

MINUTES

BOARD OF COUNTY COMMISSIONERS MEETING

July 30, 2001

The Commissioners met in session in the Commissioners' Meeting Room of the Administration Building, Montesano, Washington, on Monday, July 30, 2001, at 6:00 p.m. Commissioners Bob Beerbower, Dan Wood and Dennis Morrisette and Sandi Daniels, Clerk of the Board, were present. Jim Baker, Senior Prosecuting Attorney, was present.

Chairman Beerbower reported this meeting was to consider Case #2001-0851, an appeal on the record of the June 4, 2001 Grays Harbor County Planning Commission decision to deny rezone Case #2001-0581. He asked Jim Baker to outline the procedure for the meeting.

Jim Baker reported for the record this is an appeal in Case #2001-0851. He reported the procedure will be a closed record hearing. The Board is to consider the record that was before the Planning Commission and no new evidence will be accepted at the hearing. Testimony for or against the appeal will be considered as argument and not as evidence. The Board of Commissioners as an appellate body in a case such as this must decide the case based on the record and to determine whether or not there is substantial evidence in the record to support the decision of the Planning Commission. Mr. Baker explained since the Planning Commission voted 4 – 4, which was a tie, the proposal failed by a vote of 1 vote. Because the Grays Harbor code requires a majority vote of the Planning Commission this is deemed by operation of law to be a denial and the denial is what is being appealed to the Board of County Commissioners. Mr. Baker reported staff will present a short staff report on the appeal and the appellant who carries the burden of persuasion in this appeal will present their case and anyone speaking in support of the appeal will have an opportunity to speak followed by those who are opposing the appeal will have an opportunity to speak.

Chairman Beerbower asked for a staff report. Curt Crites, staff planner, for the Grays Harbor County Planning Division provided a staff report. Mr. Crites reported that prior to the hearing the applicant and Board of County Commissioners received the following materials and requested that they be entered into the record without reading:

1. The Record of Action for rezone application, Case #2001-0581, containing the Grays Harbor County Planning Commissions Decision and the un-adopted findings of fact and conclusions as presented by staff.
2. The minutes from the June 4, 2001 Grays Harbor County Planning Commission Public Hearing.
3. Application for Appeal and supporting letter.

Minutes
July 30, 2001
6:00 p.m.
Page 2

4. Memo to file for Case #2001-0851, verifying application date and a copy of receipt for the appeal application.
5. Notice of Application for Consideration of Appeal, Case #2001-0851.
6. Owner's of record of property within 900-feet of the subject property for Case #2001-0581, which also received the notice of appeal.
7. List of individuals who testified and individuals of record for Case #2001-0581, who also received the notice of appeal.

Mr. Crites reported the following materials were entered as part of the record at the June 4, 2001 Grays Harbor County Planning Commission Public Hearing, Case #2001-0581.

1. The Staff Report for Rezone Application, Case #2001-0581.
2. Application for rezone and supporting materials.
3. Site Plans and aerial photo.
4. SEPA Determination of Non-Significance (DNS).
5. Environmental checklist
6. Notice of public hearing and list of property owners receiving the notice.
7. Affidavit of Publication from the Vidette for the public hearing.
8. A letter from the Department of Fish and Wildlife in support of the rezone.
9. A letter from Carolyn F. Savage in opposition of the rezone.
10. A letter from the Friends of Grays Harbor in opposition of the rezone.
11. A letter, along with supporting material, from the Gays Harbor Conservation District in opposition of the rezone.
12. A petition from the Satsop Valley Homeowners opposing the rezone.
13. A petition titled "Petition To Grays Harbor Commissioners – Petition to Grays

Harbor Planning Commission Case #2001-0581” opposing the rezone.

