MASON COUNTY
PLANNING ADVISORY COMMISSION

Minutes
April 21, 2003

(Note audio tape (#3) dated April 21, 2003
counter (#) for exact details of discussion**)**

(*This document is not intended to be a verbatim transcript)*
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1. CALL TO ORDER

The meeting was called to order by Chair Bill Dewey at 6:00 p.m.

2. ROLL CALL

Members Present: Diane Edgin, Steve Clayton, Mark Drain, Theresa Kirkpatrick, Bill Dewey, Bob Sund, Wendy Ervin.
Staff Present: Bob Fink, Allan Borden, Darren Nienaber, Susie Ellingson.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0015) Bill Dewey: We'll start out our business tonight by welcoming our new Planning Advisory Commission member, Wendy Ervin. We're glad to have you on board.

(#0020) Theresa Kirkpatrick: Mr. Chairman, I have a question for Ms. Ervin. In the newspaper I've seen your name published above the words 'Skokomish Nation'. Could you please clarify your relationship with the tribe.

(#0024) Wendy Ervin: I have no relationship with the tribe. I live on private property which is in the reservation boundary and so when we moved there and changed our address, we put on our change of address label Shelton, 98584. The Post Office changed it to Skokomish Nation, 98584 so apparently that's my legal address so that's what I use.

(#0034) Theresa Kirkpatrick: So you have no relationship either family or cultural with the tribe?

(#0038) Wendy Ervin: No.

(#0040) Theresa Kirkpatrick: Thank you for the clarification.

(#0042) Bill Dewey: We have several items to address tonight so what I'd like to do from a process standpoint is hear a brief staff report and we'll just go down the issues on the agenda, entertain any questions that the PAC have of staff, we'll open the public hearing and hear testimony on it. First up is the

Boundary Line Adjustment issue.

(#0064) Allan Borden: I'd like to first pass out this comment letter we received from Steve Clayton. It has a question or two on each of the issues we have before us tonight.

(#0078) Bob Fink: My name is Bob Fink and I'm the Planning Manager with the Mason County Department of Community Development. The first hearing tonight is the proposed changes affecting BLA's. We have a proposal that the department had worked on with a number of people; a citizen group mostly made up of title company representatives, surveyors and others directly involved in adjustment of boundary lines. A BLA is defined in our ordinance where you're making adjustments to property lines but you're not creating new lots and you have to ensure that when you make those adjustments that you're providing for a sufficient area for future development. Title 16 lays out what the criteria are. In addition to the normal BLA's we also have a provision that is intended to address right-of-way changes. For instance when a right-of-way is realigned and not just modified, if this is done .... what we wanted to try to do is to clarify the effect of such a location and when the party making such an action took so much of the land that they've then restricted the future development potential of the property for the owner and that would give them a better feeling for what the actual value of the property is and what the effect of the change in the right-of-way is. That is an issue that's coming up in the Alderbrook remodel. You might have heard that they're remodeling Highway 101. The amendments we have here have been in draft form since August but one of the reasons we wanted to move this forward is if these changes were approved by the county it might make things easier if it were done in a timely way for the development of Alderbrook. It's not necessarily required for the project but for that reason there's a certain urgency for those amendments rather than the rest. There was a negotiation process in developing the BLA language and what we sent to you several of the public that we were working with on this weren't quite sure of the language. Exactly what the implication of the language has to be pinned down fairly well. We want to get clarity to what's being done. If there seems to be doubt about the exact language we would have no objection to perhaps tabling the remainder of the draft to next month to allow additional time to work out the exact language. Allan, did you want to address the question that Steve sent in?

(#0215) Allan Borden: Steve Clayton had questions about specific wording in the text. On page 2 of the BLA draft under 3.c(2)(i) there is a statement that's in the middle of the first sentence that says 'the administrator finds the claim clear and convincing and the minimum necessary to resolve the dispute, or a court must ordered the change'. Steve suggested adding either 'to either order or have ordered' and that also occurs under the next subsection 3 as well. The second question on page 4 of the draft is a description of the BLA right out of Title 16. It says "a BLA is the division made for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site, or division", then it uses the words "which contains" and I think that was confusing to Steve. I think the word should be 'containing' so it reads "which does not create any additional lot, tract, parcel, site, or division containing insufficient areas and dimension to meet minimum requirements for width and area of a building site". There should then be a semi-colon which divides off the rest of the sentence.

(#0318) Theresa Kirkpatrick: I have a housekeeping question. On page 1 of the draft under 3.b.(4) it refers to the Director and then on the following page under 3.c.(2) it refers to the Administrator. Are these referring to the same person? Should we be consistent and just exactly who is that person?

(#0375) Bob Fink: It should always be the Administrator. The Administrator is the Director of Community Development or his or her assigns.

(#0385) Bill Dewey: So the changes will be made on page 1 to change it to Administrator instead of Director?

(#0387) Bob Fink: Right.

(#0392) Steve Clayton: Allan, I had that other question on page 4 of whether it was prohibited or permitted?

(#0400) Allan Borden: Steve had a question on page 4 of the draft under the second paragraph 4th line down; the intent of the paragraph defines insufficient areas and dimensions and talks about where the residential use is prohibited.

(#0450) Bob Fink: The intent of this is that you have residential property where residences are allowed in

which case you need the residence driveway parking and if necessary well, stormwater, septic system and reserve area. Or you have other properties where residential use is prohibited in which you need enough area for that activity that is allowed. It was intended for it to be "where the residential use is prohibited" is correct. The wording was intended to say that you need sufficient area for the buildings and for the uses that are allowed, like a commercial use.

(#0472) Wendy Ervin: I think it would be clearer if that phrase was in parentheses; "or other building where residential use is prohibited".

(#0480) Bob Fink: That might make it clearer.

(#0490) Steve Clayton: The way it's presented, the new additional paragraph appears to be a definition for an insufficient area from above. It doesn't read clear and that was the crux of why I asked the question.

(#0510) Bob Fink: The intent of the paragraph is to specify or define what an insufficient area and dimension is or what sufficient area and dimension is. The reason it's put into this section is that it's intended to apply specifically to the BLA's rather than generally. What could be done to clarify it is I've often seen a phrase beginning like "as used in this section". That specifies that it's a description for something that's used within that section. If you added that wording would that clarify what the intent is?

(#0545) Steve Clayton: That would do it for me but I don't know if anybody else is confused by it.

(#0550) Bill Dewey: I think that's a good clarification.

(#0560) Diane Edgin: Is there some history for the use of 'out lot'?

(#0566) Bob Fink: There is no regulatory history to using it. What happens is occasionally the issue will come up and the county ordinances aren't real clear where they have plats and there are some tracts; they're called Tracts A, B, C and the lots are called Lots 1, 2, and 3. The tracts might be used for parks areas or they might be used for stormwater. There's some kind of a common ownership and they're distinguished from residential lots. The question arise when someone asks 'what happens if you do a BLA involving one of those parcels which might not be developable'? One of the key criteria in doing an BLA is that you're not creating or ending up with undevelopable lots because that's built into the criteria of a BLA. The issue we're trying to get at is to distinguish an out lot from a lot in the sense of where if they needed to do a BLA and they wanted to create a separate tract of land not as a building lot but for stormwater or for a wellhead protection area, could they do that? This is intended to provide an explicit consideration of how you do it when that kind of situation comes up.

(#0626) Diane Edgin: I don't have any problem with the creation of the lot I just have a problem with calling it an out lot.

(#0640) Bill Dewey: Is there other precedence from other counties in similar situations?

(#0642) Bob Fink: The term 'out lot' is used elsewhere; I don't know that I have an exhaustive knowledge of other terms for that.

(#0646) Bill Dewey: If it's used elsewhere are we consistent with it's use? If someone comes to our county from somewhere else and they see 'out lot' are they apt to find a similar meaning?

(#0650) Bob Fink: I think it would have a similar meaning as to where it's used elsewhere. I'd be glad if someone could offer a better term.

(#0660) Steve Clayton: This would be registered on the title of the property so that people that would buy it would know about it?

(#0664) Bob Fink: Yes, it would be distinguished and all the title and papers would show that it was different and what special restrictions might apply to it.

(#0672) Diane Edgin: What's wrong with the word 'unbuildable lot'?

(#0675) Wendy Ervin: Because you might be putting a well or something on it.

(#0677) Bob Fink: You might build something on it; you might build a recreation building. When you use the term unbuildable some people think residential but it could be commercial; any kind of structure would be a building.

(#0700) Bob Sund: This maybe doesn't have something to do with a BLA but with the concept of an out lot. If a person did a short plat and they're restricted to four buildable lots can they also include an out lot?

(#0720) Bob Fink: That was one of the things we were working towards. Short plats are limited to four lots. Short plat processes are generally easier to do and there are administrative processes to do them. They're less expensive and easier to do than a long plat which is five or more lots. If one of your lots is an open space or recreational area we have provisions that provide for open space areas. If you create such a tract does that count against one of your four lots? And should it? I would say that it really shouldn't count against one of your four building lots. The planning and the regulation of land has evolved over time and often the laws haven't really kept pace with the directions things happen and that's why we come back and amend them.

(#0770) Wendy Ervin: Commenting on that previous question, in one development that I know there are out lots which are 15 feet wide on either side of the access road and they go along the county road and eventually can be turned into county road counting those as lots and that wouldn't be a fair use of a short plat to count those as two lots. That would only give you two buildable parcels. In your presentation you said that the BLA's would allow for future development. My understanding is that if you have an area where you're allowed 1 residence per 5 acres and you make a BLA and maybe you're moving a roadway and you're not increasing or changing the number of residences per acre so I don't understand when you were talking about allowing for future development. What is the definition of future development?

(#0825) Bob Fink: It is the buildout of those lots is future development. Even if there's a residence there adding additional structures would be development. The term development is very broadly defined.

(#0840) Steve Clayton: So did we come to a resolution regarding Bob's question of whether the out lots count? Where are we going to put that in? It should be written down.

(#0845) Bob Sund: It's not really fitting to be in a BLA area. It needs to be someplace else.

(#0855) Bob Fink: We weren't quite ready to tackle the issue of out lots in subdivisions. What we're doing here is responding to a concern that was coming to the public in our processing of BLA's and there were a couple of concerns. One of them was when we adopted zoning and we adopted minimum 2 acre lot sizes there's a standard rule of law that you don't increase a non-conformity without a variance. Once we establish a 2 acre minimum lot size you can't take a lot that's 1.9 acres and reduce it to 1.5 acres, even though there may still be room for septic and well and other development. The code doesn't allow it. If you can't comply with it then you apply for a variance and the variance has strict criteria that apply to whether you can get it or not. Even if you can justify the variance it's a relatively onerous thing to do. So we were trying to provide certain conditions where those lots could be adjusted and potentially produced without having to go through a variance process to do it. There are also issues relating to people having encroachments and that's often why they want to adjust boundaries because there is an encroachment.

(#0975) Steve Clayton: So your answer on the out lots and how to handle them is to make out lots but not determine at this time how to handle them?

