation but because it had a broad range of uses the Planning Department had decided to restrict that from not occurring outside of RAC's and hamlets. It has the advantage of limiting development on large lots.

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(#0385) John Diehl: I do think that might help to primarily limit it to RAC's and hamlets. I would also recommend that if you did decide to retain the general concept of the RC4 that as you agreed on the other rural zones that you distinguish between those uses that are automatically accepted within such zoning and those uses that would be subject to a special use permit. Even though the total impermeable area may be small the potential for development including retail development that was sprawling is substantial given the size of the lot.

(#0435) Steve Clayton: Let's just go down the list now. Convenience/general store, gas retail ...

(#0444) John Diehl: I want to compare it with RC3 and I think the convenience/general store could be accepted as a use that you don't need a special use permit for. Similarly for nursery, or laundry ...

(#0460) Steve Clayton: Looking at this do we have any different uses between RC3 and RC4?

(#0464) Bob Fink: I think you'll find that the RC4 permitted uses are the same as RC3. If you wanted to look at the purpose language; one thing you could do is say that the RC4 the purpose is for land uses on properties that were commercial as of 1990 and that this is not intended to be a zoning used for areas that were not developed as of 1990. This was developed to address four or five particular cases where there were small developments on fairly large lots. This was to limit the development on those sites. It was not intended to be applied to new sites and there's no particular advantage to applying it. It does provide an alternative because it does have a low floor area ratio. You might want to apply it to a larger lot that was applying for a rezone for commercial use.

(#0515) John Diehl: If you use the language that Bob has suggested as an amendment to the purpose language for RC4 I'd go for that and suggest that otherwise it would read as in RC3 with the exception of the one thing that originally distinguished RC3 and RC4 namely the floor area ratio.

(#0535) Steve Clayton: So your recommendation is not to limit it to 1990 at this time. We'll just make it as a new zoning designation?

(#0540) Bob Fink: The original intent of creating the designation was to apply it to sites existing as of 1990.

(#0546) John Diehl: So it would be limited to 1990 commercial development.

(#0552) Bob Fink: I think it would be fine to limit it or to provide an alternative with a higher floor area ratio.

(#0565) Darren Nienaber: All things being equal it's probably viewed from a planning standpoint is providing a little more flexibility.

(#0570) John Diehl: One thing we're doing that wasn't a part of the original proposal is giving a lot more review for certain activities than what was originally conceived of through the special use permit process. That can include a staff recommendation to have a lower floor to area ratio than would be otherwise prescribed in an RC3. In other words, you have someone who wants to put in a gas station but they're in a residential neighborhood. You probably don't want to allow it at all but if you do allow it you might want to allow it only if you had really good floor to area ratio and that's the kind of situation a special use permit provisions are designed to call into play.

(#0598) Bob Fink: I was thinking that it might be an alternative to RC3 where someone wanting to do an activity like a an RC3 might propose that but instead be granted a RC4 because it was a larger lot.

(#0605) John Diehl: I'm not at this point arguing that you shouldn't have the RC4 and I'm suggesting that it read just like the RC3 except with the amendments you suggested to the purpose language and the change in the floor to area ratio that was originally proposed.

(#0615) Steve Clayton: So we're intending to limit this to RAC's and hamlets?

(#0620) John Diehl: Or to existing development. Is there any RC4 that you've zoned as existing as of 1990?

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(#0630) Bob Fink: It all is. I think there's only four or five places and I think they're all 1990 commercial activities.

(#0632) John Diehl: Are they all in hamlets or RAC's?

(#0634) Bob Fink: They're all outside of RAC's.

(#0636) John Diehl: So you would limit it to RAC's, hamlets, or existing as of 1990. Would that work?

(#0638) Bob Fink: Yes, that would work.

(#0640) John Diehl: Again, subject to the provisions that we're talking about for special use permits?

(#0644) PAC: Yes.

(#0646) Steve Clayton: With the uses; lot requirements, building regulations, signs, off-street parking, special provisions that are all applied in RC3 we will apply those to RC4 with the exception of the floor area ratio.

(#0655) John Diehl: Yes, as was in your original proposal.

(#0660) Diane Edgin: What was the purpose language?

(#0662) Bob Fink: It would read something like this: 'This district shall be used only with RAC's, hamlets, or for properties that were commercial in 1990'.

(#0690) Steve Clayton: Any other comments on the RC4? Do we have a motion?

(#0692) Bob Sund: I have a question. I want to get back to the RV thing again and it would apply to the RC3. Darren, you might help me out here. Under the special provisions where it says 'RV parks existing at or reviewed after the date of DR's adoption will comply with the existing standards of the Mobile Home and RV parks ordinance'. The current Mobile Home and RV park ordinance was done in the early 90's, right?

(#0742) Allan Borden: Yes, in 1991.

(#0744) Bob Sund: At that time there were existing parks in 1991 that were excluded or grandfathered according to that ordinance. So if we're saying here that RV parks existing at the date of these DR's will comply with existing Mobile Homes and RV parks ordinance. What about those parks that were grandfathered in the 1991 ordinance?

(#0772) Darren Nienaber: My reading of it is that they would still be grandfathered.

(#0812) John Diehl: Couldn't we eliminate your concern here by simply deleting some of the language to just read 'RV parks existing at or reviewed after the date of DR's adoption shall comply with the following', etc. In other words, any other ordinance applies; we don't need to refer to the other ordinance and we can clean up this concern about that we're asking these people who are already operating parks ...

(#0860) Bob Fink: If I understand your language, this could be simply stated under Special Provisions 'RV parks shall comply with the following standards' and then just go on to A and B.

(#0872) John Diehl: I think that's fine.

(#0878) Steve Clayton: Do you follow that, Bob?

(#0880) Bob Sund: No.

(#0882) John Diehl: Let me try to restate your concern. I thought you were worried that the various standards that were only applicable to the newer RV parks, those after 1991, would somehow, by this draft language, apply to the grandfathered parks as well. To avoid any confusion we can simply delete the

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reference to those standards and all we're really saying is new or old parks, all of them, will have to comply with A and B. It doesn't have anything to do with the widths or the spaces or any of that stuff that the other ordinance refers to.

(#0925) Bob Sund: Alright.

(#0955) Steve Clayton: So the proposal as I understand on page 4 is to leave in the word RV parks, delete the rest of that line, the rest of the next line, the rest of the next line and then continue on with 'shall comply with the following additional standards'. So that would clean it up for you, Bob?

(#0982) Bob Sund: That would work. I make a motion to recommend that language.

(#0984) Theresa Kirkpatrick: I second the motion.

(#0986) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. We had a proposal that we worked through pretty good with the RC4. Do we have a motion on that?

(#1028) Bob Sund: I make a motion that we recommend to accept RC4 with Bob's revised purpose statement and the floor area ratio.

(#1030) Marilyn Johnston: I second the motion.

(#1032) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. On to Rural Tourist. Once again we have Mr. Diehl's recommendations to change from basic uses to uses with special use permits. We have some setback issues. We have some size and height differences. If we go along the format as previously we go along the lines regarding the special use permits. Setbacks, and take the staff's recommendation of 5,000 sq ft on size. We change the height recommendation to two stories not to exceed 35 feet. Allan, in RC3 you need to take a word out there on the height. It says 'two floors with not to exceed 35 feet'; you need to take out the word 'with'.