14. Various letters in opposition to the rezone as submitted by Kathleen McKinney and entered into the record for Case #2001-0581. Authors of the letters include the following individuals: Joan Nieman, Patricia Palmer, E. LaVonne Stephenson, Floyd Bollacker, Gloria Blackman, Capt. D.G. and Kerry L. Scrimgeour, David and Karen Larew, Robert Gates, Angela Cannady, Allen Barrett, Mr. & Mrs. Ralph Milam, Bob Schimpf, Jerry Zeman, Kathleen McKinney, Stanley and Mary Ellen Fleming, Laurel Zeman, Virginia M. Stelter, and Perry Christensen.
15. Materials Submitted for the record, Case #2001-0581, at the June 4, 2001 Grays Harbor County Planning Commission Public Hearing. Individuals submitting materials for the record include: Kathleen McKinney, Bob McKinney, Terri Franklin, Knoll Lowney, Don Leiske, Nadine L. Romero, and Wayne Hagen.

Chairman Beerbower announced that attendance and speaker roster sheets were available and requested that individuals sign in on the provided sheets. Chairman Beerbower asked for public comment. Wayne Hagen, attorney with Edwards and Hagen, Aberdeen, Washington, reported he represents Lloyd Foss, Elizabeth Perry, John Mouncer and Northwest Rock. Mr. Hagen reported they are requesting that a new public hearing be held and that additional testimony be accepted concerning their application for a 158.4 acre rezone of property currently designated AG-2. They are requesting that the property be rezoned to GD-5. Mr. Hagen commented the Planning Commission voted 4 in favor of the rezone and 4 opposed to the rezone. Mr. Hagen commented he believes it can be clearly shown that there is not substantial evidence to support a denial and that an error occurred at the Planning Commission level in terms of the focus of the hearing and the decision making that resulted in a tie/denial. He reported the focus of that hearing was a debate about gravel pits and processing of materials. The focal point should have been one of a rezone. Mr. Hagen stated this is a rezone request and a proposed gravel operation was not before the Planning Commission and any determination based upon that should be overturned and they should be given an opportunity for a complete hearing. Mr. Hagen discussed the primary purpose of AG-2 and commented the property should not be zoned AG-2 just for the sake of AG-2. He commented GD-5 purpose is to allow wide range of uses appropriate for rural areas and encourages compatibility between neighboring land uses and would contain a 5-acre minimum lot size for residential dwellings. Mr. Hagen commented Mr. Foss, Ms. Perry, Mr. Mouncer and Northwest Rock are not asking for anything that all of the opponents to the rezone have already received the benefit of. Mr. Hagen reported the Satsop Riveria contains homes on 1000 square foot lots, 1-acre lots and small lots, substantially less than 5-acres. He

Minutes
July 30, 2001
6:00 p.m.
Page 4

reported a large percentage of the Schaffer properties have already been rezoned to GD-5 and they have already received the benefit. Mr. Hagen commented the request is for the same benefits that all the adjourning landowners have received. Mr. Foss testified at the previous hearing that his family has been in the area since 1870 and there has always been commercial activity in the area and he would like to develop some of his property. John Mouncer testified at the previous hearing that his property is his primary asset and it is basically worthless to him in 40-acre parcels because it is not good agricultural land. Mr. Hagen reported on a soil survey report prepared by Ecological Land Services, Inc. Of the 158 acres only 9 acres would be considered prime agricultural land. Mr. Hagen commented Northwest Rock is a good member of the community and employs a number of people and contributes to the community. They are not asking for special treatment or to be treated differently than anybody else. Mr. Hagen commented that they not be punished because they are Northwest Rock. He stated there would be many opportunities for review. This is a rezone request and they want the benefit that other people requesting rezones have had. Mr. Hagen commented on Mr. Glick's rezone request and that it was approved. Mr. Hagen reported AG-2 lands provide for the protection of those soils and areas most suitable for commercial agriculture and large pieces of property are required. He explained that can not occur because of the Schafer Game Farm and Satsop Riveria because those areas have been divided up and taken out of the AG-2 category. Mr. Hagen reported Jim Phipps, professor at Grays Harbor Community College, is present in terms of moral support. Also present is Joe Stipic, president of Northwest Rock, and Randy Rognlin, director and shareholder of Northwest Rock. Also present is Jack Prince, owner of Bayview Redi-Mix, and Ken Kimura, all supporting Northwest Rock. Mr. Hagen commented they would like to answer questions and go into detail but they are not allowed. He reported that after the Planning Commission finished it was clear that at least two Planning Commission members made their decision based upon gravel pit issues or a lack of information on gravel pit issues. Mr. Hagen submitted that is not appropriate and they would like a new public hearing. He commented there is not substantial evidence in the record to support a denial given the uncontradicted testimony about the soils, the size of the property and the other rezone requests that have been granted.

