

MINUTES

BOARD OF COUNTY COMMISSIONERS MEETING

March 17, 2003

6:00 p.m.

The Commissioners met in session in the Commissioners' Meeting Room, Administration Building, Montesano, Washington, on Monday, March 17, 2003, at 6:00 p.m. Commissioners Bob Beerbower and Al Carter were present. Also in attendance was Sandra Daniels, Clerk of the Board and Stew Menefee, Prosecuting Attorney. Commissioner Morrisette was recused.

HEARINGS

Consider Appeal, Bascom Pacific LLC: There was a public hearing to consider the appeal by Bascom Pacific LLC of the decision of the Planning Commission to deny their application to rezone approximately 170 acres of land that is currently zoned General Development 5 (GD-5) to Industrial (I-2). The Board of County Commissioners considered the closed record of the Planning Commission, which was limited to testimony and evidence presented to the Planning Commission in making its determination.

The proposal is located on approximately 170-acres of the east half of Grays Harbor County's Tax Assessor Parcel #170803200000, north of SR 12 and west of Clemons Road, Section 03, Township 17 N, Range 8 W.W.M., Grays Harbor County, Washington.

A SEPA Determination of Non-Significance (DNS), dated August 14, 2001, was issued under WAC 197-11-340.

Commissioner Beerbower asked for a staff report. Jane Hewitt, Grays Harbor County Planner, reported that the applicant and the Board of County Commissioners have received a packet containing the following materials and she requested that they be entered into the record without reading:

1. Hearing date request
2. Original application, site plan, maps and other submitted materials, and SEPA checklist and associated DNS.
3. Record of Action based on "Report and Decision" document containing the Planning Commission's findings of fact and decision.
4. Record of Action based on original staff report containing findings of fact, conclusions and staff recommendations.

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5. Verbatim transcripts of September 3rd and October 7th proceedings of the Planning Commission.
6. First appeal application to Board of County Commissioners and supporting letter.
7. Minutes of October 28, 2002 and November 18, 2002 Board of County Commission hearings.
8. Verbatim transcript of January 6, 2003 Planning Commission hearing.
9. Second appeal to Board of County Commissioner and supporting letter.
10. Written comment received to-date. See transcripts for public testimony.
11. Mailing lists and affidavits of publication from The Vidette.

Commissioner Beerbower asked for a procedural report from Stew Menefee. Mr. Menefee explained this hearing is an appeal of a determination by the Grays Harbor County Planning Commission. The Board of County Commissioners are limited in its consideration to the testimony and evidence that was presented to the Planning Commission. Mr. Menefee explained that the parties who are representing both the applicant and any of the interested parties before the Commission would have an opportunity to address the Board and argue before the Board concerning the issues that have been raised in the appeal. The Board will not consider any new testimony or new evidence if submitted outside of the record that was done at the Planning Commission hearing. This is strictly an appeal of the Planning Commission's hearing to determine whether or not what they did and their action are supported by the record. Mr. Menefee reported the procedure would begin with the applicant, who has an opportunity to address the Board and indicate the record and issues that are raised in the appeal. The Board may ask questions of the applicant. Any of the interested parties present will be given an opportunity to address the Board. The Board may ask questions of those individuals. Mr. Menefee reported that at the conclusion of all the presentations the Board may then ask either the appellant or any of the interested parties questions concerning any issues that have come up when the Board considers the arguments before it. He reported that during the process the Board may also ask questions of staff concerning the procedures that took place at the Planning Commission hearing. The Board may ask questions of the appellant and of the other parties who appear during the process. When making its decision the Board will not consider any new evidence or testimony that is not in the record. At the end of the presentations the Board will then make a consideration of whether or not to affirm or reverse the decision of the Planning Commission. The Board

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may table the matter to allow the Board members to go back and review the record in light of the arguments made. The Board may also make a ruling at the conclusion of this hearing. The final ruling will be made in a public session.

Commission Beerbower reported that he is Vice-Chair and Commissioner Morrisette recused himself from this hearing. Commissioner Beerbower asked for a statement from the appellant.

Wayne Hagen, attorney with Edwards and Hagen, 110 West Market, Suite 202, Aberdeen, Washington, reported he represents the appellant/applicant, Bascom Pacific, LLC. Mr. Hagen explained he intends to address legal issues and the actual presentation will be made by Mike Daniels. Mr. Hagen reserved the opportunity for rebuttal after testimony has been received. For the record Mr. Hagen acknowledged his objection to this being a closed record review and that it is being held in an appellate capacity. Mr. Hagen lodged an objection that they do not believe that the Planning Commission decision is a final determination and the Board should be free to review the appeal on their own and reach a decision. Mr. Hagen reported this is a unique situation because there are three errors alleged. Mr. Hagen outlined the basis for this appeal as follows:

1. There are no findings, nor conclusions prepared or adopted by the Planning Commission, thereby making it impossible for the Board or anyone else to determine what the Planning Commission ruled or how or why they ruled the way they did. Mr. Hagen reported that this matter has already had two full hearings before the Planning Commission and has already been returned to them once by the Board. He requested that the Board consider this appeal on their own and reach a decision which includes findings and conclusions as deemed appropriate, so that everyone involved can have closure and move on.
2. A Planning Commission member had a conflict of interest preventing him from hearing this matter. A Planning Commission member is also a Port Commissioner for Grays Harbor Port. The request was to rezone a piece of property currently zoned General Development 5 (GD-5) to Industrial (I-2). The conflict is that the person voting on the request is also one of three people responsible for the largest industrial land base in the county. By approving the re-zone request and turning the property into industrial land would compete directly with the entity that the Port Commissioner is charged in upholding. Mr. Hagen commented that he believes that is a conflict of interest.

3. The Planning Commission considered materials which violate the appearance of fairness doctrine. Mr. Hagen reported that if a person recuses himself there are no circumstances where a recused member continues to sit on the Board and take part in discussion. That is what occurred in this case.

Mr. Hagen stated that they need findings and conclusions. Reference was made to page 36 of the transcript that shows a conflict of interest, with no opportunity to respond at the time. Mr. Hagen referred to page 36 and stated that it is untrue to say that this is ag land. He stated that this is not ag land. Mr. Hagen referred to a Planning Commission member discussing other rezones in the same area and he read testimony from the Planning Commission member. Mr. Hagen stated that the testimony is absolutely not true. He explained that he was involved in the rezones discussed and the testimony is untrue. Mr. Hagen commented that he is not claiming that the Planning Commission member purposely stated something that is untrue. However the end result of what was said is clearly misleading and not accurate and it taints the other Planning Commission members. Mr. Hagen stated that the issue here has always been a “project non-specific” rezone. He commented that this happens all the time and this is how rezones happen. Mr. Hagen provided examples of other “project non-specific” rezones. He discussed the Comprehensive Plan and that they are operating under the current Comprehensive Plan. Mr. Hagen challenged anybody to find a more appropriate site to be rezoned to industrial. There are no shoreline issues and it is not ag land and it complies with the Comprehensive Plan and is adjacent to current I-2 zone. Staff recommended that it be approved for rezone and there are no findings and conclusions upon which they can appeal. Mr. Hagen stated that he believes the Board is capable of considering this appeal and reaching a decision that includes findings and conclusions as deemed appropriate.

Mike Daniels with Pacific International Engineering, 606 Columbia Street NW, Suite 103, Olympia, Washington, provided testimony. Mr. Daniels reported he is a representative of Bascom Pacific, LLC, and their land management company, Forest Systems Inc. Mr. Daniels stated they are locally represented by Brian Carbaugh, who resides in Grays Harbor County. Mr. Carbaugh has submitted a letter on behalf of the company stating their position regarding this matter which is part of the record. Mr. Daniels reported that Mr. Carbaugh is out of town and unable to attend this meeting. He can be available next week if the Board continues this hearing and has questions for him. Mr. Daniels stated that he recognizes that this is a closed hearing and therefore his comments are limited to the record established before the Planning Commission. His testimony is in support of Rezone Application No. 2002-1117. Mr. Daniels stated that after his initial presentation and presentation by any opposition to the proposal, he would like to reserve the right to respond to questions and make clarifications prior to the Board concluding the public testimony portion of the hearing and beginning deliberations. Mr.

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Daniels testified this is a “non-specific project” application. He explained that a specific use or uses have not yet been identified, and when identified will be subject to additional public review and application permit approvals prior to any implementation. Mr. Daniels stated the application is identical or very similar to other previous cases heard before the Board in recent years. He provided examples of significant rezones with no proposed use identified, but approved by the Planning Commission and County Commissioners. Included was the Martin rezone of approximately 150 acres of Agricultural Zoned land to I-2 designation. Also the Satsop Development Park involving in excess of 350 acres of GD-5 converted to I-2 designation and immediately adjacent to the site the Shirley Robbins SBR Company, and the Rognlin’s rezones encompassing a combined 72 acres conversion to I-2 designation. Mr. Daniels referenced Case No. 2002-0014 and Case No. 2002-1572. He stated that the Planning Staff in preparing their findings of fact, conclusions and recommendation to approve the rezone in their report to the Planning Commission and to the Board, was prepared after full review of the County’s current Comprehensive Land Use Plan, Zoning Ordinance and existing zoning and land use of the area. Mr. Daniels stated that the Planning Staff determined, as they had in identical rezone cases of adjacent property, that the proposed rezone, because it is a non-project, does not in and of itself have a probable significant adverse impact on the environment. Staff determined that phased review is appropriate because the application is for a non-project. They recognized that like case no. 2000-0014 and no. 2000-1572, included in the record by reference, that impacts could not be judged until such time as specific land use was identified. That assessment concluded, in conformance with land use law, that most specific land use proposals would be subject to compliance of SEPA and include public process prior to implementation of a change in use, thereby giving interested parties the opportunity to comment on proposed specific land use change. Mr. Daniels explained that a rezone does not, in and of itself, authorize the change in land use of this property. He reported that in cases such as this the County Assessor does not change the tax status of the parcel when it is rezoned unless or until the land use changes to a use allowed in the new zone, or some other use that is different than the current use of forestry. The property currently is taxed as open space timberland. When the land use changes the property owner will be subject to tax penalties as all or a portion of the site is removed from the open space designation. Other agencies in the review such as Washington State Department of Transportation and County Public Works reserved any comments until specific land use applications for the site were made. This is their common practice in review of all rezone applications. The Planning Commission and County Commissioners approved rezones to an I-2 designation of adjacent properties totaling approximately 75 acres as submitted by Rognlin’s and Shirley Robbins. These cases concluded with approvals in the year 2000 based on identical staff analysis, findings of fact, conclusions and recommendations as has been made in this case. Mr. Daniels reported the staff reports referenced the County’s current Comprehensive Plan and the record of previous

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cases all identify the area as urbanizing, and found that this application for rezone is totally consistent with the goals and objectives of the land uses for the area. Mr. Daniels stated the application and supporting documentation is consistent with the County's adopted Comprehensive Land Use Plan and all referenced previous cases. The staff report is complete, and the applicant concurs with its findings of fact and recommendations. Mr. Daniels reported that in addition to SEPA documentation required, the applicant has voluntarily analyzed the site with the use of a qualified biologist to determine what wet lands and/or streams exist on the site so that proper buffers could be established and maintained for any development and use of the site. He reported that a copy of the threshold review is included in the materials and is part of the record. Based on that review and employing best management practices the applicant has determined approximately 105 of 170 acres are suitable for development. The balance would be left as natural and/or enhanced buffers. Mr. Daniels commented that the applicant has completed detailed analysis that will ensure that development of the property will not be at the expense of the surrounding area.

Mr. Daniels referred to a letter from Michael Tracy, Executive Director for Grays Harbor Economic Development Council, supporting Bascom Pacific's application. Mr. Tracy stated that this property is in an excellent location – adjacent to other industrial property, near infrastructure, buffered from residential areas and with little to no environmental impacts. Grays Harbor County needs clean, property-zoned, industrial land to advance the growth of jobs and investment in our community. This rezone will have a positive impact for the future.

In summary Mr. Daniels stated they believe the Comprehensive Land Use Plan and previous decisions of the County support the County staff report in this case. They further believe that recommendation to deny the application by the Planning Commission in this case is arbitrary and without merit. They requested that the County Commission affirm the staff report conditions, conclusions and recommendations and set aside the Planning Commission recommendation and approve the requested rezone.

Stew Menefee asked if there was a request from the Planning Commission for an EIS. Mr. Daniels responded there was not. Mr. Menefee asked if the primary agency made a threshold SEPA determination in this case. Mr. Daniels responded that the planning staff made a threshold determination of non-significance. Mr. Daniels agreed that this is not an issue at this point.

Commissioner Beerbower asked for testimony from anybody who had made testified at the last hearing. Testimony was received as follows:

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Korey Stamon, 147 West Wynooche Road, Montesano, reported he is one of the adjoining property owners and this is the third time that he has spoken. He commented that he is confused and it was his understanding that at the second and third Planning Board meeting the County staff report was against the rezone. Mr. Stamon asked if this was correct. Commissioner Carter reported that the Planning Commission Board asked the staff to go back and change their report to reflect what the Planning Commission had judged on. Originally the staff was in support of the rezone. The Planning Commission denied the rezone and requested that staff change their report to reflect that they denied it. In the second and third meeting the report would be that they denied it even though it was approved in the first meeting. Mr. Stamon stated that in conclusion County staff was against the rezone. He asked if a decision would be based on the first County staff report or on the final County staff report.

Commissioner Carter commented that staff recommended approval of the rezone and the Planning Commission denied it. He expressed concern that the Planning Commission ordered the staff to go back and change their findings to support the Planning Commission.

Brian Shea, Director of Grays Harbor County Planning and Building Division, provided a staff report. Mr. Shea explained that at the conclusion of the first public hearing consensus was reached by the Planning Commission that they were not in favor of the rezone. They had difficulty in articulating that in a written form, and they directed the County staff to change the findings contained in the staff report to in effect read that the application was not consistent with the regulations for granting the approval of a rezone. Mr. Shea reported that after the first public hearing, and before the second meeting held one month later, several of the Commission members came to staff and stated that they had some difficulty with ordering the staff to change the recommendations contained in the staff report. Staff agreed with their contention that it appeared to be inappropriate, so the staff drafted findings that the Planning Commission could adopt on their own that were consistent with the conclusions that they came up with at the end of the first meeting. Mr. Shea explained they had the original staff report entered in at the second public hearing and they also presented to the Planning Commission a separate set of findings that supported the conclusion that they had arrived at the first meeting.

Mr. Stamon commented that it is confusing and there is a lot of information that has been presented. He voiced opposition to the rezone request. He commented that 170 acres is a large amount of land. Residents have been in the area for many years and Mr. Stamon has lived there for 15 years. He stated that there is a gravel pit across the street. The request to rezone another large area to industrial would be in his backyard because his property adjoins the 170 acres. There was discussion pertaining to the map and the location of the proposed site. There was discussion regarding the location of the stream.

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Mr. Menefee commented for the record that the map is part of the packet and the packet is included in the record. Mr. Menefee invited Mr. Hagen and others to be included in reviewing the map that is included in the record.

Mr. Stamon commented that his source of water is a well and he expressed concern regarding his well. He expressed concern with the stream and how it will affect his well. He commented the proposed site is timberland and the majority of it was logged approximately 12-13 years ago and it has been replanted. Mr. Stamon summarized that he is against the rezone and he asked the Board to consider all of the information.

Mr. Menefee clarified that the proposed site is not zoned timberland. It is zoned General Development (GD-5).

Pat Reule, resident of 171 West Wynoochee, Montesano, provided testimony. He explained that this is his third time to testify. He commented his concerns are the same as Mr. Stamon's. He expressed concern with how the stream runs down and feeds both of their wells. Mr. Reule commented that water is involved in this issue. He testified regarding the buffer zone and asked if it was going to be logged. He discussed the quality of life and how it will be impacted. Mr. Reule asked the Board to deny the rezone request.

John Rabey, resident of 212 West Wynoochee Road, Montesano, gave testimony. Mr. Rabey reported that his property is adjacent to the proposed site. He disputed a statement made by Mr. Hagen that the site had a non-significant classification. Mr. Rabey discussed the stream and reported that it has been officially named Spaulding Creek. He reported that currently there is an approximate \$250,000 fish restoration project underway and there are plans to enlarge the culvert. Mr. Rabey reported Mr. Durham is in attendance and his group is seeking grants to complete the project. Mr. Durham commented he is testifying as a citizen. He commented on extensive culvert replacement on the West Wynoochee and Geisler Road. He reported this place has been identified as over-wintering and juvenile facility raising of Coho and Low River Chinook. Mr. Rabey referred to other developments in the County and discussed other industrial development sites that have been developed. Mr. Rabey commented on the Planning Commission Board and their procedure and criteria for considering a rezone. He reported they have used the same procedure and criteria for many years in considering applications. Mr. Rabey supported the Planning Commission finding that the applicant failed to demonstrate that the proposal will not be materially detrimental to the public welfare, or injurious to property or improvements in the vicinity and zone in which the subject property is located. He asked the Board to uphold the decision made by the Planning Commission to deny the request.

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Mr. Daniels addressed some of the issues raised and issues in the record. He stated that the staff report that was presented at the original hearing has not changed, and never did change. He stated that it is consistent and recommends approval of the rezone. He stated that never did the staff change their report. Mr. Daniels addressed the issue regarding the buffer and marshlands or streams. He referred to the biologist report that was completed on behalf of Bascom and is included in the original application and is part of the record. It addresses the stream and the wetlands on the property. The report is dated August 6, 2002, and recognizes and classified one stream as Type 4 and another as Type 5. The report addresses Category IV wetlands along the western edge of the parcel as depicted on the map. Mr. Daniels reported that Type 4 streams should be buffered, 150-feet with low mass-wasting potential and 225-feet with high mass wasting potential. The banks of the stream are vegetated and, though the stream occupies a ravine, there is no indication of past or potential slope failure. The 150-foot buffer would apply and should be taken into consideration for planning purposes. The stream channel continues above the road crossing for several hundred feet and any impact to the riparian buffer will have to be addressed through either mitigation or avoidance. The slopes around the parcel are mostly cleared and display cable-yarding scars from landings on the parcel. Despite the ground disturbance from harvest activities, little visible erosion has occurred. Permit conditions for site development would likely require re-vegetation along the slopes and, in some locations, setbacks. Mr. Daniels stated that the record shows that there has been due diligence by the property owner to determine what potential environmental concerns exist on the site to ensure that any future proposed development would address them adequately. Mr. Daniels addressed the water issue and stated there is legal responsibility to protect water rights against adverse impacts. The property owner does not have the right to destroy water rights of another property owner. Any application for improvements on the property would be required to employ best management practices. Mr. Daniels commented that the fish enhancement project between the Columbia Pacific RC&D and the County are well recognized by the applicant. Mr. Daniels spoke to zoning and the variety of permitted uses as outlined in the zoning ordinance. He explained that in this case the I-2 zone could be more restrictive on the property owner than that of the list of permitted activities and conditional permitted activities on the property. Mr. Daniels reported that the owner has recognized those issues.

Mr. Daniels responded to the question regarding the Planning Commission process and if it is appropriate for the Board to act contrary to the Planning Commission recommendation. He explained they are warranted, and like a court of appeals, if a lower court renders a decision then it can be challenged by either side and reviewed. If it is found that it is an inappropriate decision and without merit, the court of appeals can overturn the decision. He commented that it is not unlike the position that the Board of County Commissioners are in. Mr. Daniels explained this is the process.

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Mr. Daniels reported that there are standards for the streams and for the wetlands that will be enforced by the Department of Ecology, regardless of the uses proposed for the site. He explained some of the questions raised can not be answered at this time because it is a “project non-specific” application. The applicant will be required to answer those questions when a specific proposal is submitted. At that time specific buffers will be proposed and they will be reviewed by the County, and if determined not adequate will be enlarged or relocated. Mr. Daniels reported that there are portions of the property that have steep slopes and are not developable and those would automatically be part of the buffer.

Commissioner Beerbower asked questions regarding setbacks. Mr. Daniels responded that for certain uses in a GD-5 zone like large lot subdivision, the setbacks may be significantly different than they would be for an I-2 use.

Mr. Hagen stated that his client is entitled to not only a fair hearing but also to the appearance of a fair hearing. He commented they were not given that opportunity. They are entitled to findings and conclusions upon which they can appeal and the Board of Commissioners can make decisions based upon that appeal. He stated there are no such findings or conclusions. Mr. Hagen commented the Board of Commissioners are the final word on rezones in Grays Harbor County and he asked that the Board reach a decision which includes findings and conclusions as prepared by staff originally. He commented that the findings and conclusions as prepared by staff originally, and supported by staff at the second hearing as well, are the only findings and conclusions they have voluntarily prepared and have continually supported. They are the appropriate ones for this case.

John Rabey made additional statements regarding the staff report and that it was not consistent with the Planning Commission decision. He commented that the Planning Commission function is not to “rubber stamp” the staff report. Mr. Rabey stated that the procedure seems to be correct and that it works. He discussed the buffer issue and expressed concern regarding a blue cutting line he observed that was approximately 50’ from the creek.

Korey Stamon discussed a letter that he received from Dennis Morrisette regarding this issue and asked if the letter went to everybody. Mr. Stamon commented that the process has been confusing. He emphasized the county staff report and their fact and finding was “insignificant” at the first meeting.

Mike Daniels addressed the 150’ buffer concern that was expressed by Mr. Rabey. Mr. Daniels reported that he is not aware of the 50’ concern and he will contact the owner for information. He reported that some setbacks for forest practices in the timber designation

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are 50'. Mr. Daniels commented that he would receive clarification and provide that information.

Commissioner Beerbower asked if there was further testimony from individuals who had testified previously. There was no additional testimony.

Commissioner Carter commented the issue is confusing and he requested additional time to review the information and look at the property. He asked Mr. Menefee if that is allowed. Mr. Menefee responded that the Board is not required to make a decision at this time. The Board may table a decision to allow time to review the record and compare it to the testimony received at this hearing. Mr. Menefee explained the Board could drive the area but should not go on to the site or walk the site because the parties would need to be present. Mr. Menefee explained this is not a fact-finding board and it is an appellate board.

Commissioner Carter made a motion and it was seconded and passed to continue a decision for one week to allow additional time for review. A decision will be made at the March 24, 2003 Board of County Commissioners meeting at 2:00 p.m.

Commissioner Beerbower stated that he would like the additional time to review the materials. He reported that Commissioner Morrisette will still be recused from the decision making process.

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The meeting adjourned at 7:40 p.m. to Monday, March 24, 2003 at 2:00 p.m.

BOARD OF COMMISSIONERS
for Grays Harbor County
This _____ day of _____, 2003

BOB BEERBOWER, Commissioner, District 1

recused
DENNIS MORRISETTE, Chairman

AL CARTER, Commissioner, District 3

ATTEST:

Sandra Daniels
Clerk of the Board