(#1100) Diane Edgin: I'm concerned that 1,000 sq ft as a maximum building size for a RT, even a small RV park, you're going to eat that up quickly. You've got to stop and think about all the things that you need to do to have that business and with an RV park or campground they usually have some sort of rec center with showers or whatever have you. That needs to be bigger; maybe 1,500 sq ft.

(#1165) John Diehl: I think the overall concern here is that we not find people who are trying to skirt the intent of the zoning ordinance by having what is essentially a retail operation and calling it a RT use. Maybe what we could do to recognize that it's not the size of the building we're concerned with but the size of the retailing operation itself. Maybe the thing that's germane here is if it's truly RT the fraction of the structure that should be devoted to gas and retail uses should not exceed 1,000 sq ft; something like that. The building might exceed 1,000 sq ft but we think that a true RT use doesn't need more than 1,000 sq ft for gas and the retail part of the operation.

(#1280) Bob Sund: A person who was going to do this could come to the county and say what they were doing and ask for 1,250 sq ft. Is that permissible? Could they get a variance?

(#1296) Darren Nienaber: That alone wouldn't get them a variance.

(#1300) Bob Fink: That might be the kind of provision you might get through a special use permit or a special consideration.

(#1305) Marilyn Johnston: You have to keep in mind that this is Rural Tourist.

(#1312) Darren Nienaber: We envision this is an accessory to some dominate other use so it's not a retail use in and of itself.

(#1315) John Diehl: Keep in mind that you've got all these other RC1, RC2 and RC3 categories that will allow larger retail and gas uses if they meet the other criteria.

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(#1325) Diane Edgin: One thousand sq ft for what we're talking about is pretty good. It's just where they run into the recreation use and laundry and showers, etc. that's where the square footage comes in.

(#1352) Bob Sund: What would happen if they build it all under one roof?

(#1357) John Diehl: That's what I was just suggesting as an amendment. I'm not sure what language is appropriate but the concept would be to say that it needs to be limited to 1,000 sq ft of floor area within the building or something like that.

(#1400) Bob Fink: I just wanted to suggest, not that I'm recommending Mr. Diehl's amendment, but if I understand the intent you could have a provision in here saying 'retail, gas and contained self-storage shall not exceed 1,000 sq ft per use'. Or 'space used by retail, gas, or self-storage contained space shall not exceed 1,000 sq ft'.

(#1436) Diane Edgin: I'm not sure self-storage should be in there.

(#1438) Bob Fink: A lot of recreational areas have storage bins and places for people to leave their boats, their motorcycles, to store some of their goods while they go off. We had testimony that this was something that people who operate storage units out in the rural area that a lot of the storage they provide is for tourist people or seasonal people.

(#1465) Diane Edgin: I'm thinking that unless they're self financing 1,000 sq ft is not even close; you'd almost have to double or triple it to make it viable.

(#1480) John Diehl: I don't think that it's intended that RT be used in any situation where the primary function is either self-storage or retail and gas. These would only be axillary or accessory units and the question is to avoid abuse of that zoning district if you do allow some of this activity how to keep a cap on it.

(#1525) Warren Dawes: The whole purpose of making this change is that we were concerned about getting the cart before the horse; getting the accessory uses in as the first thing in.

(#1575) Steve Clayton: If we left self-storage as a special use permit and an accessory use then we're getting reasonable review of it without putting a sq ft on it.

(#1598) Bob Sund: So you're thinking we could just take out that sentence about the sq ft?

(#1605) John Diehl: I just exchanged a look with Warren and I think we're not too enthusiastic about that because at least the people that are doing the review without any real standards... I would submit that if ever there came forward a proposal that struck everyone so good that it needed to be accepted even though it didn't fit the ordinance it's always possible to change the ordinance but in the meantime it's certainly helpful to the HE, to you folks, to have some relatively specific standards to apply. Legitimate RT uses are not likely to need more than this amount and if they ever did you could confront that at that point.

(#1700) Steve Clayton: So we'll keep the self-storage into the UGA's, RAC's and hamlets and out of the RT application. So our thoughts for adjustments to that particular paragraph is to change the retail and gas to 1,000 sq ft of usage within a building rather than building size.

(#1735) PAC: Yes.

(#1735) Steve Clayton: Going down under lot requirement setbacks we've taken Mr. Diehl's recommendations previously and I think under RT we'd want it small. Floor area ratio is appropriate. Staff recommendation of 5,000 sq ft. Any problem with that, Mr. Diehl?

(#1755) John Diehl: I'm a little nervous about that but I know the direction you're taking on that and so while I would still prefer 3,000 sq ft alternatively I would like 3,000 with provisions for a special use permit for those uses otherwise permitted that would exceed 3,000. You kind of know my take on it; I'd like to keep rural developments small in scale.

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(#1795) Steve Clayton: Height change the same as we've done for the others? Two floors not to exceed 35 feet.

(#1798) PAC: Yes.

(#1800) Steve Clayton: Parking is okay. Special provisions.

(#1806) Theresa Kirkpatrick: One thing I would just like to say on the record, to my knowledge in reviewing all this material this particular ordinance is the only place that signage is addressed at all that I've seen and I think that's something very important that this commission should revisit at a later time to address signage.

(#1820) Steve Clayton: We included it in RC1, RC2 and RC3 that we did last week.

(#1820) Theresa Kirkpatrick: That's wonderful. Sorry, I missed that.

(#1848) Steve Clayton: Under Special Provisions we had a new item there that justified the RT and the paragraphs on the last page we would implement the same as we've done in RC3 and RC4 for mobile home parks. Could we have a motion?

(#1862) Diane Edgin: I make a motion that we accept it with the changes that have been noted.

(#1878) Bob Sund: I second the motion.

(#1880) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed.

Break in meeting.

(#2420) Steve Clayton: We're onto Rural Tourist Campground. This is a new designation by the county. Allan, could you brief us on this?

(#2475) Allan Borden: It's mainly oriented to the large ...

(#2480) Darren Nienaber: It's the floor area ratio; that's the difference. It's spread out. So you've got smaller ratio of buildings to land area which we thought was more appropriate to a campground or golf course.

(#2490) Steve Clayton: The 1:5 is the same as RT.

(#2500) John Diehl: My question is why would you want RTC on top of RT?

(#2508) Darren Nienaber: I thought the floor area ration was 1:30.

(#2510) Bob Fink: I think it's the restriction of uses, too. It's not like the RC3 or RC4. If you look at the RTC it's restricted in other ways. For instance, it doesn't have retail, it doesn't have marina sales ...

(#2538) Darren Nienaber: The PAC is saying why didn't you just include that in the RT? I thought the floor area ratio was different.

(#2575) Bob Fink: I don't remember the floor area ratio but the uses were limited to lodging facilities, including an RV park, campgrounds, golf courses, retreat centers and outdoor recreation. So it doesn't have the retail, or gas, or self-storage, or restaurant or the marinas.

(#2620) Mark Drain: So why couldn't those primary uses also be included in the RT?

(#2625) Darren Nienaber: If you have a campground it's not really appropriate to say you can put in a restaurant or if you have a golf course ...

(#2658) John Diehl: I can see one might want to say you can use this parcel for the RTC use but we don't

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want to see you develop it into a somewhat more intensive way that's allowed under RT uses. I don't object to that concept but I would say that if you do it that you also follow the pattern that you have in the other categories and sort out these things in terms of uses permitted with and without the special use permit. The floor area ratio might be a good one to revise somewhat.

(#2712) Bob Fink: You could raise that up to 1:20; I think that would be consistent with the original intent.

(#2728) Diane Edgin: Bob, do we have any large scale campgrounds that are not open to the general public, like camping clubs?

(#2745) Bob Fink: It depends on what you mean by the general public. There are a number of very large campgrounds that are owned by non-profit organizations such as the girl scouts, boy scouts and other private clubs which probably have very limited access to the general public beyond the membership in those clubs.

(#2768) Diane Edgin: The reason I'm bringing this up is that because of the idea that our county is for recreational purposes outside of resource based and these campgrounds are so expensive to put in that most of them that are being put in today are usually on a membership basis. They are pretty much self contained because they offer an awful lot right there for the people. I just want you to be aware that you could be limiting a very large source of income for this county for tourism.

(#2840) John Diehl: I don't see this as limiting any legitimate proposal of that sort, do you?

(#2845) Diane Edgin: What I'm thinking of would that be more of a Master Planned Resort?

(#2852) John Diehl: Not necessarily. I think that's an entirely different category. The campground would be a more primitive sort of thing than I think is envisioned in the ACT where there is a reference to a MPR.

(#2865) Diane Edgin: So you're talking basically campground as versus RV park.

(#2870) John Diehl: That's right.

(#2872) Theresa Kirkpatrick: If that's the case then I would question why under RTC where the permitted uses listed are lodging facilities, RV park, campgrounds golf course, retreat center, etc., if we're trying to define it as primitive in nature I would question the inclusion of those uses.

(#2888) John Diehl: At least they should be only there subject to a special use permit where they got some review.

(#2912) Theresa Kirkpatrick: I'm confused because I missed the last meeting. The document we're reading has everything struck out so am I to understand that everything is still on the table that's in this document?

(#2925) John Diehl: What happened was the staff was good enough to incorporate all of my suggestions from one of my memos where I got very specific in terms of language for possible revisions to the zoning districts. At that time I wasn't convinced that there was any real need for a couple of the categories and this was one of them. That's why it's shown as entirely struck out. As I indicated just now, I think Darren has provided reasonable rationale as to why they should be. I think if you accept this as a zoning district that it would be a good idea to go through and make the changes similar to those that were adopted on the other zoning districts with respect to setbacks, floor area ratio ...

(#2978) Bob Sund: Theresa, last week we had two sets; one from the county and one was basically John's. So last week in the brochure we had a section that was entitled RTC from the county which had the proposals unstruck and then John's was further back in the packet and it was all struck out. On this packet they've omitted the county's proposal.

(#3114) Allan Borden: It's not omitted; it's the third version.

(#3016) Steve Clayton: So as I see it on RTC the purpose statement should stay intact. The uses permitted

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under uses to stay intact. What's listed as Accessory Uses in the crossed off area similar to RT and we'll put that under uses permitted with a special use permit. What we did with RT we also limited the retail and gas to 1,000 sq ft within a building and self-storage 1,000 sq ft building size. Same language as we used in RT. Lot requirements and densities are fine. Front yard setbacks we changed to Mr. Diehl's recommendation of 30 feet. Side and rear setbacks to be 15 feet. Buffer plantings of 10 feet. We're talking about changing the floor area ratio requirements to 1:20. Staff recommends 5,000 sq ft for building size. Mr. Diehl said he would go along with that. Building height will be changed as we've done previously and the signs, off-street parking and special provisions all to match the language that was done in RT. That's a summary; does anybody disagree with that?

(#2125) PAC: No.

(#3127) John Diehl: As you read through it with respect to lot requirements under the side and rear setbacks. Do I understand that you would use the language under RT as amended?

(#2150) Steve Clayton: That's correct.

(#3155) Bob Sund: Under purpose, Bob, there are private travel clubs so what do they call those as a group?

(#3195) Bob Fink: They're an RV park.

(#3200) Steve Clayton: So your view, Bob, is that's called an RV park and we've listed RV parks under uses so that would be an acceptable use.

(#3206) Bob Fink: So they would have an option of applying either under RT or RTC if they had a larger acreage.

(#3212) Steve Clayton: So the purpose statement doesn't define for private facilities under the uses section but we could plumb that in.

(#3222) John Diehl: It's there in the sense that the list includes campgrounds which includes both public and private campgrounds.

(#3238) Bob Sund: I move that we adopt it as amended.

(#3290) Mark Drain: I second the motion.

(#3330) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. Mr. Diehl had two comments which were reiterated in his January 17th letter. Let's clean those up before we go on to LAMIRDS. 'As we previously recommended, there should be no automatic reduction of the buffer based on hypothetical lines drawn between adjoining development and a point 100 feet from the shore.' Do you want to tell us what that's about, Mr. Diehl?

(#3405) John Diehl: The concept is that we would not wish to deny anyone a view of the water by virtue of the restrictions we're imposing on shoreline setbacks. This is all in the context of trying to maintain a 100 foot shoreline setback. The question is what exceptions can there be to that. I submit that if we're really trying to protect the resource we should keep those exceptions as few as possible. Hence, the recommendation that I make is that you not automatically grant any exception because the mere fact that there's development on either side doesn't mean that a persons view is significantly restricted if that guy in between has to build 100 feet back even if the adjoining development on one side of his lot has a house that's closer to the water. I'm suggesting that you can still allow for the reasonable exceptions by providing for an application for those exceptions rather than just automatically granting them based upon an arbitrary averaging thing. *(Mr. Diehl shows example to PAC).*

(#3650) Bob Fink: There are special considerations that might occur on shorelines. There are shorelines that are coves and there are shorelines that points and there's essentially straight shorelines. One way to distinguish them is if it's a curved shoreline then you don't set back in line with the other houses. You basically determine how far back they're set; let's say they're set back 50 feet on either side of you. Then

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you would set back 50 feet along a curved shoreline. *(Bob shows example to PAC)*. When you have a point it's a little bit different. If you tried to common line on a point you'd be off your property landward. That's why you take an average. There's a minimum of 35 feet setback standard. What Mr. Diehl didn't explain is if you have a shoreline where one person is back 150 feet and the other person is back 180 feet you would actually end up building back in line with these even though it is more than 115 feet. You would end up with a buffer that would be 100 feet and then a building setback far enough back to put you in line with the other houses. You actually separate the house from the shoreline even more than the standard buffer provides for so it doesn't only work one way. In no case would you be less than 35 feet from the shoreline.

(#0115) Bob Sund: What happens, Bob, if these lots are substantially wider?

(#0120) Bob Fink: I think the house has to be within 150 feet. So if it's more than 150 feet away then you don't count them.

(#0125) John Diehl: Then you've got to average between whatever existing development there is on one side and an arbitrary setback of 100 feet.

(#0135) Bob Fink: I understood the question differently. If you have development only on one side and on the other side either the house is not there or not within the 150 feet of your lot line you don't consider that house and what you do is ... *(Bob shows example to PAC)*.

(#0355) John Diehl: I believe it's better to say that if you feel that you can't abide by the setback requirements and still preserve your view then come to us and we'll review it for a special permit.

(#0365) John Diehl and Bob Fink exchange examples with PAC.

(#0642) John Diehl: I think if you simply inset the language that 'and subsequent dates' I believe that will handle it. This other is a bigger deal. I really think that if you allow what seems to be an arbitrary averaging without regard to whether the view is really impeded, that's going to be for most future development the operative standard not the nominal 100 feet setback. There are not that many parcels on shorelines where there's no development on either side.

(#0696) Bob Fink: This would apply even larger setbacks.

(#0705) John Diehl: What you're saying is that if you stick with the averaging process then we get the possibility that some further development will be required to set back more than 100 feet.

(#0715) Bob Fink: Right.

(#0717) John Diehl: I agree that that's so but we can waive that because that's the kind of development that will be required by virtue of geotechnical studies to set back that far anyway. All I'm saying is that you need to have a review process where people don't at least set back as much as 100 feet. You could retain the provision that if the average is more than 100 feet then that will prevail. Only apply the review process to any situations where someone wants to develop within the 100 foot buffer and where they can show that their view will be substantially impeded. That should be the standard. Not any kind of averaging.

(#0760) Steve Clayton: Do we want to make a motion or do we want to leave this for ... John does bring up some good points.

(#0770) Marilyn Johnston: I think we should leave it because there's a lot that needs to be further reviewed.

(#0772) Mark Drain: Is it possible for staff to consider some language ... we're talking about new homes being built closer than a home that's already closer than you'd like the standard to be. There aren't going to be that many that show up but when they do when you average between a home that's built and another home on the other side or a distance on the other side and it turns out that the new development can end up closer than the existing home or the preferred line that some kind of review process or something else happens. I think the situations that John is concerned about are rare and maybe with a little bit of extra language those could be addressed some way.

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(#0810) Steve Clayton: Fill some of the loopholes.

(#0812) Mark Drain: I'm not going to push anything because it's a subject I'm unfamiliar with. I'm just amazed that this day that people can build that close to the water.

(#0815) Bob Fink: How close do you think that close is? The minimum that you can build now would be 35 feet under any circumstance; a residence, a non water dependent activity. The minimum standards in the SMP would still apply so those areas where the SMP requires a larger setback would still be true.

(#0850) Steve Clayton: Unless there's input to the contrary how about we move onto the LAMIRD's.

(#0860) Mark Drain: I think we should direct it to staff to see if you can't work something out.

(#0862) John Diehl: I think it might be helpful if we're going to have some further discussion if you had some sense of the commission on this. Do I sense that you think it would be good if we had some provisions for some additional review with respect to averaging that would result in reduction of the minimum distance between the shoreline and new construction? If you think we ought to give some further attention to it you could say that at least. Then we can discuss it further.

(#0884) Darren Nienaber: Or is this something that you feel like it's more complicated and keep it for another day.

(#0900) John Diehl: You probably won't have another chance to bring it up before the BOCC acts on it so if you would like us to try to do something to improve the draft between now and the time it goes before the BOCC it would be good if you said at least that much.

(#0910) Theresa Kirkpatrick: Are the BOCC still scheduled to hear these on February 4th?

(#0914) Bob Fink: Yes, they are. Our hope is that you'll finish your recommendation tonight and tomorrow we'll be able to release a full draft which will give the public a week on have that draft to comment on it. It's possible the BOCC will take action on the 4th but they may decide not to.

(#0928) Theresa Kirkpatrick: So we're still operating under that same self-imposed deadline regardless of the petitioners ...

(#0930) Bob Fink: It's not self imposed. It's consistent with the order of the GMHB which they haven't lifted.

(#0935) Theresa Kirkpatrick: I misunderstood when the petitioners all said they would be willing to grant extensions.

(#0942) Bob Sund: We're talking about one measurement from the water as a consideration. What would you do if the building site ended up being in a hazardous area if you went to the 115 foot and the only building site maybe was less than 115?

(#0960) Bob Fink: There is always the possibility for a variance if there's some unique physical feature of the site that would justify that kind of action.

(#0972) Darren Nienaber: From my experience, you've got 1 or 2 a year so in terms of significance and in terms of dealing with it right now I don't think it's of an epic scale kind of decision.

(#0980) John Diehl: You're going to have more than 1 or 2 a year that are going to have averaging.

(#0982) Bob Fink: I think he's thinking about those ones that are problematic.

(#1000) Mark Drain: If the county thinks it's a significant issue then let them work it out. I'm not too sure it's that significant.

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(#1002) Steve Clayton: It appears we have two different directions to go. Let it die or actually make up some sort of rough idea to direct the staff to do a last minute recommendation to the BOCC to pass along with this.

(#1010) Mark Drain: Why don't we make it the staff's decision to let it die. If they and John think it's a significant enough issue then they can work on drafting some alternative language.

(#1015) Steve Clayton: I agree with John in that it's a good idea to clean up some of the loopholes. It may not be the appropriate time right now given the time constraints. John's concern is that staff will basically not address it later. I don't know how we address that. It appears John would like to put the limitation on it to get it passed with this round to make sure it gets acted on.

(#1030) Mark Drain: The ultimate concern is whether it's an issue with the GMHB.

(#1036) John Diehl: That certainly is a very important concern but your interests are broader than that. You ask yourself what you want the future to be like in Mason County. I think if you gave us a vote that you thought there were some potential loopholes or need for tightening here and ask if we could possibly find some language to address that that's as much direction that we could hope for right now.

(#1060) Steve Clayton: We could do that and not pass along a PAC recommendation because we really don't know where it's going to go. Okay, let's carry on.

(#1108) John Diehl: So it that the consensus? That there are some areas of language that pertain to these loopholes that the staff and I should try to address and see if we can come up with some better language.

(#1122) Bob Fink: I don't think they're fairly characterized as loopholes. It's an intentional policy that the outcome ... if you wanted to not leave it as an administrative review but require a public hearing or some higher level review the end result would probably be the same. If you wanted to try to protect the landowner and the interest in preserving some kind of view and fact that these are small pieces of developed shoreline that have already been impacted then in many of these cases the property owners will have to apply for variances. As I think of the shoreline I see the result would be that all of these properties would then be coming in for variances. These typically address smaller lots, they don't have the distance, they're in a developed area that's already impacted, you're not gaining a significant amount of environment protection but you're incurring major costs and delays on the property owners and the outcome will probably not be that significantly different. I don't see it as a loophole at all. You meet the goals of the SMP regarding the use of the shoreline. This is where the concept of this kind of averaging came from; the SMP.

(#1188) Bob Sund: Bob is saying we can live with what he's got.

(#1195) John Diehl: We're concerned not with the SMP but with the GMA and specifically we're concerned with protection of the FWHCA's that are found along shorelines. We know that our shorelines are much disturbed as it is in terms of protecting those values and we also know that the cases where there are lots that remain to be developed that have no development on either side are not that common. So this is a major concern in terms of future development along shorelines. Are we going to simply allowing averaging without regard to the view impairment if any or will we require some consideration of whether there really is significant view impairment before we grant a reduction in the buffer.

(#1234) Diane Edgin: I would like to hear from Mr. Dawes and what he thinks about this.

(#1245) Warren Dawes: I felt I understood what staff was proposing with the change for the curved shoreline. I guess there could be some cases where there would be an exception that could occur and in those cases it wouldn't hurt to have a review. My cut on it was that using the average of the setbacks from the adjoining properties was a fair way to deal with it on a curved shoreline. Where you're going to get into something where you're got a road on one side you could get into where you have people looking for a building site on the property it's going to get stickier and maybe that should come into review like John is saying.

