



# currents

NEWS » COMMENTARY » BRIEFS

BY TIM JOHNSON

# LawyerUp!

COUNTY UNLOCKS THE GATES TO LARGE-SCALE DEVELOPMENT

**IN AN** unusual meeting in an unusual setting, Whatcom County Council's Committee of the Whole sat down this week with attorneys representing various development interests around the county and the city leaders who—in most cases—support them. The meeting, which took place at a church north of Bellingham large enough to hold the lawyers and laymen, was intended to air the litany of grievances of these developers and city leaders against recent county land use decisions.

Council members expressed their interest in settling some of these disputes perhaps as early as June of this year. While all members attended the meeting, the committee must still forward their recommendations to the full council for a public hearing.

"A total of 18 different parties filed something called a 'petition for review'" of decisions County Council made to demands by the state's growth board to reduce build-out of the county's rural lands, Council President Sam Crawford explained. "In other words," he told KGMI, "it's basically like you would file an appeal in court, to say they were not happy with the results of what the council did last November."

Council's response to the state's finding was two-pronged—first, an effort to reduce subdivisions in rural areas; second, an effort to reduce the size of urban growth areas in lands bordering those cities. Taken in tandem, the efforts were intended to reduce greenfield development and force the cities to become more innovative in their approaches to urban density and population growth.

While the City of Bellingham was amenable to plans to trim the size of its UGAs, Whatcom's smaller cities balked and joined up with the legal efforts of developers to force their projects through before the new land use regulations mature.

"It's a bit unsettling to watch these communities follow the lead of attorneys hired by the development community, and use their legal resources and arguments, when they're afterward going to have to regulate and control these projects," Bellingham Mayor

## HOW THEY VOTED

	B.Brenner	S.Crawford	K.Kershner	B.Knutsen	K.Mann	W.Nelson	C.Weimer
West Blaine, Trillium	A	Y	Y	A	N	A	N
East Blaine	P	Y	Y	Y	Y	P	N
Birch Bay, Anchor Manor	Y	Y	Y	Y	Y	Y	Y
Ferndale	Y	Y	Y	P	N	P	N
Nooksack	P	Y	Y	Y	N	Y	N
Sumas, Hovel Rd.	Y	Y	Y	Y	Y	Y	N
Sumas, NW Reserve	Y	N	Y	N	Y	N	N
Bellingham, Yew Street	P	Y	Y	Y	N	Y	N
North Bellingham	N	Y	Y	P	Y	N	N

## KEY:

- Y:** Yes, supports a compromise to settle claims
- P:** Provisional support for settlement pending additional information
- N:** No, does not support a compromise to settle claims. Supports county's current position
- A:** Abstain from position pending additional information

or Dan Pike observed. Pike cautioned it may become difficult to extract the public's interest from the interests of private property developers.

A political shift on Whatcom County Council in November produced a council majority more keenly interested in settling private property complaints, but the realignment was already well underway:

Last summer, council asked the county administration to weigh in on the issue of the size of UGAs. The County Executive essentially split the difference with Whatcom's smaller cities, recommending a compromise that returned about half of the cities' UGA requests. Further refinement and compromise as council adopted the recommended changes last November returned even more lands. Thus, council's agreement this week to settle most of these lawsuits through additional compromise sets the UGA map and clock essentially back to where

the process began—again out of compliance with state growth mandates.

The City of Ferndale, in particular, has vigorously championed the return of lands provided to that city for future growth.

"The county's population forecasts are precise but not accurate," Ferndale's planning director Greg Young told listening council members. "That is, they describe a very precise target number but the number does not accurately describe how we're planning for growth."

Tempers flared late in the meeting when County Council expressed an interest in forcing open Bellingham's UGAs despite broadly expressed satisfaction by COB with the sizes established by county elected officials in November.

"I have never heard, anywhere, of a city being forced to enlarge its urban growth areas against that city's ex-

pressed wishes," Mayor Pike complained. "Other cities may be dissatisfied by their boundaries but Bellingham currently is not. Bellingham is exploring infill and other strategies, and I find it highly inappropriate that the county would interfere with that."