(#0980) Bob Fink: There should be language in here for how you do it. The idea being that when you count up your lots you can potentially modify an out lot without having to have buildable area. There's one standard that you have to have buildable area; the exception to that is the out lot. If you needed to make a change to a tract that had your stormwater system on it the BLA says you have to have adequate area for a buildable lot but you may not be at all feasible. As far as short plats we weren't ready to address how out lots might be used in the division of short plats. It should be clear in here how out lots can play into BLA's. If

it's not clear to you we can look at it again.

(#1030) Bob Sund: What Bob is saying is that he's going to have to look at it under Title 16 and make a provision for an out lot within Title 16.

(#1040) Bob Fink: What we need to do is relate that to short plats and how you count lots in short plats.

(#1048) Bill Dewey: Because we're potentially setting up two different situations it sounds like something we do need to address in the future.

(#1055) Bob Fink: The out lot will be a general definition used throughout Title 16; it's not used anywhere else in Title 16 but it could be. Whereas the adequate area is something that was intended specifically for the BLA issue. They're regulated differently and they use different terminology when we talk about land divisions.

(#1090) Bill Dewey: We will now go ahead and open up the public hearing for testimony.

(#1105) Dan Holman: My name is Dan Holman and I'm a local land surveyor. This latest revision is definitely an improvement from what we looked at last time when we had our workshop.

(#1122) Bill Dewey: Dan, you were part of the workshop that looked at this?

(#1124) Dan Holman: Yes, there were probably six or seven title company people and surveyors and of that group there's two or three that are here tonight that were there then. I know Dennis Pickard from Mason County Title is going to get real specific here tonight so I'm going to hit on the areas that I know he's not going to hit on. As a surveyor I've done hundreds of BLA's and I've seen all manner of problems and solutions. The best regulation for me is the most flexible regulation. You'd be amazed at the kinds of problems you can run into. Basically these days people in the surveying and development community realize that we're not going to be using BLA's anymore to end up making more lots. Those days are gone. We understand that and what I'm here tonight for it to try to suggest a couple of changes and a couple of thoughts for you to consider as you get ready to put the thoughts to words. One of the things that I'm noticing in reading through this new proposed language is that there is a concern about the administrator being able to effectively make a decision as to whether or not the BLA should be approved especially where there are substandard existing lots that are small to start with. All of the platting that was done in the county years ago there are very few lots that are two acres. My thought is that I don't know how the administrator is going to be able to make a decision without a survey when you have issues of encroachments and so forth. Title Companies don't do surveys. They've certainly done many BLA's over the years but generally not the kind where there are encroachments unless there has been a survey. I don't see any language in here anywhere that actually requires the survey. The landowner already has a problem because they didn't survey the first time so how are you going to fix it if you don't at least survey it a second time. It's not even an issue that I need more work; I'm plenty busy. There are situations that arise quite often where there are two pieces of property right next to each other where the lines run a certain way. For whatever reason it might be better if the lines ran another way. It might be that they would have better access or their power would be closer or the view fits better or whatever. What I'm hoping to achieve here by bringing this up is that as long as these lots end up the same size and no new lots being created it would sure be good if we had the flexibility to change the directions of the lines. There are times when that tool is important. There's any number of reasons why that might be important.

(#1340) Bob Sund: Is there something in here, Dan, that would prevent that from happening?

(#1342) Dan Holman: I don't see any language in here one way or the other. The reason I'm bringing it up is because some months past there was at least one or two cases that I'm familiar with that that was not allowed. I just think there doesn't really seem to be any good logic for not allowing it if it makes a better piece of land.

(#1375) Dennis Pickard: My name is Dennis Pickard. I work with the Title Department Manager of Mason County Title Company and like Dan I work with BLA's literally since Mason County began them in 1987. I have a few details that were important to address in here. First important point I see in the draft is on page 1 of the draft section 3.a. it talks about no residential lot of less than the Standard Residential Density may be

created or reduced in size, etc., or through the provisions of 3.b or 3.c. below. Section 3.d. should also be added to that since one of the priorities that Bob has is to get the section regarding road rights-of-way incorporated into the Development Regulations. On to the main body of the BLA section under 3.c. item 2 and 3 both include very similar language with respect the administrator finds the claim clear and convincing and the minimum necessary to resolve the dispute or a court must order the change. I don't think the court ordering the change is necessary to be included in there because if the court ordered the change then the parties would not be applying to the county for approval of a BLA. If they've obtained an order from the court to adjust a property line then approval from the county for a BLA would be redundant. Of greater concern to me and my customers is the broad discretion given to the administrator to make a determination of what is clear and convincing and what is the minimum necessary to dissolve the dispute. My preference would be either more definitive language that takes that arbitrariousness away so that we can adequately advise our customers as to what to expect from the process and also to take that burden away from the administrator. Dan was talking about what criteria does the administrator use to make those determinations.

(#1495) Bob Sund: Do you have a recommendation?

(#1497) Dennis Pickard: I had some additional language that I had roughed out a while back and I haven't had a chance to review this new draft totally. I'd be happy to get that language to Bob as soon as I possibly can. On section 3.c.2(ii) the second line discussed an option for reducing lot sizes which are presently below two acres and it indicates the new boundary recognizes a logical physical boundary or condition, and again, the logical physical boundary, I'm not sure that is defined adequately to permit an unambiguous interpretation by both the customers and the administrator. The next part of that sentence indicates that the modification does not exceed 20% of the area of the lot. I believe that that should read something to the effect of 'the net reduction does not exceed 20% of the area of the lot'. A modification of greater than 20% can take place without there being any net reduction in lot size. Moving on to section 3.d. it indicates when property is acquired in fee ownership by the public for road right-of-way; technically road right-of-way is an easement, not a fee title, so there probably should be slight change in the language there; maybe indicate by the public for public road purposes. It provides two conditions; no lot of less than the minimum lot size shall be created - Bob, I assume that's the two acre minimum?

(#1585) Bob Fink: Right, in a rural area the minimum is two acres. It may not be two acres everywhere because this would also apply in urban areas. It's not necessarily just two acres.

(#1590) Dennis Pickard: It goes on to indicate that no lot of less than a minimum lot size shall be created unless the lot created is an out lot. Now the definition of an out lot that you have provides that the lots not adequate for either residential or commercial development. But a lot of less than minimum lot size would create a lot that could conceivably still maintain all the other criteria necessary for a buildable lot but would by this regulation become an out lot; a nonbuildable lot. I'm concerned that that provision would create a situation wherein if the county wishes to acquire road rights-of-way that they would have to buy the whole lot. In the next section it seems to provide greater latitude where it indicates that no existing lot shall be reduced in dimension or area such that it does not have adequate area, etc., but there it doesn't talk about if the lot created is an out lot. Those two paragraphs might need to be adjusted to accomplish what I think is the goal of this modification which is to permit the public to acquire rights-of-way in fee title without requiring that they comply with the normal subdivision standards and yet not create situations where there is essentially an excess of taking from the individual lot owners.

(#1712) Bob Fink: Number one is intended to address where you're creating a new lot. You have one lot and the road cuts off the property and #3 also addresses that. That's the difference between an existing lot and a new lot. The example you have is where you have a 2.1 acre lot and the road right-of-way cuts off a portion of the property and the property is still large enough to be developed under other codes and that would not prevent ...

(#1738) Dennis Pickard: So that should not be defined as an out lot.
(#1740) Bob Fink: That's not an out lot.

(#1742) Dennis Pickard: It is by the definition here, though, where it says no lot less than the minimum lot size shall be created.

(#1756) Bob Fink: The intention here was that a new lot is one more lot than you used to have. Number one says that you could divide property and end up with a single parcel; more lots than you started with but the little piece on the far side of the road would have to be an out lot. Let's say you had some purpose for that lot but it may not meet the requirements for development. The DOT wouldn't have to buy that land; they could leave it in the ownership of the farmer who owns the land across the way but it would be an out lot not a new lot.

(#1815) Dennis Pickard: If that's the situation you're intending to account for by the out lot language then that should probably more accurately be included in section 3 which talks about no lot shall be divided by the acquired right-of-way in such a manner that the total number of residential units allowed shall be greater than, etc. My concern is the situation with the way I read this as written is that the slightly over 2 acre lot that is reduced by some small margin by the right-of-way acquisition that that would then become an out lot.

(#1840) Bob Fink: You're right; maybe it would be more clear if #1 and #3 were combined. Three says you can't do this if you end up with a remote property; that remote property has to be an out lot.

(#1912) Dennis Pickard: I don't have any problem with section 2 but the important thing I'm concerned about is section 1 as it now stands is once the right-of-way acquisition reduces that lot below 2 acres as it's written, that lot becomes an out lot.

(#1920) Steve Clayton: So if we added the word 'new' would that alleviate your concern?

(#1930) Dennis Pickard: I'm not sure it would given the difficulties I've run into in the past with the interpretation of the word 'create'. My definition of the word 'create' hasn't necessarily corresponded with the department's definition. One situation we ran into where we had two parties and one of them owned approximately 6 acre piece and the other owned a 2 acre piece and they wished to do a BLA. The smaller piece wished to acquire some pasture land from the other. The result would have been two lots of the same level of conformity as the existing lot but the proposal was rejected as an application because the lot of greater size was being reduced to below the 5 acres. The interpretation was the reduction of the 6 acre lot to less than 5 acres created a nonconforming lot. On page 4 under the definition of a BLA. In the fourth line it talks about where required, a well, stormwater, septic system and reserve area. In a lot of residential developments it's possible to have these facilities placed outside the bounds of the particular lot. I was hoping that in the definition of out lot that some allowance could be made for future provision of offsite facilities to fit meeting those requirements.

(#2175) Jim Hungerford: My name is Jim Hungerford and I'm an attorney here in Shelton. In my practice here I from time to time deal with BLA's. People often come to me with BLA's if they have a situation where a survey is not required. I did want to comment on Mr. Holman's suggestion that surveys be required for BLA's and I think it's a very good thing that they're not required. The instances where a survey is required for a BLA are pretty obvious and in those case I would send a client to a surveyor to see that that's what happens. There are many instances that I've encountered where a BLA can be done pretty inexpensively and quickly to resolve an encroachment problem without actually having a survey. I do think that Mr. Holman's suggestion about the lack of any wording regarding just moving lines in nonconforming lots where you're not reducing any of the lots is a very good suggestion. I don't find that language in here and maybe it is but I will say that I've encountered that with other jurisdictions where if you've got lots that are smaller than the minimum size already, they're nonconforming lots, they say even if you're not reducing either of the lots if they're nonconforming you just can't do it. I think there are many instances that come up where there may be no encroachments but the BLA may run right through the middle of a building site and really rendering both lots useless and really by just moving it 90% or something you can make two buildable lots and I would like to see something like that in here.

(#2322) Steve Clayton: Mr. Hungerford, we're pretty vague on the administrator's responsibilities as far as documentation. What are your thoughts on that?