Commissioner Morrisette asked for clarification regarding things that did not occur in the Planning Commission Board meeting. Mr. Hagen responded that he was surprised to hear Mr. Baker report that the standard was substantial evidence. He thought it had been determined with the prosecutor's office last week that it was not the standard and they were prepared to proceed with the County Commissioners being able to make a decision. Mr. Hagen reported they believe there several issues in terms of mistake or error of law. He reported basing a determination on gravel pit development issues or a lack of information thereon would be an improper mistake of fact. It implies that the decision

Minutes
July 30, 2001
6:00 p.m.
Page 5

was for approval of a surface excavation permit and that was not the issue. Mr. Hagen commented that allowing a substantial portion of the evidence to relate to surface mining activities and basing a decision and accepting testimony on those issues is an error of law. Mr. Hagen reported it was represented to him by the County that regardless of the outcome of the Planning Commission hearing there would be a "De Novo" hearing before the Board of County Commissioners. They believed that would allow all new testimony to be taken.

Commissioner Morrisette asked for clarification regarding the lack of substantial evidence that may have existed in the Planning Commission Board. Mr. Hagen responded there was uncontradicted testimony regarding the soil and its suitability. He reported they provided the only survey and the only work involving the soil. There was no credible basis to determine that the soil is suitable for the AG-2 designation. He commented the only evidence is to the contrary.

Commissioner Morrisette verified the Board of County Commissioners must decide if substantial evidence was presented to the Planning Commission Board.

Commissioner Wood asked Mr. Baker for comment regarding the statement that there would be a "De Novo" hearing before the Board of County Commissioners. He asked what the implications would be. Mr. Baker explained it depends on the type of hearing. If there is a denial by the Planning Commission it becomes an appeal if the decision is carried beyond the Planning Commission. If it is an appeal the Board is sitting as an appellate body and it has to be a closed record. If it is a recommendation for approval, the hearing would not have been a denial and it could have gone to the Board as a recommendation and not an appeal and it would have been an open hearing. Mr. Baker commented that if there is evidence of an error of law the Board of Commissioners has the option of remanding it to the Planning Commission. He explained the Board could inquire of staff regarding what was said.

Commissioner Wood asked Mr. Crites what advice was provided to the applicants in terms of process. Mr. Crites explained that once the appeal was filed for that the applicants were told it would be an open record hearing and notice was given that there would be a public hearing. When they became aware that it should be a closed record hearing a notice of cancellation was prepared. The new notice of hearing was prepared and published and appropriately sent out indicating it would be a closed record hearing. Commissioner Wood verified that prior to the Planning Commission meeting there was a plan to hold an open record public hearing before the Board of County Commissioners and after the Planning Commission denial it was discovered that the hearing was to be closed and that was communicated. Mr. Crites reported in the past the County has had

Minutes
July 30, 2001
6:00 p.m.
Page 6

similar hearings involving agriculture property before the Board of County Commissioners for an appeal and it was an open record public hearing.

Mr. Hagen referred to Ch. 13.14.07 of the Zoning Ordinance regarding the filing of an appeal. He commented they entered the hearing thinking one thing and found out it was different.

Mr. Crites verified that after the appeal was filed both parties were informed that the hearing would be an open record public hearing.