(#1288) Diane Edgin: I think at this point in time we should let staff deal with it.

(#1292) Theresa Kirkpatrick: They're willing to deal with it if we give them some direction so how about if it

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will produce a substantial reduction in the buffer then individual parcels will be subject to individual review. Does that work for everybody?

(#1300) Bob Fink: We review them now. Do you mean a public hearing process?

(#1302) Theresa Kirkpatrick: Just the increased review that Mr. Diehl and Mr. Dawes have addressed.

(#1305) John Diehl: That could be left to language that you and I can discuss further, Bob. If it's your sense that there are at least some instances where that makes sense then if you give us that much direction we can see what we can come up with.

(#1320) Theresa Kirkpatrick: So if the averaging brings it within 'x' number of feet that maybe this body or someone else would consider it to be too small a buffer and in that case we would have to kick it over to a parcel by parcel review. Is that possible to come up with something workable along those lines?

(#1330) Bob Fink: I can try.

(#1332) Theresa Kirkpatrick: We respectfully request that you guys come up with something along those lines but we really do need to move along.

(#1345) Steve Clayton: We need to discuss the LAMIRD's. Was there any other concerns or things that we have to specifically do?

(#1350) Bob Fink: That's what I was trying to do was to determine exactly what you thought was undone that you've been calling LAMIRD's. One issue was the conforming and nonconforming businesses in the rural area and the zoning that was proposed and even if those permitted uses can be changed to special use permitted uses they would still be considered conforming uses. So to the extent that you accepted the zoning that staff proposed of lots and properties in the rural area according to the zoning categories where they have the uses that you approved then for the most part the activities in the rural area would indeed be conforming. Most of the businesses with the exception of a few businesses such as a car sales business which is not permitted in any of the rural districts there would be nonconforming. There was an issue besides that that I was discussing with Mr. Diehl that he made a comment on which I hadn't considered and it was from a couple of orders back so there's that issue. You should address as far as LAMIRD's go simply a confirmation on the maps of the new Development Areas map with the different zoning locations shown on it by number and then the series of numbered maps that show in detail the parcels. You may have done that before but I just wanted to check with on you that. So the zoning you've already addressed, the mapping you could address again, and then whatever other portions of it that maybe Mr. Diehl talked about.

(#1475) Marilyn Johnston: I'd like a point of clarification so that I understand. In this staff memo dated January 14th on page 2 the sentence 'Therefore, one cannot argue that the rural population needs a particular use any less than an urban resident. The county strategy for principally designing rural development was to limit the size and intensity of rural development'. It goes on to talk about the appeal. 'Mason County complied in limited part with the prior order by limiting some of the uses allowed in the RAC's and the hamlets'. 'On March 2, 2001, the GMHB ruled against the county in part' and goes on to talk about 'light industry, small engine repair, etc'. So then we say 'Thus, after following the theory of some of the petitioners, the GMHB continued to uphold the theory that some uses are inconsistent with the rural areas, while the county continued to maintain that there is simply no evidence anywhere that any use in and of itself is inherently contradictory to the rural areas'. Question: In other words, if I understand this, you're saying that if in and of itself there's nothing that could not be in the rural area?

(#1550) Bob Fink: I think what's intended there is there's no use or activity of this nature in its own self that doesn't serve the rural residents. For instance, a use that's not allowed, like car sales or mobile home sales, most of the people who buy those mobile homes buy them to live in a rural area. If they aren't already rural residents that's where they're moving to. They're not moving to downtown Shelton or to Olympia. Most of them are coming to the rural area but the reason we're not allowing that use in the rural area is because of the physical and visual impact of a business of that nature in the fact that it covers such a large area.

(#1585) Marilyn Johnston: But isn't part of your argument to limit the size and intensity?

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(#1588) Bob Fink: Yes, you limit the size and intensity of use but the intensity of the use of businesses like those is very intensive over the land. If you go by here and you see them their property is full of their merchandise. You can't sell mobile homes without having 5 or 10 or 20 mobile homes sitting on your property.

(#1605) Marilyn Johnston: I have a hard time with that because to begin with we talk about rural area and we talk about rural character and to me to use the argument that if we limit the size and the density then anything goes. That's not what I understood we were trying to do.

(#1622) Bob Fink: We're not saying anything goes. We're saying that a rural resident has the same needs of any other human being and that includes buying stationary for letters. The market that a business located in Matlock serves is Matlock. They don't serve Olympia. If someone were to open a jewelry store in Matlock people wouldn't drive to Matlock to do comparison shopping. They would go to Tacoma or downtown Olympia but they wouldn't go to Matlock to do comparison shopping.

(#1650) Marilyn Johnston: So why wouldn't it be that whatever is there is to serve the residents there and it's just for our immediate needs, such as going to get milk or something like that?

(#1660) Bob Fink: That's what tends to locate there. It tends to locate there because of the market area that's needed to support a certain level of service or a certain type of business and that varies from being very small convenience oriented to a New York City in order to offer that service.

(#1676) Marilyn Johnston: So don't you have to say that the type of business is going to serve just the surrounding area or are you going to try to attract a wider group?

(#1685) Darren Nienaber: The 'principal design' is the key word. You don't have to prove that every business is only serving the rural residents. It's the design mechanism to say that generally speaking these businesses will be serving the rural residents.

(#1700) Marilyn Johnston: I find that's just not what I thought we were trying to do and to even suggest that, to me, raises a lot of questions about what we're trying to do. We're talking about a rural area and to serve just the needs to the residents and to say that we should have everything there

(#1720) Darren Nienaber: If you look at the zoning scheme you don't look at the memo in terms of what we allow. You look at what we just reviewed to see what we allow. Is that fair under what you understand the law to be? It carries to a logical conclusion.

(#1740) Steve Clayton: Hopefully with the changes we made requiring special use permits on the properties then we're addressing a lot of that on what rural character is.

(#1755) Marilyn Johnston: It just seems to me that it should be very clear to people who don't deal with it like we do that the type of business when you ask about rural is is it going to serve just the surrounding area residents? That's what we need to think about to maintain what we want for rural area and rural character.

(#1785) John Diehl: I developed an argument to respond to what Mr. Nienaber characterized as a logical extreme which I hope you've all had a chance to read. I want to remind you that we're talking at this stage about existing development primarily; almost exclusively. The earlier discussion this evening is going to be relevant to any new proposals for development that come along. Now we're talking about whether existing development fits the scheme of things that is laid out in terms of your own planning and in terms of the requirements of the GMA. The upshot of that decision you're making is not, of course, whether anybody has to tear down existing development but it's simply whether it's deemed a conforming use or a nonconforming use. That applies to two categories. There is the existing development that is in areas not designated as LAMIRD's, except as LAMIRD type 3's. In other words, the so called isolated development. If you look at the map you'll see that a fair amount of this so called isolated development is not isolated at all; it's clustered. So we have this development that is the 170 or so LAMIRD's that have described and listed in one of the staff documents. The question there is which of those are to be deemed conforming uses and which to be nonconforming. Following Ms. Johnston's suggestion, I'm saying to you that there may be some