(#2330) Jim Hungerford: I think the more precise you can define it the better. I think it is somewhat ambiguous in here. It is left open more than it could be. As Mr. Pickard pointed out, when you're dealing with customers or clients it's nice to know ahead of time what to expect and what you can advise your clients about. When criteria are left in the way some of these criteria are worded with the discretion left to

the administrator if you can define that more precisely that would be better. I don't have any specific suggestions but I was struck that it states that the administrator must find it clear and convincing. What does that mean? I don't know and I'm a lawyer.

(#2430) Steve Clayton: Any idea where we could obtain such language?

(#2432) Jim Hungerford: I'd be happy to give it some thought.

(#2445) Bill Dewey: Any other testimony on this issue? Okay, we will now close the public hearing. Any additional questions for staff? Any guidance on where we want to go with this?

(#2460) Diane Edgin: It seems to me that in view of the testimony that if this new proposed language could be added to this by staff and brought back before us to review it would be good.

(#2480) Bill Dewey: Diane, so you think we've heard enough testimony and are just trying to come up with the new language? There have been concepts with language brought up tonight that have value in your opinion?

(#2488) Diane Edgin: Yes, I do.

(#2490) Bob Sund: It seems that Dennis has some verbiage someplace and along with the others if they could get that verbiage to Bob Fink and that Bob could incorporate that and try to get back to us at the next meeting with the new verbiage. Does that sound reasonable, Bob?

(#2510) Bob Fink: I do have a concern; it would be nice if we could address road right-of-way language in particular in a more timely manner. Unfortunately there were comments that came in that we would probably want to review the specific language for. I would like to point out that this particular language something that I disagree with Dennis when he spoke. The language in here is intended to address when a county or state acquires public right-of-way in fee ownership. He said that right-of-way is an easement. The situation really isn't that clear that actually the county and in some cases the state tries to acquire the right-of-way; the term right-of-way originally meant easement. When usually a public road right-of-way is vacated it goes back to the property owner that adjoins it because that's where it came from. But that's not always the case. Sometimes the land underlining the road is owned by the county entity and Mason County has been in the process of trying to buy the land in fee; actually buy the land rather than just get an easement across it. The difference is that an easement across it doesn't really divide the land; physically the road is a presence but in many ways we consider that easement as still being owned and acreage still accounted for the property owner that adjoins it. The state law regarding large lot subdivisions; to get to five acres they count in large lots to the middle of the county or state road because that's all right-of-way. The situation isn't always clear; you don't always know whether the road is right-of-way or easement. In the future the county intends to buy the fee ownership which will clearly divide the land and the land won't necessarily go back to the adjoining property owner if it's sold. So that creates additional problems of how you treat that land and what happens to it. I just wanted to clarify that.

(#2685) Bob Sund: So you're saying that if a road went through a parcel and the county got an easement or bought it outright, at a later time if the road was rerouted in a way different that this original property wouldn't go back to the landowner? Would it be retained by the county?

(#2708) Bob Fink: It could be retained by the county or it could be disposed of as surplus property which means it's sold to the highest bidder.

(#2740) Bill Dewey: It sounds like the county is changing their policy where in the past they worked with easements and now they're going to purchasing. That seems almost inappropriate. If you're going to go by condemnation and take land from somebody and then later the road is abandoned it seems to me that it would only be appropriate that the land the landowner was taken from originally be offered the first right of refusal on that.

(#2770) Bob Fink: There are some fairly complex rules for disposing of surplus property. It's beyond the scope of what we're trying to deal with here. I just wanted to be clear that there is that distinction between

right-of-way coming in as easement and right-of-way coming in as fee ownership. I've been told by the Public Works Director, Jerry Hauth, that the county, when they purchase property, usually try to purchase in fee. That means that that land is no longer owned by the previous owner. We're trying to clarify the regulation so that we know how to treat this so that we're not left with a piece of land that either isn't buildable or is marginal and then it becomes a process of do you apply for a variance or a waiver. We want to clarify that so people know if it's buildable or not buildable. Then they're going to get a fair price for it.

(#2878) Diane Edgin: You're talking about trying to clarify this road right-of-way business and one thing that was said was about whether a lot boundary can be changed by it's directions so you can have buildable lots. That should be something that happens. Too many times something that has happened over the past years is you look at a short plat or whatever and there's maybe four pieces and they lay them out but that doesn't matter when you actually get out there and look at the land as to how it should be treated.

(#2930) Bob Fink: Another thing that these regulations address is there's not a prohibition on someone modifying their boundaries under normal circumstances. If they have a lot that is conforming in size and they want to modify their boundary with other lots that are conforming in size whether they're taking the lines and turning them or whatever there's no restriction on that. Where the restriction lies is where they're taking a lot that is currently conforming and making it nonconforming; reducing it below the minimum lot size. Or they're taking an already nonconforming lot and reducing it even further and the purpose of these regulations is actually to provide for certain relaxation to that restriction. This is when you get into administrative discretion. The language on page 2 under 3.c.2(i) the adjustment resolves a physical encroachment of buildings or improvement on the property and is it the minimum necessary? I don't know about clear and convincing. The intention there is to indeed tap into the legal meaning of clear and convincing. That may or may not be entirely necessary. It may be necessary to limit it by saying is there a physical encroachment? That's what you're trying to address.

(#3050) Diane Edgin: We're talking about creating nonconforming lots. Does that make them unbuildable or is that going to put the county at the point of having to buy a lot of different properties because of this out lot creation? I can see that happening every time you push a new road through some area.

(#3075) Bob Fink: You create the problem whether you recognize it or not. If you simply lay the road out without consideration of where the properties are and you only buy the right-of-way necessary then you are creating a situation that legally is unresolved. That's what this does; if the property on both sides of the road is an adequate size to be buildable then the road could divide it into two lots. If you start out with a 10 acre lot and you put a road down the middle of it and you ended up with 4.5 acres on each side they wouldn't meet the density requirement. Overall they would meet the density requirement, they would meet the minimum lot size requirement, they would probably both be buildable and they wouldn't have to go through a subdivision to do it. If you take that road and you put it down the middle of a 7 acre parcel then you might still end up with lots on each side that are over 2 acres and they might both be buildable but if they each would be allowed to build as a residence then you will have increased the building potential in the rural area. If that land had never had a road put through it you would only be able to put the one house on it. Now that the road has gone through it you have two housing lots and they should be paying the county the profit for putting the road through the property. The idea being that they violated the intention of the regulation which is to control the rural character and the rural density. This says that you can't increase the density.

(#3226) Steve Clayton: How does that affect the Overton property in Belfair that might be stranding 10 or 15 acres up against the railroad without access?

(#3250) Bob Fink: Urban area minimum lot size are much smaller. It's not to say that you have to have a driveway but you have to have a sufficient area on your lot to have a driveway. If you think of a lot and you've got a certain amount of it to have in order to build; you've got to have a place to park your car, you need to have your septic and well if you have those, and that's what you need to have in order to have a developable parcel.

(#3298) Steve Clayton: You also need to have access to the parcel.

(#3306) Bob Fink: You're right in the sense that you have to have access and maybe that should be added but that's not a matter of dimension or area; it's a matter of having access. Your access could be having an

easement across adjoining property or it could be directly onto a road or it could be potentially on any side of your property.

(#3335) Steve Clayton: My understanding of that particular application is that they're fairly stranded because we don't give access points off the bypass and it's backed up against the railroad so there's no access to the west and so we're being forced to purchase property but we're dividing it off of a major piece, is that an application for this particular issue?

(#3360) Bob Fink: I don't know enough about the facts. Primarily this would not necessarily keep you from laying down that line. You have to look at ownership. How many of those properties have access? How is the access provided to those properties now? There's a lot of site specific questions you'd have to ask to know what the effect might be in that given example. Because it's urban the lot size isn't an issue so you're not creating a lot ... which is what this section deals with. Is it creating a lot less than minimum lot size or reducing a lot less than minimum lot size. To a certain extent it deals with the division of land by a road. What this would specify that you could clearly do is you could divide land by a road as long as you weren't creating an unbuildable lot without having to go through a short plat or a subdivision. So in an urban area it would apply in the same way. It wouldn't specify what your access is; that's something to be negotiated between the county and the property owner as to how they're going to get access and what their land is worth without access. This doesn't really address that.

(#3464) Mark Drain: This gets back to what Mr. Holman addressed. I completed a BLA in Grays Harbor County and am in the process of one in Thurston County. In order to validate that BLA with the county I have to provide maps done by a licensed surveyor. The parties, if they're different landowners, have to sign off on the survey and then the county accepts it. Does Mason County go through that same kind of process?

(#3512) Bob Fink: All the property owners have to be party to the BLA. The county has made the choice at this point not to require a survey for a BLA.

(#3536) Mark Drain: That seems like a nebulous thing. I don't know what you're agreeing on if there isn't something drawn on paper.

(#3544) Bob Fink: Often the existing lots have never been surveyed so you're taking a papered legal description of a lot and making a modification to that paper legal description and you're hoping that everyone is more or less right about where everything is. Usually if there's a disagreement on the property line that's because someone did a survey or you don't have very convincing evidence that there is an encroachment unless a survey has been done. Mason County processes a lot of BLA's with surveys and a lot without a survey. It's a considerable expense; it's good to have a survey. You do have to be careful because you could have where someone sells their property and it's defined in a portion of a section; 5 acres might be 330' x 660'; some people will sell the east half to one person and then they'll sell the western 165' to someone else and they'll find out they didn't have a whole 330' so there may be an overlap between the property ownership of the two parties. That's the kind of issue you run into when you use title descriptions.

(#3715) Bill Dewey: Related to that and several issues have been brought up tonight and need more work but you specifically have asked us to deal with the road right-of-way section. Are we anywhere near consensus on language to get that for you tonight?

(#3726) Bob Fink: If you would table that until the end of the meeting and we'll see if we can come up with language that you might be able to consider and we can move forward with the rest of our agenda.

(#3744) Bob Sund: I move that we table this until the end of the meeting.

(#3748) Diane Edgin: I second the motion.

(#3750) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Motion passed. Next up is the public hearing on proposed changes to administrative variances for side yard setbacks for development on parcels designated Rural Residential 10 and Rural Residential 20 in Mason County. Allan?