Council member Ken Mann sided with committee efforts to force to accept a new UGA and the development planned for it. Pike complained the decision was absolutely the opposite of what Council President Sam Crawford earlier in the week assured him would occur.

"My assumption is if the county moves forward on this it may result in a lawsuit from the city," Pike warned. "One of the worst outcomes is for two public entities to waste public resources fighting each other in court."

"I don't feel like there's any compelling reason to bring Caitiac's proposal into Bellingham's UGA at this time," he continued.

Caitac attorneys had earlier proposed that the county simply acquiesce to their terms and require Bellingham to accept the UGA and the development proposals that designation encourages.

"You are the elected County Council, you have the discretion and that authority" to set the UGAs, attorney Tom Walsh, of the Seattle law firm Foster Pepper, told a listening council. Walsh represented Caitac USA, which plans a large-scale development in the proposed UGA. "All our law firms agree your decisions will be legally upheld" and, he promised council, the firms would bring their considerable legal resources to bear to defeat any public challenges to those decisions.

"If expanding UGAs were the solution to our problem as all the cities (but Bellingham) contend, then why didn't oversized UGAs solve the problem of rural sprawl and ag land conversion during the time they were all oversized?" Cathy Lehman observed afterward. Lehman is chapter director of Futurewise, a public-interest group promoting land use reform. "Why do people continue to argue that small UGAs cause our rural sprawl? It's so ludicrous. *Rural development potential* causes rural sprawl. No matter how we size UGAs, that doesn't address the fact that another County Council a long time ago zoned rural areas too densely, allowed parcelization below minimum rural standards, and basically caused the whole big mess we're trying to clean up now."

Council member Bill Knutzen made a motion at the start of the meeting to forbid Futurewise from being able to present the organization's opinion. The prohibition, softened to allow Futurewise members to speak later in the day, was passed by council members 4-3. ☺

## A survey of threatened legal action:

### WEST BLAINE, TRILLIUM APPLICATION

If approved, Trillium's proposed Semiahmoo West planned unit development (PUD) would more than double the number of existing homes in west Blaine with 1,246 additional homes and as much as 60,000 square feet of commercial space on 624 acres west of Semiahmoo Parkway. The existing Semiahmoo development, by comparison, has about 800 homes.

Significant questions remain about Trillium's ability to develop all 1,246 homes under current zoning. Under Washington state law's "vesting rights doctrine," landowners have a right to develop at the zoning density at the time in which the PUD application is approved, regardless of whether there are subsequent changes in land use law or density. When Trillium filed their PUD application in advance of the county's UGA decision last year, the application only included the first phase of development—or 28 lots. Trillium attorneys argue the PUD application is fully vested. County planners and land use attorneys demur as to whether vested rights apply to the entire project.

**DECISION:** A slim majority favors settlement, provided questions about the property's vesting rights may be reasonably answered.

### BIRCH BAY, ANCHOR MANOR

Development projects, long on the books, were imperiled when the County Council changed land use status in this area of Blaine. Attorneys for the development argue the change in status results in a non-conforming use. The area is served by water and sewer. A settlement would allow what is already slated to proceed to proceed.

**DECISION:** In the only unanimous vote, County Council agrees to consider a change in UGA status that would resolve this dispute.

### FERNDAL

County Council originally agreed with the county Planning Commission to throw major portions of unincorporated

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# The Week that Was

BY TIM JOHNSON  
**LAST WEEK'S NEWS**  
 APRIL06-APRIL12

04.06.10  
 TUESDAY

**Port of Bellingham commissioners approve \$80,000 in stimulus funds** to support economic projects in Whatcom's smaller cities, including Blaine, Everson, Nooksack, Ferndale, and Sumas.

**A Washington state man charged with threatening to kill Sen. Patty Murray** over her support for health care reform appears in court. Charles Wilson, of Selah, is charged with threatening a federal official. Wilson, 63, is freed on a \$20,000 bond following his detention hearing. The FBI says the agency traced a torrent of violent calls targeting Washington's senators to Wilson's phone.