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nonconforming uses out there. The fact that you've adopted some criteria and Mr. Fink says that most of them are going to fit within those is fine but it doesn't get us to the decision of which ones actually fit with that. We know that there's existing development out there that doesn't fit, including auto sales lots and also, I think you've also not treated as a conforming use the existing salvage operations in the rural areas. There are certainly some things that we agree on already that are going to be existing uses and nonconforming. The question is whether we have a full list of those and I don't think there's anything in the record that suggests that we do. The other category that you need to look at is the existing uses within the RAC's and hamlets. There, of course it's clustered and there's no objections to commercial development there; there may be objections to particular kinds of commercial development if it's not consistent with rural character. So again, you have to ask yourself how many odd jewelry stores and things do we have that really are not developed to serve the local needs, the neighborhood needs, the rural needs, but are marketing to a much larger area. There are non commercial uses in those areas, too; industrial uses, which quite plainly are not geared toward serving rural needs. The prime example was the foam cushion factory just south of town in what's sometimes called Taylor Town north. It's next to Verle's and I don't think anybody disputes it's probably zoned in a commercial way but the GMHB was quite explicit where they said that of an industrial use, such as the cushion factory, that they ought not to be permitted uses in RAC's. They should instead be nonconforming. The rural population service exemption in one for industrial areas does not apply to industrial uses within a mixed use area. In other words, if the county were to find in a rural area some purely industrial area that it's okay to create that as an industrial area but it's not okay to have an industrial area zoned within a mixed use area. I think this could be resolved reasonably well by giving the cushion factory a commercial zone. It would be a nonconforming use but that's what the mandate is from the GMHB. I don't think that anything falls short of that that tries to insert an industrial use into the mixed use area is going to meet the test of this language.

(#2060) Bob Sund: Does the cushion factory predate 1990?

(#2062) John Diehl: Yes, it does.

(#2068) Diane Edgin: They asked to expand within the last 3 years.

(#2075) Bob Sund: The question I have is the GMHB is telling us that we have to list industries that are nonconforming pre 1990?

(#2090) John Diehl: The GMHB ordered us to not particularly address the question of what was existing as of 1990. Staff has tried to take a definition of existing in the ACT and turn it into a principal but it's a pretty arbitrary principal and I don't think it will pass muster before the GMHB. It's almost as bad as if you said our principal is going to be that all those businesses that have the letters 'e' and 'a' in them will be deemed nonconforming uses and the rest will be conforming uses. What you have to ask yourself in the light of the decision of the GMHB is what uses are consistent with rural character and in the case of those uses to be found within the D1 LAMIRD's, the RAC's and hamlets, are they part of a scheme which serves the needs of the rural community as distinct from the needs of the rural plus the nonrural community. I feel pretty confident in terms of the industrial activities in the RAC's and hamlets they should be deemed nonconforming uses and in terms of the clustered developments outside those are not going to meet the standards of the D3 LAMIRD's. The D3 requirement is that they be isolated. You've got those two basic problems and you could handle it either by taking a pass for the moment by calling everything nonconforming but allowing it to exist and then review it subsequently, or you could start trying to apply some reasonable tests. It needs to take account of industrial uses and I think you should be looking at the general pattern of uses and asking if it's consistent with rural character.

(#2275) Diane Edgin: Bob, in the packet from January 14th you have listed under RCW 37.070A.011 Findings – Rural Lands 'The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people and its environment, while respecting regional differences'. Did you lift that language from someplace?

(#2304) Bob Fink: From the ACT of the legislature. The legislature adopted those findings when they adopted the latest amendment to the GMA. That was in 2002. That's the Eichmeyer amendment.

(#2323) Diane Edgin: One of the things here it says 'Rural lands and rural based economies enhance the

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economic desirability of the state, help to preserve traditional economic activities and contribute to the state's overall quality of life'. 'The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand'. I don't think it says anything about being isolated, grouped together or anything else. I read all the rhetoric here but I come from this from a little bit farther out than that because I happen to work for maybe four or five big finance companies. Any business who is going to be deemed nonconforming is in serious trouble. They were in trouble before 9/11; they're even in worse serious trouble now. Borrowing money issues are huge right now.

(#2390) John Diehl: Let me respond to that. I really do know something about this apart from my activities with growth management. Over the last 17 years I've made somewhere around 200 loans and or purchases of existing notes. They've entailed evaluating property in terms of its value relative to the amount of money that was originally loaned or whatever so I'm in the lending business. I do it as a form of investment. I don't know that I have any big secrets to share with you about this and I don't disagree with you, Diane, except perhaps in terms of keeping it in proportion. I can't think of an instance where I've ever turned down a loan because it was a nonconforming use. I've looked at at least 1,000 different proposals in making the 200 loans that I have. I'm not saying where there aren't instances where that could make a difference. It makes a difference mainly in terms of the amount of money that you would lend. In the criteria for making a loan it's not at the top of the list. There are many other criteria. When you're talking about loans on rural commercial property the most important consideration, at least for me, is the one of liquidity. You can imagine that it's a conforming use but who is going to want to pay how much for it, especially if as a lender you only have to worry about the collateral if you get it back after the business collapses. If the guys repays you, you're not concerned about; it's only if he doesn't repay you. A fundamental rule for anybody engaged in rural lending is to be very conservative in your loan to value ratio. That doesn't have anything to do with the question of whether it's a conforming use or not. What it boils down to is there are a host of considerations that go into making a loan; whether it's a conforming use is a relatively small part of that matrix. I submit that we should be trying to get people to build where they preserve the value of what they're building and that is not in these isolated areas. They're not doing a good job of investing their money or anybody else's money when they're doing that.

(#2630) Diane Edgin: I don't disagree with the fact that maybe building out in the rural area maybe is not the best idea. I'm talking about existing businesses that are viable. Let's say that you have a viable business that really has grown over the years and you're out in the rural area and maybe if you're trying to sell it as a going business and you're in excess of a million dollars. Right there you've limited your pool of candidates to purchase your business because of the sheer dollar you might want for your business. Now you're talking about somebody throwing the label of nonconforming on an existing business, before 1990, and maybe you want to double in size. If you throw that label on them your big lenders are going to walk away from the table.

(#2690) Theresa Kirkpatrick: I think the items you're addressing here we need to look at in a more long term approach that perhaps after we come into compliance that would be the time to look at those areas.

(#2738) John Diehl: The staff and I are in agreement that there are existing nonconforming uses. The only issue is how many? I don't deny that labeling something as nonconforming is not good news for the person so labeled. It does have some adverse impact upon the value of his property. I think that's the price that we pay for proper planning. Even the county staff is prepared to label some businesses as nonconforming. I have a slightly longer list and my intention is not to put anyone out of business but it is to say that we should be encouraging those people who have uses that we wouldn't now permit to start thinking about moving into areas where their investments really make more economic sense.

(#2820) Darren Nienaber: What's your bottom line. Were you just talking the industrial and then the clusters of what the county had previously labeled as D3?

(#2822) John Diehl: Those are the ones that I'm aware of. There may be some truly isolated commercial uses that are questionable. The GMHB did refer to mini-storage units as being in their list of uses not consistent with rural character. There are certainly some isolated mini-storage facilities that are not in any of your RAC's or hamlets. So I would at least suggest that that kind of thing be looked at.

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(#2868) Darren Nienaber: You provided a whole list of very clear suggestions and that's what's helpful so that's what I want to try to get at; what are we really talking about here?

(#2876) John Diehl: I'm agreeing with the two that you mentioned and I'm adding at least a third category ...

(#2886) Darren Nienaber: If you look at some of the RC's, RAC's and hamlets and you cross a few off the list. Is that right? We're going to say that for RAC's and hamlets we're going to allow less uses. Is that what you're talking about?

(#2902) John Diehl: For RAC's and hamlets I think I can keep it simple. I'd ask you to eliminate the RI category for that as a zoning category. The language of the order makes that pretty plain.

(#2935) Allan Borden: The day they signed that order it clearly says in there that industrial uses are allowed in those areas. In mixed use areas.

(#2960) Warren Dawes: I would like to cut right down to the bottom line myself. The very liberal allowance that we have for nonconforming uses in our DR's, where you can expand by 20% or 10,000 sq ft, whichever is greater, exists now. The ability to change use for that nonconforming use to another use that can be allowed as long as it's not a more intensive use, exists now. My feeling is whether it's nonconforming or conforming that business is going to still be there. They're not going to be limited under nonconforming because of the existing DR's. Also, the county taking the approach that size is everything is to my way of thinking is wrong and we've talked about that. When you come down to it it has to be a combination of type and use. The bottom line is the county in naming the 175 LAMIRD's was naming 175 uses which you said were existing in 1990. By naming them as individual LAMIRD's you wanted to make them conforming.

(#3105) Darren Nienaber: I think 36 or 37 of them are zoned RC.

(#3112) Warren Dawes: The 175 were existing as of 1990. The concern that John has and that I share is that by putting them in the way that it has been put as conforming will mean that in the future you're going to see an applicant coming in and saying that there's a cushion factory that's in there that's conforming. Why am I disallowed ... I'm just going to be doing the same thing. So that's a legitimate concern. Your whole purpose in developing these regulations is to provide a plan for the future. One thing that is lacking in here is that you haven't carried over the process of identifying the 175 LAMIRD's as existing in 1990 in your DR's. You could make your existing nonconforming use if you would identify ... you could have a statement like this 'Commercial or industrial uses that have been in continuous operation since July 1, 1990 are declared conforming uses. That's what you've done in those cases where they would not match with your new regulations. If you put that in there then there would be a rationale for future applications as to whether they could go in under the same conditions.

(#3296) Steve Clayton: So you're surrendering up the parcels that are already nonconforming and saying that they will continue to be used for associated purposes but it's putting a limit on ...

(#3310) Warren Dawes: I was just making a plea for just laying out what you have done. You've done it in saying that we've got 175 uses that we've cut down from 194 because these are the ones that existed in 1990. That doesn't carry forward into the DR's and that creates a problem for how you would consider a future application of similar nature. You're not comparing it with something that was let in strictly because it was existing in 1990.

(#3342) Bob Sund: It would seem to me that if you listed them as pre 1990 as conforming that a similar development that came along after that time and he could use the rationale that you just used that the cushion factory was there and I'm going to do the same thing. The reason why he's conforming is because he is grandfathered in from 1990. You've got a new standard that you have to meet.

(#3375) Darren Nienaber: I don't think the county has a problem with that as a suggestion. That is the rationale. When we look at new businesses and rezones we apply the rezone criteria. Your rationale for the original designation was one thing.

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(#3450) John Diehl: I thought the point that you were making was that staff's proposal leaves everything after 1990 as a nonconforming use. That's the fundamental arbitrariness of the staff proposal. Everything is before 1990 is going to be deemed conforming and everything after 1990, outside of the RAC's and LAMIRD's, is going to be nonconforming.

(#3490) Bob Fink: I disagree with your characterization of what staff is recommending and what staff has said. For one thing, the 1990 is not arbitrary; it comes out of the GMA. The GMA, not staff, makes the distinction between development in 1990 and before 1991.

(#3505) John Diehl: That date is in the ACT but the date is only used to define what is existing. There's nothing in the ACT that says that all the existing uses should be deemed conforming.

(#3520) Bob Fink: It's very clear from the legislature, as shown in the Eichmeyer ACT, the intention is to have these businesses survive and to be able to convert to other uses and not to be extinguished along with the rural economy at such time as those businesses decide to close and move on. I would also point out that it's no mystery what uses are on these properties and the table that has these uses listed, they have the use categorized and you can compare the use that's actually there with the use that's in the zoning district that it's either zoned now or the zoning district as proposed and just approved by the PAC and see whether these uses are indeed conforming and nonconforming by those very zoning designations that you adjusted. That's not a mystery; that was reviewed by the county. It was the intent of the county to try to make as many businesses conforming as possible but it was certainly not our intent, and as you acknowledge we did not make all businesses conforming. Warren, I'm a little bit unclear as to what it is that you're actually proposing.

(#3615) John Diehl: I understand where Warren's coming from but he's ignoring the fact that we actually have some very specific direction from the GMHB with respect to some of these things, including the cushion factory. If you decide in your wisdom that you want to make the cushion factory a conforming use you've got to expect that I'm going to go before the GMHB and point out their own language to them which calls for it to be a nonconforming use. I would think there's a good chance I will prevail. Let me try to wrap myself around Warren's thinking on this. He's thinking that if somehow you simply say that these uses are deemed conforming only because they existed prior to 1990 then that will prevent future applicants from pointing to them as conforming uses that justify their proposed uses which would otherwise be deemed nonconforming. I don't think that's going to be successful. I think it will be forgotten by the time some future applicant comes forward and says they want to do this because the cushion factory is right there. Similarly there may be uses subsequent to 1990 that in fairness should be treated as conforming uses.

(#3786) Bob Fink: The solution to those businesses that were established after 1990 and are appropriate for the area they are in, is for them to request a rezone when such time rezones are possible. So if you had a gas station that was built on some intersection out in the county in 1996 and under the current proposal and what was adopted previously they would be nonconforming because they would be zoned RR of some type. Those businesses can come in and ask to be rezoned to RC1. They could be rezoned and indeed become conforming uses.

Problem with tape.

(#0022) John Diehl: Let me remind you of the language. Referring to uses such as light industry, small engine repair and plumbing shops; 'while these uses may continue in the Taylor Town RAC as existing, they ought not to be permitted uses in all RAC's. They should instead be nonconforming uses. The rural population service exemption in 1 for industrial areas, does not apply to industrial uses within a mixed use area'. You can ask the GMHB to reconsider that language but if they stand by that language they will reject this.

(#0045) Darren Nienaber: As we said a couple of years ago, where are the facts on the record to say that those uses aren't principally designed? We appealed that and we won.

(#0055) John Diehl: You're not going to say that the cushion factory is primarily designed to serve the needs of the rural population, are you?

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(#0057) Allan Borden: No, it's an industry, just like any other part of the rural area.

(#0059) Bob Fink: It's a Rural Industrial zone. I don't know that we'll ever agree on the exact intent of the GMA and how it should be interpreted but is there specific language that you're looking for?

(#0070) John Diehl: You should be eliminating the whole category of RI from the RAC's and hamlets.

(#0080) Darren Nienaber: And for the clusters, how about calling them D1 instead of D3?

(#0082) John Diehl: If they really are clustered then you need to draw a logical tight boundary around it.

(#0084) Bob Fink: So we should draw a larger boundary to include more boundary?

(#0086) John Diehl: I think so, if they are actually clustered and you can defend them as a crossroads of some sort.

(#0092) Darren Nienaber: The way the county views isolated is ... you have these existing. Isolated means in order to prevent sprawl don't let sprawl happen up and down the road from the existing businesses that are already there.