(#3792) Allan Borden: I'm Allan Borden with the Department of Community Development. Tonight's proposal

involves a review of side yard setbacks in rural residential zones in Mason County. The current DR's have side yard and rear yard development standards and some of the parcels in rural residential zones are small or narrow in dimension and some property owners have not been able to construct proposed buildings without seeking a standard variance to the DR's side yard setback standards. Tonight the staff proposes two alternatives to address this problem. Alternative A is for RR 10 and RR 20 designated lands and an administrative variance review process is established for parcels that meet certain circumstances related to lot size and lot width, existing improvements on the property, such as buildings, septic systems and wells, and physical features such steep slopes, wetlands and streams on the property. This process is brought into the DR's under RR 10 and RR 20 zones by adding a provision about reducing the side yard setback trough a new subsection in the variance authorized section of the DR's. So as you can see in the staff report on page 2 we're adding a phrase on special provisions so that they can be reduced by administrative variance and then we're adding a subsection in the variance authorization that describes the process. Using those standards a basis for approving them is documented in the county legal files. The second alternative for RR 5, RR 10, and RR 20 designated lands is added to the development standards for side yard and rear yard setbacks that states in certain circumstances such as slopes, wetlands and streams, lot width and size, or an existing improvements of buildings, septic systems, and well areas, the required side yard setback shall be equal to 15% of the lot width but not less than 5 feet from the property line or easement boundary. We have two approaches, either utilizing the administrative variance process or change in development standard to include that some exceptions may apply in certain circumstances. When we analyze these two alternatives of an administrative variance review versus the use of an exception when it's applicable, the administrative variance process is largely paper work that takes a certain amount of time and money of the applicant to submit the form and staff to review the document findings. The exception to standards states the circumstances of the project so that the property owner can predictably propose development on properties that have constraining circumstances and the staff can provide effective review of that proposed development. Alternative B is preferred by staff as the exception standard.

(#0240) Darren Nienaber: Allan, are you proposing to have this regulation with an asterisk at the bottom as it appears?

(#0244) Allan Borden: That's right.

(#0248) Darren Nienaber: Can you fit that into the text itself?

(#0250) Allan Borden: Well, it could be put in there.

(#0252) Darren Nienaber: I'm not a big fan of a regulation with an asterisk in it.

(#0255) Allan Borden: If you go to attachment 2 on the first page of Alternative B you could take what's highlighted on the bottom of the page and stick it at the end of side and rear yard setback standards and maybe underline exception.

(#0335) Diane Edgin: On Steve Clayton list of questions, he was talking about under Alternative B to extend it to RR 2.5. Can you give me a reason why you did not include the 2.5?

(#0348) Allan Borden: Primarily, because when we were looking at the initial proposal for the administrative variance we were only applying it RR 10 and RR 20 where when we designated these properties there are a lot of existing, nonconforming lots and those lots still can develop houses on them but as those nonconforming lots get smaller and smaller and you wind up with a 3/4 acre lot that's where the administrative variance would apply because these people are really constrained. We came up with this other mechanism that wouldn't require a $90.00 fee, an application, time spent, staff review time, with this exception and we thought this could apply to RR 5 because it would be easy to apply. We're figuring that the only areas that RR 2.5 occurs in are the RAC's and those basically are Hoodsport and Union where you have really small lots. In Taylor Towne it really doesn't apply because those lots are large. The only lots that are really small are already designated as RC. It wouldn't hurt; the suggestion to include 2.5 could be utilized but I'm thinking about how much I work with the plats in Hoodsport and Union and there are very few lots there that are really small. Most of them are at least 3/4 of an acre because they cobbled together 4 ½ lots in a block and now you've got a lot that's 125 wide and 225 feet deep.

(#0438) Steve Clayton: If we go by the text of the current RR 2.5 they could build within 5 feet of the property line on a 3/4 acre lot. So on a 3/4 acre lot you wouldn't have any trouble having a 20 foot setback.

(#0454) Allan Borden: If we leave RR 2.5 the same it will have a 5 foot side yard setback. What we've done with RR 5 we've increased the side yard setbacks for RR 5 from 5 to 20 because the lots that are real small will be able to apply the exception to.

(#0492) Steve Clayton: I agree with the 5, 10 and 20 that 20 feet is an appropriate number but it just seems like for the 2.5 it's also an appropriate number. As you're saying if you've got a 3/4 acre lot you should be able to have a car length built away from the property line.

(#0505) Allan Borden: Let me think; those properties in Hoodsport and Union are platted out on hills. My first reaction is I don't know that I would change the side yard setback for 2.5's just because they're the next step up from the UGA's. Twenty five years from now when Union might incorporate as a city they might qualify as a UGA and then they would probably create their own standards at that time. I just wanted to say something about the other comment that Steve made and that's we shouldn't be bogged down talking about permitted land uses in those zones because we're really not discussing that right now. I'm thinking that some of those uses as community and recreation centers and commercial day care centers are going to require special use permits with public review and we'll get input about the appropriateness of the proposal, the development, setbacks, buffers, appearance and things like that.

(#0575) Steve Clayton: I missed when we were talking about our GMA compliance things and to me, these applications should have gone in RC and not in RR. I personally live on a road that has a new daycare on it and it's very high traffic count. You've got numerous kids using a private well and other such considerations. There was also Christ Lutheran which is a church up in North Belfair that's in a RR area and it went from 23 to 88 children again on a private well. Essentially the neighbors brought in complaints and videos and essentially there are for sale signs running. How would you like to have 88 kids and a church next to you if you're a retired folk? That isn't fair and that isn't RR.

(#0608) Darren Nienaber: You already started your SEPA process and this isn't in the scope of review of that. You couldn't do it. It's a good topic for future discussion. This issue is only regarding side yard setbacks.

(#0620) Bill Dewey: Any other questions for Allan at this point?

(#0625) Allan Borden: Basically you agree that there is a problem and these are two ways of trying to resolve this situation. We have received complaints from people who live in subdivisions who unfortunately are located in RR 20 and some RR 10 which we may fix in the next go around. There are an assortment of size of lots in all of those zones; 5, 10 and 20 and by approaching it with either the administrative variance or the exception would address those problems and situations.

(#0655) Bill Dewey: In Alternative A, the language that you have on page 2 you're referencing existing lots of record as of March 5, 2003 and then you have RR 10 and RR 20 and then when you're talking about Alternative B, there's no reference to a date and you're talking about RR 5, 10 and 20?

(#0675) Allan Borden: That's correct. The administrative variance text is structured so that it was very similar to a previous request for front yard setback reductions and we had decided at that time that lots as of March 5, 2002 would be afforded the opportunity to reduce front yard setbacks. The thought is that future subdivisions will not create lots that don't meet reasonable development so if the person wants to subdivide a piece of property each one of those lots that's created has to meet the development standards.

(#0727) Mark Drain: You have standards for the setbacks and then we're going to talk about the exception. What is it that would require someone to go by the standards rather than just defaulting to the exception?

(#0742) Allan Borden: They would have to meet those qualifying conditions. They'd have to be a lot of 1 acre of less, they've have to have a lot that's less than 100 in width ...

(#0745) Mark Drain: But some of those lots could meet the requirements and not have to go to the

exceptions. What holds them to their requirements instead of just defaulting? There should be some verbiage and then we're going back to who is making the determination? If they can't fulfill these standards what clicks them over to the exception?

(#0790) Allan Borden: If they have an 80 foot wide lot, this provision says their side yard setbacks have to be at least 15% wide. Let's say it's 100 foot wide lot, it has to be 15 feet on either side. When you get down to the 60 foot wide lot then you're talking much closer to 5 foot for the side yard setbacks.

(#0842) Mark Drain: My questions is, the regulations say he has to stay 20 feet away. At what point does he go to the exception? Does he make that determination himself by saying that he could save himself 5 feet of pavement if I just moved my house over another 5 feet and go to the exception.

(#0855) Allan Borden: These standards are applied by the department. The applicant would have to provide some sort of verification of why they can't meet the 20 foot setback.

(#0865) Wendy Ervin: Doesn't the language of the exception say existing improvements, etc., and that's what kicks you into the exception? If you're designing a lot from scratch on vacant land then that exception doesn't apply.

(#0877) Mark Drain: But it could apply.

(#0885) Wendy Ervin: It says existing improvements; it doesn't say planned improvements.

(#0888) Allan Borden: She's right. This really applies when somebody has built a house in 1994 and they want to put a garage next to their house.

(#0910) Steve Clayton: I think Wendy brought up a good point and Allan saw it that this doesn't address new construction on a small lot.

(#0940) Allan Borden: If it's a vacant lot there are no encumbrances; they would have to go to the standard.

(#0944) Steve Clayton: There may be a septic system encumbrance which we deal with quite a bit and driveway access point encumbrances.

(#0950) Wendy Ervin: Then it's not a vacant lot. If you have a septic on it or if you have a driveway on it then it's not vacant.

(#0952) Steve Clayton: Right, but there might only be one place on the lot you can put the septic.

(#0970) Allan Borden: I could change, on page 3, where the asterisk is, at the end of that sentence regarding the exception 'with a lot width up to 100 feet, a lot size up to 1 acre', and then change 'or a lot with existing improvements' to 'and a lot with existing improvements'. Right now you only have to qualify for 1 of the 3.

(#0996) Mark Drain: You're excluding bare lots receiving an exception when you say that.

(#0998) Allan Borden: Yes. They'd have to get a variance if the lot is so small. When I wrote this I was thinking of the lot that's stuck in one of these subdivisions that's 65 feet wide. I'm not thinking of the lot that's 1 acre in size.

(#1040) Steve Clayton: We did a variance on the south shore of Hood Canal there in Union where they built on a lot 100 foot wide but they had a Class III salmon stream going down the lot so now you have an encumbrance that isn't addressed here or you could have a geological encumbrance, etc., where they would be forced to one side of the property or the other. Do we want to knit pick down that far?

(#1060) Wendy Ervin: These are all manmade exceptions and maybe we should add wording into the exception that allows for a natural encumbrance.

(#1066) Steve Clayton: Or would that go through the variance process, Allan?

(#1078) Allan Borden: The critical area buffers are pretty significant. With a 100 foot wide lot if the stream was on one side they probably would already be in the buffer by the time they got done. I did mention on page 3 about slopes, wetlands, streams and soils but I didn't put it in the exception standard.

(#1120) Bob Fink: Special features like wetlands are best addressed through the variance criteria. Where you have a standard variation to the width of the lot then if you provide the sliding scale it seems like a more reasonable way to go which doesn't even require an administrative variance. It's difficult to address something like the stream except in the variance process.

(#1155) Bill Dewey: So the exception as it's worded is probably most appropriate not pulling in the geological or natural restrictions.

(#1165) Bob Fink: You can quantify this. The geological restriction is more difficult to quantify and that's why you need more sophisticated and elaborate review.

(#1178) Steve Clayton: Wendy brought up that the wording there doesn't address if it's a vacant lot and we can only put a septic in one area, the wording here addresses existing buildings, etc. If we have a vacant parcel and we need to put the well in a particular place and we need to put the septic in a particular place is that a problem from your point of view or will that address it?

(#1200) Bob Fink: The idea I had as I envisioned it was to really address the encumbrances separately through the variances. A way to address small, existing lots that may be isolated in these large zoned areas is to have a sliding scale and as the lots got smaller you would have a standard mathematical approach to it. So a small lot would have proportionally small setback and that would presumably be a better way to address that situation than a variance process. The administrative variance doesn't add much to the length of processing the permit but there is a fee attached and there are certain criteria that have to be met. Not only would I say that you probably wouldn't want to include streams in this standard is you may not want to include existing improvements because it's not a clean up front regulation where you can say you lot is 50 feet wide so my setback is 5 feet. Then you would come to a situation where the lot is 100 foot wide but I have a house; does that mean I get a 5 foot setback because there's already a house there? Those kind of detailed evaluations of the site aren't codified easily. It's something that you should consider leaving for the variance process, and it could be an administrative variance up to the 5 feet. I think just picking up the lot size would deal with 90% of these cases because we're talking about a small lot and that relieves them from having to get a variance.

(#1322) Mark Drain: So you're suggesting where it says 'up to 1 acre' and delete everything after that up to where it says 'shall be equal to 15% of the lot'?

(#1332) Bob Fink: That's right.

(#1334) Bill Dewey: I think you need to include where it says 'required side yard setback for a residential dwelling and accessory structures' as well.

(#1352) Mark Drain: That's right. We've got to have that in there.
(#1360) Steve Clayton: So we're treating the existing improvements as we would with a waterway problem through the variance process.

(#1364) Bob Fink: Right, because it takes a unique evaluation.

(#1370) Bill Dewey: Let the record reflect that there was no one here for public testimony on this particular issue.

(#1380) Mark Drain: I'll make a motion that we adopt languages put forth by Allan Borden but exclude the lines right after 'a lot size up to 1 acre', and then begin again with 'the required sideyard setback for residential dwelling and accessory structures shall be equal to 15%' etc.

(#1400) Bill Dewey: So for clarity, the deletion is the 'or a lot with existing improvements of buildings, septic

systems, and well areas which encumber available area for the proposed development'.

(#1412) Steve Clayton: Can I tack on for clarity that we are accepting Allan's recommendation of Alternative B?

(#1414) PAC: Yes.

(#1416) Diane Edgin: I second the motion.

(#1418) Darren: We were talking earlier about moving the asterisk up into the text.

(#1426) Bill Dewey: I accept that as a amendment.

(#1430) Diane Edgin: I second that.

(#1435) Steve Clayton: I would like recommend to extend it to the RR 2.5 parcels as an amendment.

(#1444) Diane Edgin: I think that's going to create problems.

(#1446) Steve Clayton: I live on a 1 acre and 20 feet is plenty on a 1 acre. It would be a shame for someone to have a 2 acre parcel and build 5 feet from the property line.

(#1462) Bill Dewey: So we have the 2.5 as a friendly amendment.

(#1472) Bob Sund: Didn't Allan say that 2.5 acres really occur are in RAC's and those RAC's may in some point in time become UGA's?

(#1482) Steve Clayton: Then when they change to UGA's then they get into 4 units and 6 units per acre.

(#1485) Bob Sund: But the house would have already been built there.

(#1494) Bill Dewey: We have a motion and a second and several friendly amendments. The first friendly amendments that up for vote is the inclusion of the 2.5 acre. All in favor? Opposed? Let the record reflect that the motion carries by the majority. Next friendly amendment is the deletion of the portion of the sentence starting with 'or a lot with existing improvements', etc. All in favor of the deletion? Motion carries. Next friendly amendment was Darren's amendment to move the asterisk portion in the body of the text. All in favor? Motion carries. The other was just a clarification on recommending Alternative B.

Break in meeting.

(#1625) Bill Dewey: The next item is the proposed changes to the impound yard regulations.

(#1630) Bob Fink: My name is Bob Fink with the Department of Community Development. What is proposed is to provide some alternative ways to regulate motor vehicle impound yards to provide buffering between those activities and the neighboring properties in particular, when the properties are not industrial properties. This was partially because of the need to locate a new impound yard. Impound yards provide an important service to the public by providing a place for vehicles to be temporarily stored that have been in accidents or have been impounded by the police and because of that it was seen as an urgent issue to address. It was originally adopted as an interim ordinance. The original county regulation had required that an impound yard had to be contained within buildings and the input that we've gotten on that is that it's simply excessively costly to do it in buildings so we have two different alternative ways in which the impound yard might be buffered from the residences. Currently they're allowed anywhere in the UGA's of the county. The new regulations would restrict where they could go in the urban areas and then provide these alternatives.

(#1702) Bob Sund: If it's just in the UGA's why is it before us?

(#1708) Bob Fink: The UGA outside of Shelton is in our jurisdiction and there's Allyn and Belfair which are UGA's and under the county jurisdiction. Because the county has authority that's why we're addressing it.

(#1740) Theresa Kirkpatrick: Could you please define temporarily? Is there actually a time limit on how long a vehicle will temporarily be held in an impound yard?

(#1748) Bob Fink: No, there's not a time limit and we don't track it. These are impounded vehicles; it's not an auto wrecking yard and it's not an auto repair place. It's an impound yard. Sometimes court cases last for years so it might be there for years before final disposal or it might be for just a day or two.

(#1772) Bill Dewey: We had this discussion in off-street parking about carports or vegetative buffers and environmental impact from the vehicles that weren't in a covered storage area. It seems to me that it's almost of a greater concern in some of these impound lots because these are often vehicles that have been in wrecks and are part of court cases and they are leaking fluids badly and that there might be an environmental impact of not having them in buildings on a concrete floor.

(#1800) Bob Fink: Interestingly that never came up at any time we were discussing this. If I can presume I would think that they would have standard means of dealing with such issues because it's pretty common in situations of this kind so I expect that they put drip plans or use other means to address it. It just hasn't come up and I recognize that you're saying but I don't know how to respond to it.

(#1825) Darren Nienaber: How many yards are we talking about?

(#1827) Bob Fink: Not very many; I know of two. I'm sure of two but I think there might be one or two more. This is the only time this has come up since 1996. The one time this came up is the only new one in those six years.

(#1845) Theresa Kirkpatrick: As the population increases do you suppose that the need for additional impound yards will increase proportionally?

(#1850) Bob Fink: I would actually expect some additional need for impound yards. What I expect that specific regulations will be written very soon for each of the UGA's where these are permitted and that the communities Allyn, Belfair and Shelton will come up with more specific standards. I see these standards as essentially interim until zoning is adopted within the UGA's. They were adopted on an interim basis and they will expire unless it's renewed. I'm bringing it forward now just to preserve it as an option on the books.

(#1912) Diane Edgin: Explain what an F4 fence is.

(#1918) Bob Fink: There's an illustration of it attached to your staff report.

(#1922) Diane Edgin: I can see right now you're going to have some real legal implications. First of all, you're talking about an impound lot which you have a certain responsibility for protecting that property and quite frankly, every urban area I've ever seen all over the country when you're talking about an impound lot you're talking about an 8 foot fence with razor wire on top. Otherwise you have a responsibility in operating that lot that the government is the one causing the vehicles to be impounded and a lot of places the guard dogs are there on top of that. In an industrial area I don't think that should be a problem.

(#1960) Theresa Kirkpatrick: It also allows it adjacent to residences.

(#1965) Bob Fink: In industrial areas that requirement doesn't apply. If the surrounding uses are industrial then the standard buffer yard C is required; that's all that's required in an industrial area. Standard buffer yard C is also explained here. We don't require any particular fence and a minimal number of plantings with a 15 foot setback.

(#1987) Darren Nienaber: They could have a big fence with razor wire, though.

(#1990) Bob Fink: That's correct. These are just the minimum standard. In the discussions with the people wanting to set up an impound yard ... additional language was added for two reasons. One is the degree of sight obscuring fences and the cost of those fences and the degree to which they obscured sight. The reason why the picket fence was picked was because you couldn't see through it. I've looked at a couple of

them. They have tall fences and barbed wire across the top and they typically will put slats in between the links and you can still see through it. It's sight obscuring but only slightly. If you went out and looked at some of these sights where this would be allowed and you have residential uses nearby to buffer the residences from the activity we thought that a complete sight obscuring fence was required. We were trying to make it a reasonably attractive neighbor to have if they were going to go into a residential neighborhood at all. If they went into an industrial area with existing industrial surroundings then they don't need those kinds of buffers.

(#2070) Diane Edgin: I'm wondering if we shouldn't just forbid them in the residential areas because there's a whole other segment of law called attractive nuisance laws and I think anything like that ...

(#2085) Bob Sund: But there is a point somewhere in that industrial area where it becomes residential.

(#2088) Diane Edgin: I do think you need to make fairly stringent requirements when you make that transition.

(#2100) Bob Sund: It may be an industrial area but on one side of it is residential or multi-use.

(#2106) Diane Edgin: So I think the fence with the buffer is appropriate.

(#2108) Bob Sund: Where did these criteria come from that's on here; the buffer yard standards?

(#2120) Bob Fink: When we adopted our regulations in 1996 we adopted those particular standards then. The decision of what buffer was appropriate, I met with the City of Shelton planner, Barbara Robinson, and we looked at some of the sights that were being considered and how close the residents were. If we weren't going to enclose them in a building what restrictions should replace those. We agreed on those restrictions as being adequate to buffer the surrounding residences. The problem with what you had said earlier except to some degree in Shelton the UGA's have no residential area in the sense that they have places where there are residences and places where there is not but there is no residential or commercial or industrial area. If there were then it would seem appropriate to limit it to an industrial site or to maybe a commercial site. That's the problem. That would prohibit it to only being in the Shelton UGA and the problem with the Shelton UGA's designation is that it was very loosely founded. They basically have no documentation to back up the zones they created. They essentially extended the lines that they had inside the city loosely outside. So it doesn't really reflect what the reality on the ground is and therefore I would use it only with great hesitancy. We're hoping they're improving that right now and coming up with a new plan.

(#2225) Wendy Ervin: You have this number of evergreens and this and that and it's got to be planted on a width of whatever and it seems to me you may have crossed the line between having something that is attractive and having something that is an attraction and this sounds very park like; unnecessarily park like. I would think that a chain link fence would do it as far as not being able to see inside the fence.

(#2250) Theresa Kirkpatrick: One thing about ivy it's already been made illegal in two other states and it could quite possibly becoming illegal in the State of Washington. English ivy is against the law in California and Oregon at this point so that could be coming this way so that might not be a good recommendation.

(#2260) Wendy Ervin: There are other climbing things that would work.

(#2265) Diane Edgin: Sometimes the buffers are more than just visual; they're also a sound protection.

(#2267) Bob Fink: Sound is an issue; they often haul things in late at night. Sound was one of the reasons why the berm was included because that's more effective than a fence. This is what the county adopted on an interim basis and when we had to act fairly quickly that doesn't mean you have to approve of it. If there's something here that you think is more than necessary ...

(#2292) Wendy Ervin: So this is only currently temporary?

(#2294) Bob Fink: This is entirely a draft.

(#2298) Darren Nienaber: The motor vehicle impound part; these are current.

(#2302) Bob Fink: These figures are adopted and it wasn't really our intention to readdress the buffers but only the buffers as related to the impound yards at this time. Those are just attachments for the draft. The draft is on page 1. The only other attachment that would need to be actually adopted is the City of Shelton Comprehensive Plan Map which distinguishes industrial areas from residential areas but when you look at that you have to realize that it's not well founded on reality.