Commissioner Wood questioned if this issue has been procedurally flawed to this point. Mr. Baker commented it appears there was no guidance or advise prior to the Planning Commission hearing. The court would look at the record and if there is evidence in the record to support a procedural flaw. Based on Mr. Crites comments it appears there was not a procedural flaw at the Planning Commission level.

Mr. Hagen commented he has a factual dispute with what the procedure would be and whether it was discussed prior to the Planning Commission hearing. Mr. Crites did not recall any discussions prior to the Planning Commission Public Hearing.

Joe Stipic, president of Northwest Rock, reported that prior to the Planning Commission Public Hearing they discussed what information they would present at the hearing. Mr. Hagen talked with Mr. Crites and the Prosecutor's office regarding the process. Mr. Hagen informed Mr. Stipic that the decision was that it would be a "De Novo" hearing and at that time they decided to stay with the rezone issue.

Commissioner Morrisette commented that Northwest Rock has been through this process and they know the process and they believed that it would be an open hearing. Mr. Hagen reported that because of the turnover with staff they wanted to make sure that the same procedures would be followed. The information they had was re-affirmed by staff. Commissioner Morrisette explained that everybody knew what the rules were before the vote but the rules changed when the vote was taken.

Commissioner Wood commented the question is whether it is a closed record hearing or an open record public hearing. Commissioner Wood commented now is the time to resolve whether there was procedural error that was substantive enough on whether it warrants remanding it to the Planning Commission. Mr. Baker commented if the Board wanted to do that they should hear from the opposition.

Knoll Lowney, representing the majority of the people present, and residents of the

Minutes
July 30, 2001
6:00 p.m.
Page 7

Satsop Valley Homeowners Association and the Satsop Valley commented there is sufficient evidence in the record and the Planning Commission heard everything they needed to hear in order to deny the rezone request. Mr. Lowney stated there is no allegation that there was specific evidence that they wanted to enter into the record. He stated there is no evidence that there was a miscommunication. Everyone assumed if there was going to be an appeal it would probably be an appeal by the homeowners. In that situation everything would have been heard again. Mr. Lowney explained the law is set up to put the burden of proof for a rezone on the applicants. Applicants are given "one bite of the apple" because the burden of proof is on them. Mr. Lowney commented it makes sense to hear the appeal on closed record. He explained that there is case law and precedent that the Prosecutor's office is relying upon in determining that a closed record appeal is the appropriate way to proceed. Mr. Lowney reported those cases were available to him and available to Mr. Hagen. When new evidence is allowed to a closed record hearing that is an error. Mr. Lowney commented ignorance of the law is no excuse and everyone had an opportunity to learn the law and the hearing should move forward as the Prosecutor's office has recommended.

Ken Kimura, resident of Montesano and representative for Northwest Rock, Elizabeth Perry, Lloyd Foss and John Mouncer, commented that during the Planning Commission Public Hearing he submitted evidence in the form of alternative findings. The findings included information which showed that the current pattern of development within the area were not the intent of the AG-2 zone. He submitted evidence to show that the physical characteristics of the property do not support land extensive agriculture as specified within the agricultural element of the Comprehensive Plan. He submitted evidence that the Comprehensive Plan is more than the agricultural element of the Comprehensive Plan. It included other parts such as the Shoreland Master Program and that within the context of all of the Comprehensive Plan sub-elements there was a basis for considering this particular rezone. Mr. Kimura submitted an alternative finding to show that the application of the AG-2 and AG-1 zonings throughout Grays Harbor County included error in this instance in the way that it was applied to the properties. Mr. Kimura commented that after review of the criteria that was listed within the AG-2 element of the Comprehensive Plan he wanted the Board of County Commissioners to know that he would be testifying for this application and if there were any questions regarding the alternative findings he would be happy to discuss them.

Mr. Lowney offered opposition to the applicants' appeal and presented bound materials to the Board of County Commissioners. Mr. Lowney presented written arguments titled "Opposition to Applicants' Appeal of Planning Commission Denial of Rezone" submitted by Smith & Lowney PLLC on behalf of Satsop Valley Homeowners Association et al. and dated 07/30/2001. Mr. Lowney provided a background of the case.

Minutes
July 30, 2001
6:00 p.m.
Page 8

He commented this case is about a neighborhood coming together to protect its quality of life and the health and safety of its neighbors. It's about Northwest Rock's mistaken decision to buy the Mouncer property under the assumption that it could site a gravel processing facility there in violation of the AG-2 zoning. Mr. Lowney commented that when the Superior Court said no, Northwest Rock with stuck, and decided to pursue this rezone request. He explained that it is a regrettable mistake, but not a valid basis for a rezone. Rezone is not supported by change in circumstances on the subject property or the public interest. Mr. Lowney reported that Northwest Rock's Proposal is stated in the public notice for the rezone as the reason for the rezone. He commented that Northwest Rock's project is an expanded gravel mine. It is an industrial processing facility including a rock crusher, a screening plant and a washing plant. Mr. Lowney reported this case is important because Grays Harbor's economy increasingly relies upon retirement living and residential development. That sector of the economy relies upon zoning to protect quality of life and real estate investments. Predictability in real estate investments is important in retirement communities. Half of Satsop Riveria residents are over 60. Many are without the option of moving due to fixed incomes. They moved into an agricultural zone that specifically prohibited non-agricultural commercial enterprises. Mr. Lowney stated the Planning Commission's decision respects the interests of this Board and citizens as codified in the Comprehensive Plan. Mr. Lowney explained they are here to support the Board to support its constituents. The law strongly supports the Board's choice to protect these neighbors and their peaceful retirement. The most critical support comes from the Board itself. The Board gave itself a purely appellate role when reviewing a decision to deny a rezone. Mr. Lowney explained under the case law that means that the Board gave itself the opportunity to use its "substantial evidence test". The "substantial evidence test" applies making it easy to affirm the Planning Commission decision and hard to reverse. The Board decided not to give proponents of rezone "two bites of the apple". He explained this makes sense because rezones are disfavored and the burden of proof is with the rezone proponents. Mr. Lowney commented this promotes the interest of finality and this matter will be closed if the Board affirms the Planning Commission because there is not a valid basis for appeal. Mr. Lowney stated the appeal should be denied as invalid because the notice of appeal failed to allege any errors on the part of the Planning Commission. He commented the substantial evidence test makes it difficult to overturn the Planning Commission. The Board must affirm the Board's decision if it is supported by "substantial evidence". "Substantial evidence" is a "relatively low threshold of proof"; it only requires a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the proposition. The Board views the evidence and reasonable inferences in the light most favorable to the citizens opposing the rezone. The Board does not rebalance the evidence that was presented to the Planning Commission. Mr. Lowney stated the Planning Commission's decision to deny the rezone was supported by substantial evidence. He explained conditions have

not substantially changed since the agricultural zoning was applied to the site in 1981. The rezoning does not bear a substantial relationship to the public health, safety, morals or welfare. Mr. Lowney reported the Planning Department recommended denial of the rezoning and the Planning Commission concurred. He commented the most important piece of evidence in the record is the Planning Department's Staff Report that provides factual and legal justification for denying the rezoning. The Planning Commission relied upon the Staff Report to deny the rezoning and that is sufficient basis for the Board of County Commissioners to affirm. Mr. Lowney explained the information provided to the Planning Commission and provided at this hearing supports the Planning Department's recommendation. Mr. Lowney reported substantial evidence shows that there has been no change of circumstances since 1981 that would support a rezoning. He explained aerial photos from 1967 to the present show that there has been no change of circumstances on the subject property or adjacent properties. The use of the property has remained constantly agricultural. The applicants environmental checklist states that "It is true that the site has a history of agriculture". Mr. Lowney reported that the applicants expert, Ecological Land Services, Inc. ("ELS"), admits that most of site "historically or is currently utilized for pastureland with the remainder of the site being forested with hardwoods and conifers". ELS also admits that 15.9% of the site (21.5 acres) are Prime Farmland Soils. He reported that the Grays Harbor Conservation District states that "most of the soil types (on the site) are highly suitable for hay and pasture or woodland production. In fact, the entire area is considered to be Prime Forestlands-Timber". Mr. Lowney reported the site has actually been used for agriculture throughout this time. He explained the aerial photos show continuous grazing, timber harvesting, and hay production. Mr. Lowney reported that Mr. Mouncer obtained a Timber Harvest Permit just last November. When Mr. Mouncer applied for the permit he agreed to replant the property and not to convert it to a non-agricultural use for the next six years. Mr. Lowney reported that the testimony of Robert Gates, Kathy McKinney and Delores Cavanaugh all supported that the site is good for agriculture and presently used for agriculture. A picture of hay production on the site is contained in the Soil Survey. Mr. Lowney stated there is no evidence in the record that supports a change in circumstances. He commented that argument from Mr. Hagen at the Planning Commission was not evidence. Mr. Lowney stated that Mr. Hagen did not rebut the aerial photos, which are the best evidence. The soils obviously did not change, and cannot support a rezoning application. Mr. Lowney stated that substantial evidence shows that the rezoning is not in the public interest. He reported there was a recent case from Grant County that was almost identical to this case. There they attempted to rezone agricultural land that was "rocky and poorly suited" to agriculture so they could build houses on it. This did not matter. The court found that rezoning would be contrary to the Comprehensive Plan and therefore not in the public interest. Mr. Lowney stated the rezoning would undermine the County's Comprehensive Plan and Agricultural Zoning. In 1981, the County conducted a

Minutes
July 30, 2001
6:00 p.m.
Page 10

comprehensive review of the agricultural zoning in the County. Between 1973 and 1979, 65% of rezones were from agricultural land. Between 1977 and 1979, 230 acres of agricultural land had been lost in East County. The County surveyed all agricultural land to remove non-agricultural land from Ag. Zones and assure that all agricultural land outside of an urban service area was included within an Ag. Zone. Mr. Lowney stated the County property designated this site as agricultural land. Agricultural land includes more than just land with "prime agricultural soils". Mr. Lowney explained Policy One of the Agricultural Element states "Areas of agricultural land should be planned, designated, and zoned for agriculture. For such designations, suitable agricultural land can be characterized by one of the following characteristics: (1) Land that is prime or unique agricultural land as defined by the Soil Conservation Service (SCS); (2) Land that was historically cropped and pastured; (3) Land cropped or pastured during the farm inventory conducted during the summer of 1979. He reported that the site has been consistently used for agriculture. Mr. Lowney explained the criteria in Policy One will be used to decide if a parcel should be rezoned from an agricultural designation. Mr. Lowney stated that Agricultural Element Policy Two states "Areas designated for agricultural use should have simple and regular boundaries. In setting out planned agricultural areas, marginal agricultural lands and related wood lots shall be included in such areas in order to assure manageable farm units and to discourage the division of large ownerships needed for viable agriculture". Mr. Lowney presented a map showing the current zoning. He noted the Studer Rezone made the boundary between GD-5 and AG-2 smoother and more consistent with the intent of the Comprehensive Plan. He commented, in contrast, this rezone could cut the heart out of the AG-2 block in the vicinity. Mr. Lowney stated the County properly designated the site as AG-2. Agricultural Elements Policy Three states "Areas designated Agricultural II shall meet the criteria for agricultural land in Policy One and be characterized by the following criteria: (1) Areas with an average parcel size of more than 30 acres; (2) Areas characterized by agricultural uses requiring more than 30 acres of land; and (3) Areas with a history of agricultural zoning designation". Mr. Lowney stated this site meets all these criteria. He discussed the impact of Northwest Rock's proposal on the neighborhood. The application includes an industrial processing facility, including a crusher, sorter and washer. A noise study conducted in Satsop Valley showed that the project would cause significant noise impact on neighbors and violate noise code. Mr. Lowney reported he has included impacts shown by complaints at Northwest Rock's other processing facilities. He commented there is evidence this would severely reduce the property values and this property is relied upon as the sole asset for many of the residents in Satsop Riveria. Mr. Lowney reported that Nadine Romero, a hydrogeologist, testified that the project could dewater neighboring water wells, wetlands and streams. Her report is included in the materials submitted. Neighbors testified at the hearing that some of their wells are already going dry. Mr. Lowney reported that the Gravel

Minutes
July 30, 2001
6:00 p.m.
Page 11

Resources Committee determined that there is enough gravel in the county for 25 years. There was significant evidence in the record on the availability of gravel from other pits. Mr. Lowney stated Grays Harbor Conservation District noted this rezone would be an illegal spot zone. He states that there is no justification for rezoning the Mouncer property except to conceal potential spot zoning. This would be contrary to the Comprehensive Plan and benefits the applicant at the expense of public interest and neighboring properties. Mr. Lowney summarized the law fully supports the Board in affirming the decision of the Planning Department and Planning Commission. He stated the Board has the authority to support its constituents and the public interest. Mr. Lowney commented regarding the argument that there were errors involving the consideration of the gravel pit. He reported the public notice stated the gravel pit was an issue and the public notice was prepared by the county based upon the application prepared by Northwest Rock.

Commissioner Wood asked questions regarding the impact of the designation of “mineral resource land”. Mr. Lowney responded the mineral designation is correct and there is an existing pit there and it is grandfathered in. It does not provide a basis for a rezone. Commissioner Wood asked questions regarding a June 4, 2001 letter addressed to the Grays Harbor Planning Commission and the reference that the Planning Commission has only approved the “Studer Rezone” in this area. And that the general rule of thumb in the area is that properties north of the entrance road to the Schafer Game Park should be zoned GD-5, whereas properties south of that road should be AG-2. Mr. Lowney responded he believes the decision came from Planning Commission discussions during the time when the Studer rezone was reviewed and it was his summary of his understanding of their basis.

Kathi McKinney, resident of 71 Shafer Meadows Lane North, provided additional information and background regarding the properties on the map.

Chairman Beerbower asked for public testimony.

Bob Schimpf, 111 Shafer Meadows Lane North, reported he submitted a letter to the Planning Commission. Mr. Schimpf spoke in support of the Planning Commission and of the denial.

Dolores Cavanah, resident of 707 Middle Satsop Road, discussed her property and the zoning. Ms. Cavanah discussed the way she uses her property. She outlined a map and discussed speck rock. She spoke in support of the denial of the rezone.

Arnie Iverson, resident of 89 Alder Grove Drive, spoke in support of the denial of the

Minutes
July 30, 2001
6:00 p.m.
Page 12

rezone.

David Cannady, resident of #5 Scenic Place, discussed health concerns and spoke in support of the denial of the rezone.

Angela Cannady, resident of #5 Scenic Place, reported that she has submitted a letter and she spoke in support of the denial of the rezone.

Norma Deppiesse, resident of 72 Middle Satsop Road, read a letter on behalf of Jerry Zeman, resident of 684 Middle Satsop Road. Mr. Zeman supports the denial of the rezone.

Mary Weed, representing the League of Women Voters Grays Harbor, read a letter, supporting the denial of the rezone. Mr. Baker reported if the letter is not in the Planning Commission record it cannot be considered as evidence. Commissioner Wood clarified that Grays Harbor County did not opt out of the Growth Management Act. It did not opt into the Growth Management Act. It is not mandated to be part of that.

Bob McKinney, resident of 71 Shafer Meadows Lane North, spoke in support of the denial of the rezone. Mr. McKinney introduced his mother, Dora McKinney.