(#0102) John Diehl: Suppose we do have a parcel that is undeveloped and somebody looks around and sees all this commercial development around them, first of all, would they even want to put a residence there and second, if they do the common sense thing and say it makes sense for me to develop commercially and come to you, are you not going to allow them to develop it commercially? So I say if you can really make the case that you have commercial development that's clustered then treat it as an area. All I'm going to say that I'm going to argue as I have to you tonight before the GMHB, if that's necessary, that it doesn't make sense to call these clustered rural commercial developments as isolated and therefore the action taken in so designating them is not in conformity with the requirements of the ACT.

(#0204) Bob Fink: Let me ask you, Mr. Diehl, if they fail from being a clustered LAMIRD with a logical outer boundary then aren't they by definition isolated? Aren't they either isolated or clustered?

(#0215) John Diehl: There may be instances where they're neither because they may not be conforming uses consistent with rural character. There are a total of three categories: D1, D2 and D3 options.

(#0230) Bob Fink: D2 and D3 are both isolated and D1 is clustered. So it's got to be either isolated or clustered.

(#0235) John Diehl: Or it's not a LAMIRD at all.

(#0238) Bob Fink: Shouldn't it be a LAMIRD if it was an existing business?

(#9240) John Diehl: No, not necessarily.

(#0242) Bob Fink: So you're going to discriminate arbitrarily against businesses that just because they have a business ...

(#0245) John Diehl: All I'm saying is that if in fact they are isolated then you ask yourself if they serve rural needs and are they consistent with rural character? If so, fine and it doesn't matter whether it was before 1990 that they existed or after.

(#0255) Bob Fink: That's a totally different issue from the issue of whether they're in a clustered logical outer boundary that is existing. Whether you want to consider them conforming or not is totally a separate issue.

(#0270) John Diehl: You shouldn't be calling them LAMIRD's if they're nonconforming.

(#0272) Bob Fink: Why not? We have several businesses that are nonconforming to the designation that they have. For instance this auto sales place is actually nonconforming.

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(#0282) John Diehl: What would the point be if they were nonconforming of calling them LAMIRD's?

(#0284) Bob Fink: They could change to a conforming use of a commercial nature. I'd like to point out that when you're talking about 1990 as a key date that doesn't really apply to the area within the logical outer boundaries. Within the logical outer boundaries the zoning is based on the existing activity and not on the 1990 activity. The logical outer boundaries means that this whole area was logically established based on existence of these activities in 1990. If there have been changes to what those exact activities were we went ahead and zoned them consistent with what they are now because the whole area is within the logical outer boundary.

(#0318) Bob Sund: This discussion is beyond our scope, I think.

(#0320) Mark Drain: I have my mind pretty well settled and I appreciate both Warren's and John's comments and I think John perhaps brings up some valid points but I don't think we're going to get them all hashed out here tonight. My feeling is that the county has done an extensive job in trying to preserve some businesses in the rural areas and categorize them as best they can and I make the motion that we accept the maps that the county has put forward.

(#0352) Steve Clayton: The maps are a separate issue.

(#0355) Mark Drain: I think they are the issue. Bob brought them to us tonight to pass on this evening.

(#0358) Steve Clayton: It's part of the issue. Mr. Dawes brought up a different approach to how we recognize them.

(#0370) Warren Dawes: You need to understand that we're looking to the future so that when somebody comes in and wants to put in a isolated rural industrial they will be able to follow the zoning criteria. My criteria is that the zoning criteria that you have for those future ones is clear. My only point was to take out the ambiguity by not having that 1990.

(#0400) Steve Clayton: Where in the ordinances would that go?

(#0405) Warren Dawes: I think it would go right in your RC and RI ordinances. You probably would still have that same argument before the GMHB but at least whatever way it comes out I think you could go forward with the clarity. I'm accepting the businesses that are there but putting that statement in what you're doing is you're identifying the allowable uses in an area. I'm trying to get past this sort of contention that's going to be going on in the community because I can just imagine what the South 101 Group is going to say when they find out that the car lot is nonconforming. I'd like to get beyond that. I'm taking a different approach from John but John has good points, too.

(#0462) Bob Fink: You understand, Darren, what Mr. Dawes is proposing?

(#0470) Darren Nienaber: Yes.

(#0472) Warren Dawes: Whether you end up calling them conforming or nonconforming they're going to continue to exist there. I don't think that the used car lot is going to be into a financial bind because they're probably not going to build any more building there. His financial loans are based upon the car inventory and it's the car inventory itself that's the collateral for that.

(#0510) Bob Sund: But you said you don't think we should adopt a rule that says anything before 1990 is conforming?

(#0515) Warren Dawes: I'm saying you have done that; I would like to see you put that into your zoning ordinance so that it's clear.

(#0525) Bob Fink: So you wouldn't want to make the car dealership and the auto wrecking yards, etc... So you want anything existing as of 1990 except auto wrecking yards to be conforming? I'm just trying to understand what you're looking at.

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(#0540) Warren Dawes: What's done is done in the community and I would like to go forward with a good plan that's going to stand up.

(#0542) Darren Nienaber: You want a policy that differentiates between 1990 and after.

(#0550) Warren Dawes: I can see the argument you're going to get from Taylor Town because he's nonconforming. Whether he understands what that means for him I don't know.

(#0560) Bob Fink: I'm sure he knows what was done. Mr. Diehl, as I understand it your recommendations would be to do something with the rural RAC's and hamlets; the other one is to revisit the clustered areas what we listed as isolated D2 or D3; and you think there is a 3rd category of not being isolated or clustered. Not getting into the nature of the use but just whether it is an existing development as of 1990.

(#0598) John Diehl: The only thing you left out is that you also should be looking at the non clustered and truly isolated uses and shouldn't automatically treat all of those existing as of 1990 as consistent with rural character. I don't think there's anything about a businesses having been in existence in 1990 that automatically makes them consistent with rural character.

(#0615) Bob Fink: You recognize that some of them are nonconforming because their building is too big, etc.

(#0630) Steve Clayton: We need to approve the maps, Bob?

(#0632) Bob Fink: That's your choice to approve them or not.

(#0640) Mark Drain: I think I made the motion to okay the maps and pass them on.

(#0645) Bob Sund: I second the motion.

(#0647) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed. Darren, did you get Warren's language and where it applies accurately?

(#0655) Darren Nienaber: We'll take another look at it and I may e-mail him to come up with the language.

(#0664) Steve Clayton: So that's not something we should move on? We could also go forward and say that the PAC doesn't have a recommendation to the BOCC on this item.

(#0668) Darren Nienaber: I will work with Warren to get the language.

(#0676) Bob Fink: If you wanted to take an action you could recommend that staff try to develop a draft for consideration by the BOCC that would address that issue.

(#0690) Bob Sund: We could say something like at this time PAC doesn't have a recommendation regarding the LAMIRD's and that PAC has directed planning staff to make a recommendation to the BOCC.

(#0704) Diane Edgin: If a business exists out there they've got an investment and if they've got to borrow capital to continue operating and you make them nonconforming they're going to have a problem. I make a motion to pass it on to the BOCC; that we don't have time to deal with it.

(#0748) Bob Sund: I second the motion.

(#0750) Steve Clayton: We have a motion and a second. Any further discussion? All in favor? Motion passed.

Meeting adjourned.