(#2338) Steve Clayton: On my e-mail to you I had a question or problem with what you recommended. It says there needs to be an existing industrial use next to it. My thought on the planning process is if we've designated a particular area as industrial then guess what? You guys get your impound yard there. It could be out in nowhere and there's nobody around it, which would be ideal, but according to this ordinance they couldn't do it. If we're going to say it's okay in an industrial area then it's okay in an industrial area. My personal preference is that in an industrial area that it can be open and in an industrial / commercial mix where it's sitting next to Walmart or something else and in that application it should be in an enclosed building and rather than trying to knit pick down on particulars, and I agree with your buffers but rather than putting a limitation on where it can go ... as you know, the planning process in Belfair where there's $100,000.00 going through our planning process to designate what parcels are industrial, commercial, residential and yes, we don't want these things in residential and yes, we don't want these next to the school, etc., and that's part of the planning process. My opinion is we should let the urban areas do their job and designate what areas are industrial and once they say it's industrial then yes, you can have the wrecking yard, storage yards, you can have what belongs in an industrial area.

(#2420) Bob Fink: I understand that and I have a couple of comments. One is you really need to separate what will be adopted probably from what's there now. Currently, except in the interim ordinance where we're trying to bridge the gap, these impound yards are allowed anywhere in the urban area and they have to be in enclosed buildings. Any modification to that that you think is desirable for this interim period is something that you can propose. As I said one of the problems with talking about industrial and commercial areas is that they're not identified. We don't know where those are. You can talk about surrounding uses being all industrial or surrounding uses being a commercial / industrial mix or talk about surrounding uses being residential and you can say there are conditions a, b, c or you could say that you don't want to loosen this regulation until the new zoning for the urban areas is in place; that basically we think it should be restrictive. The only problem with that is there is an important public need for adequate places to impound these vehicles and that doesn't mean there will be another one in the next five years.

(#2488) Steve Clayton: My concerns revolve around both allowing the operators to say this is zoned industrial so I can put it there and also, not to allow the operator to say that in Taylor Towne it's not an industrial parcel and it was grandfathered in but because it's next to one that's grandfathered in we can put it there. That to me wasn't the intent of the people who made the Comp Plan.

(#2505) Bob Fink: In Taylor Towne it wouldn't be allowed at all.
(#2508) Steve Clayton: That was just a rough example; I'm not that familiar with places down here. By the designation, I'm saying that there was an industrial use next door so you can put it there ...

(#2515) Bob Fink: It actually says there has to be an existing industrial use or it has to be grandfathered as an industrial site.

(#2522) Steve Clayton: To me that allows a footprint in to expand and change the character of what the Comp Plan says.

(#2528) Bob Fink: If that's what you believe then you may not want to allow regulations that would be this liberal or unrestricted. If you think that they should remain in buildings ...

(#2540) Steve Clayton: What I'm saying is we have some rough guidelines that say that designates industrial areas ...

(#2558) Bob Fink: You have the option of simply allowing it only in the industrial designated areas in the Shelton UGA. Then you'd have to ask yourself what you want to do for Allyn and Belfair. Maybe you would

say that it's not appropriate in Allyn at all so why liberalize the regulation and Belfair ... it may be more appropriate there and then you have to figure out that maybe you would use something like this. You could certainly feel free to modify it based on your judgment. Maybe it would be something else in Belfair because you don't have industrial areas that are identifiable.

(#2590) Steve Clayton: Actually the Allyn plan doesn't include any industrial zoning under the tentative plan that hasn't been accepted yet.

(#2600) Bob Fink: Even without accepting it you can consider that in your judgement given the nature of the community that it's not appropriate to put it anywhere in Allyn at this time. There's no legal requirement that it be allowed and Belfair isn't that far if you do allow it in Belfair so I don't know that it would be a major issue with anyone.

(#2620) Steve Clayton: What would be your thoughts along the lines of instead of having the wording next to a current industrial use have it that open air yards are acceptable in UGA's and areas zoned industrial and enclosed yards are acceptable in UGA's and commercial / industrial areas? That way both the people who want to build the yards have a defined set of properties where they can go and when Belfair comes on line with their plan obviously we're building industrial zoning there then we don't have to redraft these for that. Then it's fairly concise.

(#2662) Bob Fink: Would you keep these landscape and buffer requirements as they're proposed here or would you modify them? If I understand correctly how you'd modify this proposal is where this has if the adjacent uses are industrial then the standard buffer yard C shall be required, which is just simply some landscaping and a setback. You would say that that's fine for an industrially designated area and if it were outside an industrial area, say a industrial / commercial mix area, which I think Shelton has, then you would allow it outside of a building but with the buffers as stated under the alternatives. Do you have any preference if all these together you'd want to offer any particular one or two. If it's not in a designated industrial / commercial area then it would have to be enclosed in a building or simply would not be allowed?

(#2745) Steve Clayton: My personal preference is that I would not have it allowed because of the noise and associated traffic you don't want this facility in a residential area.

(#2756) Theresa Kirkpatrick: Can we just exclude it from a UGA?

(#2758) Steve Clayton: No, you want them in the UGA. That's what our UGA's are for is for business, industry and commercial.

(#2766) Bob Fink: So what you propose in the short term only be allowed in Shelton; in the longer term, then it would provide other places for it without coming back and revisiting the issue.

(#2778) Steve Clayton: Would you find that an acceptable concept?

(#2782) Bob Fink: I've had some discussions with people who provide this service and other planners and I don't think there's a serious objection to the concept but the only issue that might come up is in the short term in the north part of the county there wouldn't be any place that you could put these. That would be the only objection I can see that might come up. It's taken seven years for this to come up once.

(#2815) Steve Clayton: Are there any current concerns in the north end?

(#2817) Bob Fink: I'm not aware of any.

(#2822) Steve Clayton: In theory our plan will be done in a year.

(#2826) Bob Fink: That's true.

(#2838) Wendy Ervin: It seems to me that there are not, at this point, impound yards in residential areas and all of this language about how many trees and all the rest of this is so that you can put an elephant in there and then cover it up with a whole lot of greenery and pretend it really isn't there. It's not necessary to put the

elephant there. Where are these located?

(#2868) Bob Fink: There's one right downtown near the Kentucky Fried Chicken and there's another one outside of town and there's a new site for one down by Brockdale Road. It's an area that's not very developed but there are a couple of residences in the vicinity. That's one of the sites we were looking at.

(#2935) Steve Clayton: It seems like to cover up the elephant like you're talking about there could be some appropriate applications because not all of the industrial area is industrial; there's a lot of residential. We could put in an exception that if this goes in next to a residence at least for the residence side we shield it.

(#2950) Wendy Ervin: I would think that with continued planning those areas that are residential and next to industrial eventually will sort themselves out so that the residential is here and the industrial is here. Why try and push this elephant into a residential neighborhood; just keep it out. Then you don't have to worry about covering it up and camouflaging it.

(#2980) Bob Sund: What happens if it's in the industrial area but someplace on the map there's a line that says this is industrial and this is residential. If it's in the industrial it may next to a residential on the one side.

(#3025) Diane Edgin: If we go with an outdoor impound lot in an area where there wasn't one before; where do I want to locate this? They're going have to start looking at what area they could locate it and we have several areas where industrial is right up against multi-unit housing.

(#3100) Bob Sund: Why couldn't it be left to the UGA to determine? Why do we have to determine it? Why can't we be very general and rely on the specifics to the UGA?

(#3120) Bob Fink: You can't do it if something comes forward before those regulations are adopted. You could do it recognizing that it's only an interim ordinance that will improved on later rather than trying to prefect it now. You can look at it as something that won't be in place very long and that each community may adopt it in a slightly different way. I think that what you proposed is basically fine. One of the ways to address the language and if you simply modify it instead of having the structures permitted, whether it's an existing industrial use, you could delete that where there's an existing use and keep the language at sites which are designated for industrial or commercial mixed use in the city's Comp Plan. Then you may want to keep the language regarding the adjacent uses. You could say 'Unless the adjacent uses are industrial or the land is vacant, then the impound yard shall be enclosed within a structure, or the operation shall be contained within one of the following buffers'. Then if you want to modify these buffers, that's fine.

(#3295) Diane Edgin: There's one other aspect that buffers serve and that is literally keeping the concrete and the asphalt running to one lot continuously. You could cut down on runoff problems, too. It also keeps the temperature down in the summer time.
(#3315) Wendy Ervin: If you required that if the adjacent use is residential then you have to have a building. Then they wouldn't choose to put themselves next door because it would be prohitively expensive. If you make it prohitively expensive then you automatically push them over into the industrial area.

(#2248) Steve Clayton: What if they're in an industrial area and the residence is in an industrial area?

(#3355) Wendy Ervin: Then you've got a grandfathered in situation where you can improve the buffering but you're not going to be able to require somebody to give 20 feet in a situation that already exists.

(#3388) Steve Clayton: Why did the guard dog issue come up?

(#2390) Bob Fink: Yes, it did come up. It was a noise and nuisance concern. At least one of the sites that was being considered that we were aware has a few houses just right adjacent to it so that's one of the reasons the regulations are crafted the way they are. There's no way to buffer those residences without a fairly strong controls over noise.

(#3465) Bob Sund: The city has no jurisdiction over the urban growth area outside of the city limits?

(#3475) Bob Fink: That's correct.

(#3480) Theresa Kirkpatrick: There's two issues. One that Mr. Dewey raised about the leaking of fluids. You made the statement, Bob, that you presume that those are being dealt with. I would like to see language added that we won't be relying on a presumption that someone is catching antifreeze or whatever.

(#3500) Steve Clayton: Is it feasible to have accessability by the Health Department on these properties written into some sort of ordinance?

(#3512) Bob Fink: You can put that kind of monitoring activity in there but to do that you either have to charge for it or have the public absorb the cost of providing that inspection.

(#3525) Bill Dewey: Is there state statutes regarding impound yards?

(#3530) Bob Fink: There are state statutes regarding impound yards but I can't tell you how they address the issue of leakage. I remember from the testimony on the vehicles in rural area that there are existing laws against oil and other chemicals polluting the ground. You can't legally pollute the ground but defining that and measuring it and knowing to go out there and look is really the issue.

(#3562) Steve Clayton: But if we were to incorporate into the ordinance the ability to inspect it then when it gets grandfathered in and we come up with funding 20 years down the line at least the ordinance is on the books.

(#3575) Bob Fink: You could probably include the ability to inspect it with new permits.

(#3585) Theresa Kirkpatrick: Even just spelling out a way to deal with it would at least perhaps get owners of these facilities thinking in those terms of an absorbent pad or whatever.

(#3592) Bob Fink: You could require them to have an approved Best Management Practices plan to deal with the waste and just as when they got approval then they would have to have a plan for dealing with those waste that would be a condition of the approval and be enforceable as a condition. We have permits that have requirements like that. For instance, some of the aquifer recharge area requirements are similar to that where certain activities have to prepare BMP's and those practices have to be approved and they're subject to review so we could probably steal some language from there and have a condition like that.

(#3648) Steve Clayton: Do you need a decision on this tonight or would it work for you to come back with some revisions.