Dora McKinney, resident of the Capital Place Retirement Home in Olympia, read a letter. Ms. McKinney spoke in support of the denial of the rezone.

Terri Franklin, resident of McCleary, spoke regarding a Land Use Inventory for a Comprehensive Development Plan. Ms. Franklin spoke in support of the denial of the rezone.

Bob Gates, resident of 19 Meadow Lark Road, spoke in support of the denial of the rezone.

Kathi McKinney, resident of 71 Schafer Meadows Lane North, spoke in support of the denial of the rezone.

Lisa Bach, resident of 711 Middle Satsop Road, spoke in support of the denial of the rezone.

Mr. Hagen, on behalf of Northwest Rock, commented the application is for a non-specific proposal. He reported they are honest in reporting that they intend to seek a permit in the future. However, this is a non-specific proposal. He believes error occurred when the

Minutes
July 30, 2001
6:00 p.m.
Page 13

Planning Commission considered the request and made their decision. Mr. Hagen reported there are not 21 acres of prime soil land and the report prepared by Ecological Land Services references 9 acres and not 21 acres of Prime Farmland Soil. He reported nowhere in Northwest Rock's application does it say how much water Northwest Rock will be using. Nowhere in Northwest Rock's application does it say it will be crushing or washing. Nowhere in Northwest Rock's application does it talk about how much truck traffic there would or would not be. Mr. Hagen recommended the application be reviewed for verification. Mr. Hagen reported those are the items that are talked about at the Planning Commission hearing. He commented that those who opposed the rezone (because it was a 4-4 tie) based their decision or lack of decision upon those discussions. Mr. Hagen discussed the map that was presented. He discussed the issue of public interest. Mr. Hagen reported there is not substantial evidence to establish that this is prime agricultural land. Mr. Hagen summarized that Northwest Rock does not want any favors but they want to be treated fairly and equally like everyone else.

Knoll Lowney commented that the burden of proof was on Northwest Rock to show that there was a change of circumstances. He stated when they came there they knew what the burden of proof is and they should have presented any evidence necessary to show that there was a change of circumstances and that it was in the public interest, and that was their burden of proof. Mr. Lowney commented it is time for this case to be over and requested that the Board affirm the Planning Commission decision.

Commissioner Morrisette commented the situation before the Board is that the Board is an appellate jurisdiction and that is why no new or additional testimony can be presented. He discussed a packet containing the Planning Boards information as it was presented. The Board must determine if enough substantial evidence was in the record and given to the Planning Board. Commissioner Morrisette commented he believes that it was and moved to sustain the decision of the Planning Board.

Commissioner Wood made a statement and commented that he finds Wayne Hagen correct in that the question should not center on the potential of an expanded pit operation. The argument is logical that the Planning Commission should not have considered rock and gravel issues. They should not have considered pit related issues of traffic, noise, dust and water because what was before them was not an application for surface mining. Commissioner Wood stated the question is does the property meet the criteria for agricultural zoning and should it be rezoned. After reviewing the documents he finds the burden has not been met to sustain the argument that it should be rezoned. Commissioner Wood seconded the motion to uphold the Planning Commission recommendation of denial.

Minutes
July 30, 2001
6:00 p.m.
Page 14

Chairman Beerbower made a statement and commented that the Board considers recommendation from staff. He believes everyone should have the opportunity to appeal anything that is brought before the County. Chairman Beerbower commented there is a need to review and change the Comprehensive Plan. The motion passed unanimously to uphold the Planning Commission recommendation of denial of Case #2001-0851.

Minutes
June 30, 2001
6:00 p.m.
Page 15

The meeting adjourned at 8:35 p.m. to Monday, August 6, 2001 at 2:00 p.m.

BOARD OF COMMISSIONERS
for Grays Harbor County
This _____ day of _____, 2001

BOB BEERBOWER, Chairman

DENNIS MORRISETTE, Commissioner

DAN WOOD, Commissioner

ATTEST:

Sandra Daniels
Clerk of the Board