04.08.10  
 THURSDAY

Police arrest 29 people after **a protest in Olympia turns violent**. The march began with about three dozen people protesting police violence. They were dressed in black with their faces covered. Police say they blocked traffic, assaulted a news photographer and broke windows.

04.10.10  
 SATURDAY



Dwarfing teabagger gatherings, more than 5,000 supporters of immigration reform take to the streets of Seattle. But you'd hardly learn that watching cable news.

**Whatcom County Democrats hold their party convention** at Shuksan Middle School.

**Hundreds attend the Great Unleashing**, a conference intended to develop an "energy descent plan" for the area in an effort to reduce dependence on fossil fuels.

Warned by the governor that unless they find additional revenues, she will slash programs until the state budget is balanced, **the state House approves a multimillion-dollar tax package** as the Legislature heads into the final days of the overtime legislative session. Their tax measure passes on a 52-44 vote and includes about \$668 million in additional revenues, including temporary tax increases on service businesses. The bill moves on to the Senate.

04.12.10  
 MONDAY

**The state Senate votes 25-21 to approve the measure that makes up about \$668 million** of Democrats' plan to raise nearly \$800 million in revenue. The House passed the bill Saturday, and it now goes to Gov. Chris Gregoire.

The Tesoro refinery in Anacortes announces they'll **shut down crude processing operations** later this month until the company completes an investigation into the April 2 explosion and fire that killed six workers.

**An ethics commission clears Whatcom County Council member Ward Nelson** of any wrongdoing for casting votes on a replacement for resigning District 1 representative Bob Kelly. Critics charged Nelson, nominated as a candidate, had a conflict of interest.

A hundred people show up at a special Bellingham City Council session to express their opinions about the city lifting its limit on big-box retail in excess of 90,000 sq. ft. The crowd is about evenly split on the issue. **Council agrees to relax the cap in a specific zone** north of the city but continue restrictions on hyper-competitive "superstores" with more than 10 percent of their inventory devoted to nontaxable items such as groceries. ☺

## LAWSUITS, FROM PAGE 9

rated growth areas north and west of town into UGA Reserve areas for further study. Ferndale leaders strongly opposed the change, arguing their growth plans target the city's north side. The Reserve area, they say, is essential for the efficient extension of public utilities.

**DECISION:** Council majority favors settlement. Questions remain about Ferndale's water-supply capacity.

## NOOKSACK

The council agreed to add urban growth area east of town and north of Breckenridge Creek, while putting land south of the creek and north of South Pass Road in reserve urban growth area status. Nooksack planners argued that Nooksack's UGAs should be restored, saying the area is essential for job creation.

**DECISION:** Council majority favors settlement.

## SUMAS

Like Nooksack, city planners argued that urban growth areas removed last fall should be restored, saying those lands are essential for industrial job creation.

**DECISION:** Council majority favors settlement.

## BELLINGHAM, YEW STREET

Developers in the Yew Street area above Lake Padden asked that lands designated as UGA Reserve be restored to their original status. The city argues that a more detailed study suggests the area would be prohibitively expensive for urban levels of development at this time. The city is satisfied with the county's UGA decision in this area, with no plans to annex the lands into the city limits.

**DECISION:** Council majority sides with developers. Brenner voices concern that the county may get stuck with unintended costs.

## NORTH BELLINGHAM, CAITAC

The Pike administration strongly opposes efforts to add 2,128 acres north of the city to Bellingham's UGAs to build an extensive development community north of Cordata that feeds on to the Guide Meridian and Smith Road. The applicant, Caitac USA, has spent an enormous amount of money to convince county policymakers to approve their UGA status and let their company and the City of Bellingham fight it out in court.

COB's position is further complicated by Bellingham City Council's failure to rescind or update the land capacity analysis in the city's 2006 Comprehensive Plan, which does call for the area to be added to the city's UGAs. Mayor Pike says more detailed analysis is planned for 2011. The city asked the county to delay settlement with Caitac until that work is completed. Meanwhile, Caitac saw their window of opportunity and pounced.

**DECISION:** County Council member Ken Mann stuns supporters of COB's position by siding with the council majority to settle with Caitac, pressuring the city to fight it out in court. Pike says the city's reluctant response may be to sue the county