(#3652) Bob Fink: This is one we could certainly come back on if you're not quite comfortable with the language. Would you be interested in having me modify the language as I read back to you and then add a clause about the waste management?

(#3675) Diane Edgin: I made a note here that BMP's should be in place to handle environmental hazards.

(#3680) Wendy Ervin: Can you just key the waste management to appropriate RCW's?

(#3694) Darren Nienaber: There might not be any available

(#3705) Theresa Kirkpatrick: Another suggestion I would like to make if staff is going to revisit this issue is to strike buffer option #3 with the exception of the last half sentence that says 'planted in such a fashion that a year-round screen at least eight feet in height shall be produced within three growing seasons'. Leave that language in place and put that onto option #1 and option #2 and otherwise get rid of option #3 because we're giving a lot of authority to one individual by letting one individual look at a landscape plan without spelling out what that landscape plan would be.

(#3745) Bob Sund: What do you plant that gives you eight feet in three growing seasons?

(#3755) Theresa Kirkpatrick: If you look at the plant material types that have already been adopted some of them are already six feet in height. I think it's important to keep that language in about at least three growing

seasons. With my background in horticulture I've seen many a project that gets planted and fails so if you revisit it within three growing seasons you're sure you don't just have a bunch of dead bushes standing there. The other thing I wanted to bring up is that we lightly touched on the subject with the promise that we would revisit it and we have not done that and I would like to see lighting regulations for these facilities require hooded lights so that the light is only going down to the ground. Typically a facility like this would probably have big street lights. It doesn't add that much cost to the building but it sure makes a huge contribution towards maintaining rural character. I would like to see that added to the new language.

(#3858) Bob Fink: There's some existing language in the DR's regarding industrial activities in the rural area that I think addresses glare.

(#0096) Diane Edgin: I think we're overstepping our bounds when we say guard dogs should not be used.

(#0105) Bob Fink: The BOCC wanted to get rid of that.

(#0108) Steve Clayton: Do they use dogs in the current ones?

(#0110) Bob Fink: Not in this county that I'm aware of.

(#0114) Theresa Kirkpatrick: There's been a real dog problem at a storage facility in my neighborhood. They get out.

(#0118) Mark Drain: Is it the intent the UGA's will sometime be incorporated into the City of Shelton?

(#0120) Bob Fink: It's not a requirement but it's an expectation. That's partly because usually the city is the provider of the services and they prefer to provide those services only for incorporation and their incorporation is limited to the UGA.

(#0135) Mark Drain: How closely do you work with them on subjects like this? We are designing their future.

(#0144) Bob Fink: As I said, these regulations came exactly with the agreement of the City of Shelton, at least on an interim basis, and they are in the process of writing their own regulations that they will propose to the county for adoption. The county signed a memorandum of understanding with them just last week that laid out a process that we will work over the next year to come up with regulations and that they are the lead entity for developing those regulations.

(#0165) Theresa Kirkpatrick: Mr. Chairperson, I make a motion that we remand the proposed changes to the impound regulations to the staff to consider issues that we have discussed and bring it back to this commission at a later date.

(#0172) Steve Clayton: I second the motion.

(#0174) Bill Dewey: We have a motion and a second. Any further discussion? I would also say for the record that there was no public testimony on this issue.

(#0180) Darren Nienaber: That there was no public available to testify.

(#0182) Bill Dewey: All in favor? Motion passed. On to the Title 15 regarding the Hearings Examiner.

(#0190) Bob Fink: For the record, my name is Bob Fink with the Department of Community Development. I provided the PAC with a memo dated April 11, 2003. The purpose of these amendments is to clarify and implement the original intention of setting up for the Hearing Examiner. It was the intention of the county that in the case of permit reviews where a public hearing was involved that the Hearing Examiner would be the body who would hold the hearing rather than the PAC or the Shoreline Hearing Board or the BOCC. Appeals at this time go to the BOCC except for appeals for certain actions such as code enforcement cases which go directly to court. The amendments here is simply making the list inclusive of what's called Type III permit reviews which are the permits that provide more discretionary review and generally require a public hearing.

(#0255) Mark Drain: It says 'other Type III permit reviews'. Are those Type III permit reviews above those other categories?

(#0262) Bob Fink: The Type III permit reviews in Title 15 are defined. They have Type I, which are administrative like issuing a building permit. Type II are variance or special uses where there's more discretion and Type IV are actually what you're doing right now, which is actually amending a regulation or amending the Comp Plan. When the language in there says other Type III I was just hoping to successfully list all of the Type III when we did it. We just used the term other so we could list more but also to capture that we might not have individually listed.

(#0290) Bill Dewey: So is that letter J the listing of the Type III's?

(#0294) Bob Fink: Some of the above decisions like appeal of administrative decisions is a Type III decision. So appeals of the Building Code Official is a Type III decision. Appeals of enforcement actions would be Type III.

(#0308) Bob Sund: So under I, granting of variances, except for administrative variances; so the administrator can grant minor variances, right?

(#0315) Bob Fink: I don't think there are any minor variances. There are administrative variances and they are called that because they're done at an administrative level and then there's variances. The Hearing Examiner can't issue an administrative variance but they could hear an appeal on an administrative variance.

(#0332) Bob Sund: We have been doing variances here, right? Don't we have one or two that are still pending that came before us that ... like Vermillion?

(#0342) Bob Fink: Right, Vermillion is still alive. There may be a couple out there; they're vested for whatever the regulations were at the time they applied. If they waive that vesting then they can be reviewed under the current regulations, which would mean the process could change. They would have the choice to go either way.

(#0370) Wendy Ervin: Is the Hearing Examiner the only one who listens to Type III hearing decisions or is that also addressed administratively by the county council?

(#0384) Bob Fink: You might get into a technical discussion about whether an administrative variance is a Type III decision or not but if your answer is that it's not a Type III decision then the Hearings Board is the only one who hears a Type III except upon appeal. If your answer were otherwise then the administrator would hear a limited set of Type III decisions. I don't know that an administrative variance meets the criteria for a Type III.

(#0405) Bill Dewey: Are these changes that we're looking at tonight the result of feedback that we've gotten from DOE since we've passed the changes?

(#0408) Darren Nienaber: They're actually changes that we got back from feedback from the Hearing Examiner to just make things more clear.

(#0410) Bob Fink: Right, one of the benefits of having a Hearing Examiner as an experienced attorney is being able to get feedback and we've gotten some and these particular amendments are part of that. I might also mention about DOE. We've been told that there's a letter in the mail from DOE approving the amendments we made to SMP and Title 15 which took the language that had to do with permit processing and enforcement actions and put it in Title 15. We haven't received that letter yet but we're supposed to be receiving it. The county adopted it in December and sent it to DOE.

(#0445) Mark Drain: I make a motion that we accept the added language as proposed by planning staff outlining the duties of the Hearing Examiner.

(#0456) Steve Clayton: I second the motion.

(#0458) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Motion passed. Next up is the proposed revisions to Title 17, Mason County Resource Ordinance, with regard to landslide hazard areas to provide that geological assessments and geotechnical reports may be prepared by licensed geologists or engineering geologists, as appropriate.

(#0480) Bob Fink: I'm Bob Fink with the Department of Community Development. The proposal you have is to amend the Mason County Landslide Hazard Areas which allow geologists and engineering geologists to prepare special reports required in such areas. Mason County regulates landslide hazard areas and requires geological assessments and geotechnical reports for development in and near such areas. Currently geotechnical reports are required to be written by engineers although assessments can be written by geologists. The proposed changes allow a qualified geologist, engineering geologists, or engineer to prepare a geological assessment and it allows a qualified engineering geologist or engineer to prepare a more demanding geotechnical report. We believe the changes are consistent with the statutory changes and provisions and these changes are supported by the county engineer. The engineering geologist is a speciality license under the geologists licensing act so they have special expertise. There was a question from Steve and it asks why now we have licensed geologists why do we have engineers going geological work? I asked the county public works director, Jerry Hauth, who is an engineer, why that is and his response was that it was the engineers who developed the science behind the assessment of geological risk and that generally the training that the geologists take is engineering schools or classes where they learn with the engineers those particular types of specialities. That science has traditionally been an engineering field. The state also says that it's legal for them to do that.

(#0590) Bob Sund: Under the current situation that we're under right now, we do not allow an engineering geologists to write the geotechnical report or we do?

(#0600) Bob Fink: The existing situation is no. We have codes that were adopted before geologists were licensed and they've just been licensed since last year. So now they're licensed and certified by the state and so we can rely on their necessary professional qualifications.

(#0610) Bob Sund: So we can rely on a qualified engineering geologist which is in addition to what we have before, right?

(#0612) Bob Fink: That's right.

(#0614) Bob Sund: When we first adopted this I remember one of the reasons was that the geotechnical report had a higher degree of needed expertise and so therefore it was more expensive than the geological assessment.

(#0634) Bob Fink: Yes. The geotechnical report requires certain specific information and analysis that's not required in the assessment and that's why a geologist can't do the geotechnical report under this draft. It has to be an engineering geologist.

(#0644) Bob Sund: We haven't really done anything to increase the requirements of a geological assessment.

(#0648) Bob Fink: No. All this does is increase the pool of people available to do these kinds of studies. It also is consistent with state law in the sense that only licensed geologists can do geological work with the exception of engineers who can do some geological work. That was another difference that anyone two years ago could have claimed to be a geologist and hired out to do geological work and they can't do that anymore. You now have to be qualified and licensed by the state to offer your services to do geological work.

(#0680) Wendy Ervin: The licensed geologist appears just by the ... and I didn't read the RCW that was attached, but it would seem to me that a licensed geologist must have certain engineering courses. It seems to me that the licensed geologist is not as qualified to make this particular assessment as is the engineering geologist or somebody who is a specialist in geological engineering. A licensed geologist can maybe see the building on a flat surface and tell you how many layers of stone you're going to have to go through or how far it is and how you're going to set that building but not necessarily is it going to go down to the

engineering if it has the possibility of sliding down the hill.

(#0715) Bob Sund: A licensed geologist cannot do a geotechnical report; they can do an assessment.

(#0720) Wendy Ervin: He's listed here under qualifications of preparer.

(#0728) Steve Clayton: The first one is the assessment and the second one is the report.

(#0730) Wendy Ervin: Okay.

(#0735) Bob Sund: There's some things that require only an assessment and some things require the report and there's a great deal of difference in the financial implications between the two. I think we need to be cognizant of the requirement that we're laying on the landowner.

(#0755) Theresa Kirkpatrick: Is Mr. Hauth currently serving as the county engineer?

(#0758) Bob Fink: Yes. However, we do have other engineers in the county but he is the county engineer but he is also the Director of Public Works.

(#0760) Theresa Kirkpatrick: So it's not going to be all the burden falling on one guy? There are several engineers who are qualified to do this work?

(#0767) Bob Sund: You would go to private source for the work.

(#0770) Theresa Kirkpatrick: But for the review ... if I was a landowner who wanted to clear on my hill wouldn't the county engineer need to look it over?

(#0774) Bob Fink: This is no additional work; it doesn't change the requirement to produce these reports. It's simply a question of who prepares them.

(#0798) Steve Clayton: It sounds like we're coming on new times with new licensing and new requirements and if you look at the third to the last page there are rather distinct differences. The engineering geologist has a lot of specific training and a lot of specific things and they're allowing grandfathering (grandparenting) in so given that something so important as the geotechnical report I'm under the opinion that we should be having the best people that are up to date doing it. The geological assessment perhaps we can get away with the less expensive; the more important stuff we should go with modern day needs.

(#0840) Bill Dewey: Steve, are you suggesting an amendment?

(#0842) Steve Clayton: I'm suggesting 'the geotechnical report should be prepared' and we'll delete 'at the discretion of the director' and then the 'by a licensed civil engineer' so the geotechnical report needs to be prepared by a licensed engineering geologist.

(#0855) Diane Edgin: The way I'm reading this is it's the discretion of the director whether or not a report is required over and above an assessment.

(#0864) Bob Sund: I think that there are some things in the ordinance that requires only an assessment, depending on the slope of the land and things like that, that only requires an assessment and if it's over that or closer to the slide area then it requires the geotechnical report.

(#0875) Diane Edgin: Striking 'the discretion of the director; I don't even think that needed to be in there in the first place because the report is going to be asked for at the discretion of the director. You have to do the assessment on everything and then the director makes ...

(#0890) Bob Fink: No, actually there's a list of certain conditions that trigger an assessment and other conditions trigger a report. You can also do the assessment and it might trigger the report. The intention of the discretion here is because not all civil engineers are qualified to do this kind of work. They have no experience or training in it because civil engineering is a broad umbrella of engineering whereas an

engineering geologist has a specific set of skills so the civil engineer has to have expertise.

(#0930) Wendy Ervin: I think the discretionary choices of the director should be in one paragraph and this only needs to be definitions; the geological assessment and who prepares that and the geotechnical report and who prepares that and the decision as to whether which one is handled under another subsection. You've already said elsewhere that the director shall determine whether you need a geological assessment or whether you need a geotechnical report and now you're just defining who does that.

(#0950) Bob Fink: No, I'm saying that it has to do with the discretion to require a particular type of report. There's also the discretion to say that this person isn't qualified to prepare this report.

(#0964) Wendy Ervin: You've already said that the geological assessment shall be prepared by certain specialities and those people with those licenses are qualified to produce that document then the geotechnical report is prepared by other people with other specialities so what you're just doing is defining who prepares which reports.

(#0978) Bob Fink: I think I understand what you're saying, but this is saying that a licensed civil engineer with specialized knowledge of geotechnical/geological engineering. You could remove the redundancy and maybe add some clarify by pulling out 'at the discretion of the director' and put a sentence in down at the bottom saying that the director may remove the qualifications of the preparer to assure that they meet the appropriate standard.

(#1000) Wendy Ervin: Fine, but as far as the particular property needing a particular assessment or report that subject doesn't need to be handled in this paragraph.

(#1010) Bob Fink: That wasn't the intention of this 'at the discretion' language.

(#1012) Bill Dewey: There's obviously some confusion, Bob, and I like your approach of moving it to the bottom and putting that clarification down below.

(#1018) Steve Clayton: That's on the assumption that we're going to treat both things the same; both the assessment and the report. We could treat them both the same. I'm of the thought like Bob of if it's an assessment let Jerry pick somebody off the standard roster that is a local engineer and knows what he's doing and if it's for something like a major bridge you've got to have your qualifications from the state.

(#1038) Bob Fink: They all have to be licensed by the state.

(#1040) Steve Clayton: Right, but as far as being a specialty the licensed engineering geologist has more documentable formal expertise than a civil engineer.

(#1050) Bob Fink: Not necessarily. They don't necessarily have more experience.

(#1054) Bob Sund: You could word that so that the director will determine the validity of the qualifications of the people preparing it. It says a licensed civil engineer with specialized knowledge. It's not any civil engineer that can do it.

(#1100) Steve Clayton: I'll make a motion to accept the first part of it and to delete the line 'at the discretion of the director' by a licensed civil engineer with specialized knowledge, etc.' so it will read 'A geotechnical report shall be prepared by a licensed engineering geologist'.

(#1135) Bob Fink: My understanding of it is the civil engineer with expertise is more than qualified to this kind of evaluation and historically have been the only people qualified to do the evaluation.

(#1148) Wendy Ervin: And the intent is to broaden the number of people rather than reduce it.

(#1155) Bill Dewey: We have a motion. Do we have a second? Hearing no second, the motion fails.

(#1160) Wendy Ervin: I make a motion that this be accepted with 'at the discretion of the director' be deleted

in both paragraphs and that new wording be added at the bottom 'the director will make the decision as to whether the preparer meets the qualifications'.

(#1188) Bill Dewey: We have a motion. Do we have a second?

(#1190) Bob Sund: I second the motion.

(#1192) Bill Dewey: We have a motion and a second. Any further discussion? All in favor? Motion carries. We will now return to the BLA's that we tabled earlier.

(#1215) Bob Fink: We have the revised language that only addresses the right-of-way and I'll pass this out to you.

(#1230) Bill Dewey: So we're bringing back to the floor for discussion the first item on the agenda on BLA's and specifically the section on the right-of-way.

(#1255) Bob Fink: Essentially what is this is the new paragraph 3.d. which did address public right-of-way which proposed to be changed by Dennis Pickard. What he meant when he was addressing right-of-ways is that he meant that in state law right-of-way is an easement. So he suggested the language be changed instead of using right-of-way was to use public road purposes and then he suggested it be changed to just public purposes because there are other instances that come up, for instance, with fire stations which do not effect rural density and which are developed in a private sense where public land might be needed. He proposed that this be crafted in a broader sense. The current language is to address the acquiring of property for public purposes by condemnation or other means. What used to be 1 was deleted essentially and 2 is now 1 and remains unchanged. What used to be 3 is now 2 and essentially it says 'no rural residential district lot shall be divided in such a manner that the total number of residential units allowed after the acquisition would be greater than the total number of residential units allowed prior to the acquisition, but out lots may be created'. It's saying that if you had a 7 acre lot that was in RR 5 you would be entitled to 1 building lot. If the road came down the middle of it it would divide the property into 2 areas. This would basically say that one of the lots, since you aren't entitled to 2 building lots under the density provision, this would allow you to have a building lot and an out lot that would or could potentially be a part of the same lot or sold to a neighbor but without the right to develop it as an independent lot.
(#1380) Bill Dewey: The sentence under 'Acquisition of an easement for road right-of-way, etc., does that language need to be changed to the same language as the first sentence?

(#1386) Bob Fink: No, that still applies to right-of-way and it basically says that this is for the fee acquisition of land and not the acquisition of a right-of-way which is just an easement. We're not going to affect the development potential of the property through the right-of-way acquisition if it's just an easement. We're not going to treat it as dividing the land so in the example of that 7 acre parcel, you still have a 7 acre parcel and it still is one lot but you just have a road down the middle of it on an easement. Then since we used the term out lot we would keep the definition of out lot and Dennis said that I could tell you that he concurred with this language.

(#1425) Bill Dewey: Any questions?

(#1428) Theresa Kirkpatrick: There were a couple of other issues that Mr. Pickard raised and one is under 3.c. he objected to the logical physical boundary; he thought that was not defined clearly enough. Did he retract that in your other conversation?

(#1435) Bob Fink: No, this is not a fix for the entire proposal. This is a fix only for this one section and the definition.

(#1442) Theresa Kirkpatrick: Because of the urgency at Alderbrook?

(#1448) Bob Fink: In the interest of that and other projects that are under way. What we'd do with the rest of the proposal is come back to you next month with some revised language along the lines that have been discussed.

(#1462) Theresa Kirkpatrick: I would love especially to see the administrator's role defined in finding claim clear, etc.

(#1468) Steve Clayton: If we've got a half acre and we've got to put a road through the middle of it and we create two parcels, neither one of which is buildable, then this says we can't do it under #1.

(#1478) Bob Fink: Then they'd have to buy the entire parcel. Then they could resell a part of it back to a neighbor if they could.

(#1488) Steve Clayton: It says 'no lot shall be reduced in dimension'. What we do is we do that but we just have to retain it. Is that what you're saying?

(#1496) Bob Fink: It becomes part of the right-of-way.

(#1505) Diane Edgin: I make a motion that we accept the 3.d. as amended. And the definition of out lot.

(#1515) Wendy Ervin: I second that.

(#1518) Theresa Kirkpatrick: I would like to make a friendly amendment that there will be further clarification of the language of the whole proposal specific to the administrator's duties and defining logical physical boundaries based on public testimony we received this evening.

(#1528) Bill Dewey: Is that acceptable to the motion?

(#1535) Diane Edgin: I'm sitting here thinking whether we should be doing that because we didn't move on the whole thing to start with.

(#1540) Wendy Ervin: It was tabled for clarification of this item only.

(#1550) Diane Edgin: We don't operate on Roberts Rules.

(#1565) Bill Dewey: So let's make it clear that we're only adopting 3.d. and the out lot definition and that we're asking staff to come back incorporating new language that we received during public testimony.

(#1574) Wendy Ervin: I think that the motion should be clean; only a motion to accept this. Then we also have an understanding we're coming back to the rest of the body.

(#1585) Steve Clayton: We continued this proposal until the end of the meeting. We had people in the audience that were here for this proposal. We're not making a decision on the proposal without those people being aware that the decision was going to be make.

(#1598) Bob Fink: They were here when it was tabled for the end of the meeting.

(#1600) Wendy Ervin: And they helped word it.

(#1602) Bob Fink: And one of them stayed until we actually brought the proposal back and we actually consulted with them on it.

(#1608) Steve Clayton: So we aren't going to run into trouble with continuing the meeting and then reopening it.

(#1616) Bob Fink: You closed the public hearing and you told when you were continuing it until the end of the meeting and they didn't stay and that was their option.

(#1620) Theresa Kirkpatrick: I withdraw my friendly amendment.

(#1625) Bill Dewey: So we're back to the original motion of adopting 3.d. with the definition of out lot. All in favor? Motion carries.

(#1630) Steve Clayton: Would you find it acceptable to phrase it as we would like to continue the rest of the BLA's until next meeting and that way if we have audience members that come and further input which they will give to Bob then they can legitimately testify? Is that what we're talking about. If we phrased it as continuing the hearing they could comment on it?

(#1653) Bob Fink: I don't remember that you closed the hearing.

(#1656) Bill Dewey: Yes we did.

(#1658) Bob Fink: You could propose to reopen it for testimony on the new draft language.

(#1662) Theresa Kirkpatrick: Could we somehow reopen it for interested parties who have expertise to offer to bring forward their comments in writing this week?

(#1678) Bob Fink: We can solicit their comments.

(#1688) Steve Clayton: So we're going to continue the rest of the BLA until the next meeting. We can make a motion to reopen it right now and then make a second motion to continue it for public testimony until next meeting. Next meeting is May 19th.

Meeting adjourned.