

Whatcom County Council Planning and Development Committee

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Committee Minutes - Final

**Tuesday, May 7, 2024
1:30 PM
Hybrid Meeting**

**HYBRID MEETING - ADJOURNS BY 3:20 P.M., MAY BEGIN EARLY
(PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010)**

COUNCILMEMBERS

Todd Donovan
Ben Elenbaas
Jon Scanlon

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Committee Chair Ben Elenbaas called the meeting to order at 1:36 p.m. in a hybrid meeting.

Roll Call

Present: 3 - Todd Donovan, Ben Elenbaas, and Jon Scanlon

Also Present: Barry Buchanan, Tyler Byrd, Kaylee Galloway, and Mark Stremmer

Announcements

Special Presentations

1. [AB2024-304](#) Presentation on Conservation Program of Agricultural Lands (CPAL)

Mark Personius, Planning and Development Services Department Director, introduced the presentation. He stated this is the second briefing (see AB2023-303) on the Voluntary Stewardship Program (VSP) regarding critical areas and agricultural activities. The purpose of the presentation today is to provide a clearer picture of the County's current approach to critical area regulations related to agriculture known as the Conservation Program on Agricultural Lands (CPAL). The Conservation District will also be presenting on how they work with landowners to develop farm plans and identify best management practices (BMPs). The goal is to follow up with a third meeting later in the year at which the Council can hear from some VSP counties.

Dakota Stranik, Planning and Development Services Department, read from a presentation (on file) regarding the CPAL. She spoke about the history of the Critical Areas Ordinance (CAO).

Donovan stated that around the time of the 2017 CAO update, there was a settlement agreement that said that if VSP came up that Council would consider it.

Elenbaas stated that conversation did not have anything to do with the settlement but in those meetings, it was agreed that it was something that both Planning and Development Services and the broader farm community were interested in. However, you could not enroll as a VSP county unless the State law changed. So, collectively, there was a letter written to the State to open it up.

Donovan stated the timeline is that around 2017 there was a Growth

Management Act (GMA) challenge, and then there was a settlement agreement, and then the State law changed, and that is what got us to this discussion.

Stranik continued her presentation on CPAL, its requirements, the roles of the Whatcom Conservation District (WCD) and Whatcom Clean Water Program (WCWP), and an overview of the VSP as an alternative to the current approach.

Elenbaas clarified that the VSP will not take away the Critical Areas Ordinance, but instead, would replace CPAL, and would be applicable for agricultural activities inside of our CAO.

Donovan stated this is a prelude to a discussion about potentially adopting VSP and he feels they are casually discussing what could be a massive and expensive undertaking, the scope of which is on the scale of a Comprehensive Plan update. This is way more than a simple code change.

Elenbaas stated the motivation for something like this is to have a program that will not be pushed against and heavy-handed. If we want to get a better outcome over the long haul in the agricultural community, the VSP is looked upon as a better tool than what we use in Whatcom County.

Donovan and Elenbaas discussed whether this issue should be in Committee of the Whole because of its scale, that not everyone may be aware of the discussions that have already taken place, and that some of the information given the Councilmembers prior to this from the State was poor information.

Stranik stated part of the challenge of the State presentation in September is that it was about the state level and did not factor in CPAL and how it works, so one of the reasons they came back today is to establish what the County is currently doing. She continued her presentation.

Councilmembers discussed the presentation, conflicting ideas regarding agriculture between existing rules and practical application, getting more data on the VSP and CPAL programs, whether they could tweak how they define existing agriculture or incorporate some aspects of the VSP into the current CPAL program without having to do a massive change, and the potential benefit of land owner buy-in to the VSP which would ultimately result in a better outcome.

The following people read from a presentation (on file) on an overview of the Whatcom Conservation District, their role in the County's CPAL Program, and the farm planning process and answered questions:

- Corina Cheever, Conservation District
- Aneka Sweeney, Conservation District

They answered questions about funding sources, whether any of these programs look different if the VSP was in place as opposed to CPAL, whether the benefits are the same for bigger pieces of property as opposed to smaller pieces of property in terms of how much land that might be covered by critical areas, and what the barrier is for farms that have not worked with the Conservation District in putting together a farm plan. Cheever stated there is a lot of distrust in the Conservation District. They are funded by grants and contracts from the County and are a sub agency of State government.

Elenbaas spoke about why there is mistrust and stated if we did not spend a dime on enforcement and we focused all of our energy on outreach and education, we would have a better outcome over time. We have created the problems by making things political that should never have been political. The VSP feels more like a carrot than a stick approach over CPAL. He stated he cannot say enough about the Conservation District.

This agenda item was PRESENTED.

2. [AB2024-276](#)

Overview of land use development and the appearance of fairness doctrine

George Roche, Prosecuting Attorney's Office, stated they have a full presentation they would like to give at the next meeting. He spoke about how they are going to handle ex parte communication going forward and stated the new plan is to not prevent people from talking about it directly in the meetings themselves, but they will notice in the agenda certain project permits that they are not interested in discussing in open session. Then, if people choose to engage in that discussion, they are going to make a record of that and keep tabs on when people are approaching the Council with inappropriate communications when project applicants are not there themselves to hear those arguments and prepare their own defenses to them. He spoke about types of issues for which the Council could act in a quasi-judicial capacity.

Donovan asked what the Council passed off to Superior Court to be the appeal body as opposed to the Council when they changed the Code a few years ago.

Roche stated he would look into that and that there are other permits that that could also go to other people if the Council would want more of an opportunity to divest themselves of those responsibilities and engage with the public. He stated he is working with the Planning Department on a system with which they could identify for Council current projects that could trigger their quasi-judicial responsibilities. He stated with the removal of the ABC project, he does not think there is anything before the Council now in a quasi-judicial capacity.

Galloway requested that they have more robust training on this issue and some time in a future committee meeting to discuss how the Council might want to address Heavy Impact Industrial applications in city urban growth areas.

Mark Personius, Planning and Development Services Department Director, stated he believes they are going to be ready to take the related docketed item to the Planning Commission in June and the Council in July. They are moving that forward but are happy to have a broader conversation as well around policy.

Councilmembers and Roche discussed having a list of projects for Council as well as their timing, and how to handle public conversation on issues that might come before the Council in a quasi-judicial capacity.

Elenbaas spoke about the previous presentations on the Voluntary Stewardship Program.

This agenda item was PRESENTED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 3:23 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Ben Elenbaas-via email 5/13/2024

Dana Brown-Davis, Council Clerk

Ben Elenbaas, Committee Chair

Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE