

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING  
DECEMBER 10, 2007 – SPECIAL SESSION**

The Board of Island County Commissioners met in Special Session on December 10, 2007 beginning at 7:00 p.m. to conduct a Public Meeting and consider for approval the Freeland Sub Area Plan. The meeting was held as noticed and advertised, at the Trinity Lutheran Church Gym, 525 and Woodard Road, Freeland, Washington. Commissioners Wm. L. McDowell, Chairman, John Dean, Member, and Phillip Bakke, Member attended.

Attendance: Approximately 22 members of the public, press, County staff  
*[Attendance sheets on file with the Clerk of the Board – GMA No. # 9627]*

Hand-outs were provided by some who commented and those written remarks are on file with the Clerk of the Board.

Chairman McDowell gave the welcome and opening statement explaining that the purpose of tonight's hearing is to collect additional input on the Freeland Sub Area Plan and designation of Freeland as a Non Municipal Urban Growth Area (NMUGA). The Planning Department transmitted to the Board for consideration on November 21, 2007 the Planning Commission's recommendation and the Board has evaluated the draft. Explaining the evening's format the Chairman said that Planning will first give a presentation followed by a time for comments by members of the public. Thereafter the Board will review its options and decide whether to consider the options or require additional time for consideration.

Jeff Tate, Planning Director, introduced himself and Greg Waddell. Mr. Waddell is a representative from BHC Consultants hired in 2007 to help with completion of the Sub Area Plan and Environmental Impact Statement. For the benefit of the Board and audience Mr. Tate began by reviewing the history leading up to the Freeland Sub Area Plan and also discussed the broader principles of the Plan in designation of Freeland as a NMUGA.

Mr. Tate explained that the Growth Management Act (GMA) was enacted in 1990 providing that most all jurisdictions adopt comprehensive plans and growth management strategies for concentration of urban growth in areas where services can support urban growth such as sewer, water, and storm water. The GMA also established broad principles for protection of resource lands such as agriculture and forestry and also for designation of rural areas. The principle behind growth management is to identify areas in which growth is encouraged and concentrated in order to reduce pressures outside of urban areas. In Island County there are three existing Urban Growth Areas: Oak Harbor, Coupeville, and Langley.

In 1998 the Board adopted a Comprehensive Plan, Land Use Element, and implementing development regulations. At the time the Board made the decision to adopt the Comprehensive Plan there was a massive down-zoning effort that occurred and much of what the County knew as residential zoning, 3-1/2 houses per acre, was down-zoned to one house per five acres. Of the 34,000 acres of existing Residential zoning, 25,000 acres was down-zoned. Left over at the time was a land use pattern of designating Urban Growth Areas, again Coupeville, Oak Harbor, and Langley, along with a new principle incorporated into the Comprehensive Plan namely Rural Areas of Intensive Development (RAID), a designation for rural areas where there is existing historical development that has taken place at high density. RAIDs afford local jurisdictions the option to designate Rural Areas of Intensive Development with Freeland as one example. Its purpose is to contain existing development to avoid sprawl.

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Mr. Tate continued by saying when the Board adopted the Freeland RAID in 1998 it was appealed taking about a year and a half to resolve. The Western Washington Growth Management Hearings Board stated on June 2, 1999 that:

Freeland has many urban characteristics, including many small lots spread over a large area and significant commercial development. These RAIDs look less like limited areas of more intensive rural development and more like urban growth. With its current boundaries and allowed densities, are not limited areas of more intensive rural development, but constitute non-municipal urban growth.

The Finding is key and the primary springboard for beginning the process of drafting the Freeland Sub Area Plan and consideration of Freeland as a NMUGA.

Mr. Tate said that following the Growth Board's Finding the Board assembled a Freeland Sub Area Planning Committee consisting of business owners, homeowners, those with a vested interest and knowledge of Freeland. The Committee met 72 times. In May 2004, the Committee forwarded its recommendations to the Planning Commission and the document included a recommendation to adopt the Sub Area Plan, as written by the Committee, and to designate Freeland as a NMUGA. From May 2004 until now there was development of Comprehensive Sewer and Storm Water Plans which are the infrastructure necessary to support urban growth in Freeland; designation of the Holmes Harbor Shellfish Protection District; and the drafting of an Environmental Impact Statement.

Through the course of August, September, and October 2007 the Planning Commission held public hearings and public meetings resulting in a recommendation submitted to the Board. The Land Use Plan submitted is merely a "blueprint" at this time, the first step, with many more steps to follow. It should be viewed as a "policy guide." In addition to the Land Use Plan document there must be developed other supporting elements to the Plan such as, along with others, a circulation and transportation plan, open space and parks plan, infrastructure, and code regulations. Plan highlights are:

- Range of residential densities within the sub area plan, 1 unit per acre to 6-9 units per acre;
- Variety of different commercial land use designations with commercial core at heart of Freeland;
- Guidelines for preserving highway corridor;
- Guidelines for protecting area immediately surrounding Freeland;
- Goals to make Freeland an integrated community;
- Vision

Commissioner Bakke read from page 109 (Summary) of the Plan saying it reflects how he feels about the Plan as a first step, and future steps, and how the community and County should continue to work together:

Implementation of the Freeland Sub Area Plan is an ongoing process involving all sectors of the community. Changes in legal codes, capital improvements and every day decisions which affect the quality of life in Freeland will greatly depend on the desires and level of citizen support given to the planning effort. The effectiveness and value of this Plan will only be measured over an extended

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period of time when citizens and local officials have an opportunity to achieve common objectives.

The general goals and policies should first be viewed as an overall framework for future decision making. Public and private interests should carefully examine this statement of comprehensive planning policy to ensure cooperation and coordination in meeting common objectives.

Beyond revisions to development regulations, it is necessary for public and private interests to work in a spirit of cooperation to implement the Plan. Policies within the plan provide overall guidance for decision making, offering flexibility to developments and innovations, which achieve common objectives. The Plan has been intentionally formulated to provide guidelines for future development which foster a high quality living environment for all citizens at the lowest possible public cost.

Commissioner Dean encouraged comments from members of the public as he has questions and concerns relating to word usage (“shall” vs. “should”) and design review concepts.

Public Comments

Dean Enell, Chairman of the Freeland Incorporation Committee, read from a letter [GMA No. 9628] expressing several matters of concern:

- Usage of the words “should” vs. “shall”;
- The ability of Non-Residential Design Review;
- Change in zoning to “industrial” in the area currently occupied by Nichols Boat Builders;
- Zoning of Freeland Hill;
- Planning Commission’s Findings of Fact failed to enumerate that a parcel of land south of SR 525 has been changed to allow for commercial development;
- Freeland Sub Area Planning Committee’s full Vision Statement submission should be included in the Plan; and
- Aesthetics relating to off-street parking and disallowing eating and drinking establishments in residential neighborhoods.

In summary:

The membership of the Freeland Incorporation Committee is strongly united in its support of the good work accomplished to date in the development of the Plan. It is also united in its concerns over what we believe are serious omissions. The Plan represents a key foundation stone in Freeland’s future. Without substance and certainty, the future of Freeland is predictable – uncontrolled development, destruction of its unique character and the creation of just one more of the sprawling urbanized areas that have unfortunately become characteristic of the Puget Sound corridor. We encourage the Commissioners to act forcefully to prevent this and allow for Freeland’s future to be consistent with the broad-based visions and mandates set forth by the Freeland Subarea Planning effort.

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Geoff Tapert, P.E., 3833 E. Harbor Road, Freeland, a civil engineer with 17 years experience in land development, is a former planning commissioner for the City of Everett and is a current Port Commissioner for the Port of South Whidbey. He provided a letter and supporting data based on the history of the GMA. [GMA No. 9629] Mr. Tapert said that of the 13 goals in the Growth Management Act Planning Goals he has five specific goals he believes are inconsistent in the proposal, specifically those goals as they concern two properties identified as the parcels with an asterisk on Map 8 of the revised plan:

- Goal 1 – Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- Goal 2 – Reduce Sprawl. Reduce inappropriate conversion of undeveloped land into sprawling, low-density development;
- Goal 4 – Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock;
- Goal 6 – Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected arbitrary and discriminatory actions;
- Goal 9 – Open Space and Recreation. Retain open space, enhance natural resource-based industries, including productive timber, agricultural, and fishing industries. Encourage the conservation of productive forest lands and productive agriculture lands, and discourage incompatible uses.

In summary:

It is my professional opinion the designation for the two parcels with an asterisk on Map 8 should be revised to be equivalent to the current zone of Rural Residential (3 DU/AC) or a Low Density of 3 DU/AC in the future plan without the requirement for clustering or open space. Should Island County find it useful to arrive at a development procedure to allow increased density while promoting open space, such as done in Snohomish County, I would be much in favor of such endeavor.

Concerning design standards Mr. Tapert said if there are simple basic design parameters with key elements that people can review, he believes that would be acceptable to both the development community and neighbors. Additionally, if the Board allows minimum densities in a UGA then, based on numbers provided by a 1985 report which mentioned the population over the next 20 years doubling, coupled with numbers from the Office of Financial Management projecting another doubling, he feels that everyone must look well beyond 20-40 years.

Mitchell Streicher, 5436 Pleasant View Lane, Freeland said that if the County disregards the Committee's recommended design standards then the people who drew up the plan will withdraw their support, there is then no Freeland Sub Area Plan. Of additional concern:

- Mudslides – 60 units should not be allowed on the 20 acres in question on Freeland Hill;
- Higher density if not required to accommodate the projected population in 2025;
- Usage of the words “should” vs. “shall”;

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- Labeling of land at Nichols Brothers Boat Builders as Light Manufacturing is inappropriate.

*[Written comments GMA No. 9630]*

Mr. Streicher challenged anyone to walk the hill on the lower asterisk land reflected on the map. He lives on Pleasant View Lane, opposite his house begins Cherry Street which runs along the base of the hill at issue.

Bill Frederick, P.O. Box 1426, Freeland, said that he recently learned that the 19<sup>th</sup> Vision Statement was in fact included by the Planning Commission so his letter requesting such is moot.

Lou Malzone, 5428 Pleasant View Lane, Freeland, feels the Board should answer the following questions before adopting the Freeland Sub Area Plan and changing Freeland from a RAID to a NMUGA:

- How can the Board justify changing Freeland from a RAID to an NMUGA without meeting the prerequisite of the Freeland Sub Area Plan Committee and based on incorrect findings?
- Will the Board reconvene the Freeland Sub Area Planning Committee to continue an open debate on the Freeland Sub Area Plan?
- How do the broad categories and loose definitions meet the objectives that the Freeland Sub Area Plan Committee was trying to set forth in the original Freeland Sub Area Plan?
- Will the Board meet the request of the residents of Freeland, as reinforced by ten members of the Freeland Sub Area Plan Committee, to zone this property Rural Estate and remove the bad precedent being set by the asterisks?
- Will the Board return the zoning of this piece of property (letter from a property owner south of SR 525 requesting changing the property from Residential to Mixed Use) to Residential because it is contrary to the Freeland Sub Area Plan Committee and also based on public testimony given too late in the process?

In summary:

Island County established the Freeland Sub Area Planning Committee, encouraged public participation, and actively participated in its process. To radically edit the Freeland Sub Area Plan and to disregard the public comments given to the Island County Planning Commission does disservice to everyone who participated in the planning process. If you move to adopt this version of the Freeland Sub Area Plan, please rename it Island County's Plan for the Freeland Sub Area.

*[Written comments GMA No. 9631]*

John McFarland, 5873 Double Bluff Road, Freeland, is a consultant for an economic development firm. He said that the vast majority of his clients hired him to undo what has been done in communities over the last 20-30 years; that is, specifically allowing urban growth without a vision, plan, or character in creating a city in a NMUGA. He believes the Board should include design standards in the Plan that encompasses architectural intrigue, small town character, and a vibrant and healthy downtown.

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Steve Shapiro, 3541 S. Saratoga Road, Langley, a member of the Committee, questioned if the Committee and the County share the same goals. He said the people of Freeland want a continued robust and continuing role in the creation, implementation, and enforcement of non-residential design standards. Additional concerns:

- The draft plan submitted by the Planning Commission bears little resemblance to the one submitted by the Committee. Specifically, substitution of the word “should” for “shall” and he would like to see “shall” reinstated;
- The zoning map was simplified; and
- Freeland Hill and overall zoning.

Commissioner Bakke has no objection to the people of Freeland having an on-going role as this develops through the process, he does not want to stifle members of the community, but he feels the discussion of this now is premature.

Jim Short, 5107 Bercot Road, Freeland, former Chairman of the Freeland Sub Area Planning Committee, thanked Mr. Tate, Gary Hess, and Commissioner Bakke for their help to the Committee over the years. Key issues to the people of Freeland are:

- A community that is vibrant;
- A beautiful Highway 525 corridor;
- A vibrant downtown corridor;
- Sewers;
- Remove pollution in Holmes Harbor; and
- No heavy industrial development.

Deborah Housework, P.O. Box 299, Langley, is the owner of a ten-acre parcel cited specifically in the Planning Commission’s Finding, never meant “80/20” when talking about a clustered community. Her concerns are:

- Establishing protective land use regulations for her property constitutes discriminatory action;
- The imposition of a clustering requirement in order to achieve zoned density constitutes the taking of private property without just compensation;
- The ratio of 80% open space to 20% development is arbitrary, inconsistent with urban models of development, and is unrealistic;
- A concern she will become subject to unequal taxation due to the imposition of the restrictions, which are unprecedented in the county;
- There is no justification for requiring a variety of different types of housing;
- Is aware of no studies that support the claim: “due to topographical constraint Medium Density Residential is an inappropriate land use regulation.”

Ms. Housework believes that the “protective land use regulations” imposed upon her property should be removed. As an alternative, the County could provide incentives (rather than requirements) to the landowner to develop the parcel by “up zoning to” medium density if clustering is employed. Also could consider development incentives such as “zero lot line setbacks, increased height limits, and reduced road widths” so as to assist in the creation of open space and affordability.

*[Written comments GMA No. 9632]*

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Charlie Stromberg, 5783 Menlo Beach Lane, Freeland, asked the official population of the NMUGA to which Mr. Tate said he will locate and provide Mr. Stromberg with that information.

Meg Wingard, 4960 Harbor Hill Drive, Freeland, said it is important to not merely think in terms of the developer, but think what is best for the community.

Mr. Tate had the following comments in response to public remarks:

- Industrial facility at Nichols Brothers: When the Planning Commission opted to make a change to Industrial it was a change in label only, the standards under the label did not change.
- Densities: Conclusion reached was that the overall density of four dwelling units per acre was what was needed to be achieved. Provided there was rationale, okay to have certain areas where there was lower density as long as maintaining four dwelling units per acre. In the Plan the overall average density is slightly less than four, at 3.89 people per acre.
- Non-residential design: Department always supported the idea of regulations/design standards for Freeland and that they be customized for Freeland so the vision can be achieved. Also supported convening a group to help in the review and creation of the regulations. The Department has a concern regarding a design review committee that reviews building permits.
- Sub Area Planning Committee and the letter submitted by Mr. Streicher: Suggested that the Board read the entire first paragraph concerning Non-Residential Design to understand the entire context of Mr. Streicher's comments.
- Mr. Frederick is correct concerning the 19<sup>th</sup> Vision Statement in that a section of the statement was inadvertently omitted though the Planning Commission did vote to include the entire Vision Statement.
- Failed to find a difference in the Committee's recommended map compared to the Planning Commission's recommended land use categories. It is the same other than the fact that there was a shift in name to the Nichols Brothers area but same categories.
- Mixed-Use piece of property on south side of Highway 525: Letter was submitted during the public comment period. The Planning Commission accepted comment, deliberated, made its decision, and Mr. Tate does not believe that it did anything outside of its commitments or obligations under rules of proceedings.

Mr. Waddell with BHC reiterated that the Vision Statement is in fact included in the Plan. Concerning the Industrial Light Manufacturing issue, the Planning Commission considered letters written by business owners in the business general designation requesting they be changed to Light Manufacturing. It was decided rather than little spots of Light Manufacturing in the town's center, a better way to handle it is to include Light Manufacturing as a use in the business general or mixed use zones. The Planning Commission felt it important to make the distinction.

In response to Mr. Waddell's comment Mr. Malzone said that changing Nichols from Light Manufacturing to Industrial sets up a conflict with the Island County Comprehensive Plan and

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others which state that the people of South Whidbey do not want industrial zoning. Additionally he believes it is an endless loop concerning Non-Residential plan review; the map does differ from the original Freeland Sub Area Plan because categories have been simplified and some categories have been removed from the Plan; and the letter about the property south of Highway 525 was never brought up during the public comment period so no one knew about it until deliberations then comments were not allowed. He wants further debate about the Plan and that debate should be done in front of the Freeland Sub Area Plan Committee.

Board Comments

Commissioner Bakke said that the Plan is replete with design standards. He said much of the discussion had, letters received, confusion and angst stems from the decision made early on to develop the Comprehensive Plan first and implementing regulations second. The implementing regulations are the details. The zones, policies, and vision will all be looked at again when endeavoring to arrive at the development regulations. Mr. Bakke suggests that the Planning Director prepare Findings of Fact, Legislative Findings, and a Resolution that outlines implementation of the development regulations in a clear and concise way workable to all. Commissioner Bakke wants to continue the effort to work together as a community as the process moves forward.

Commissioner Dean had hoped to adopt the Plan but now has a concern about its original intent. Specifically he is concerned about design review since design review is vital to Freeland's future, he supports the concept. Use of the word "shall" vs. "should" is less of a concern but thinks an easy solution would be to use the verb only and eliminate the need. Lastly Commissioner Dean commented if this is not what the people of Freeland want then why is it being considered for adoption?

Chairman McDowell asked several questions of Mr. Tate to which he responded as follows:

- Does this reflect the 60-70 meetings?

The core of the Plan is consistent with what the Committee recommended with the exception of some "fringe issues" such as changing a piece of property from one designation to another. In his opinion Mr. Tate does not see significant change to the Vision Statement, the land use categories established, and the goals for those categories.

- Can a new plan zone out the Nichols Brothers property use or are there vested rights if used as Industrial for a period of time?

The existing use is protected in the sense that grandfathered existing legally established uses throughout the county are protected. The Code reads that it is not tied to a specific name and allows some flexibility to those selling their property and transferring the use even if the use is not allowed in that zoning designation. There remain some guaranteed rights to continue using the property as such. In this case boat building is the historic use that is protected. If changed to a different type of use then that would change many facets of the impact and imprint on the community so restricted to boat building or something close to boat building.

- If the public does not support sewer or a city concept, what has changed on what can go on in that area, is it any different than any other area of the County?

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Not much will change but for a sub area plan that mentions a vision statement about what Freeland should look like in the future, depending upon services. The Planning Department will not under state law be able to process a land use permit, 6 homes per acre, without a sewer. "Incorporation" is at a higher level. An interim strategy must be developed to provide guidance in the meantime.

To further explain, Mr. Tate said that density within a NMUGA depending on the property is three houses per acre, one house per five acres, or in a commercial core rural center zone mixed use and multi-family. Planning cannot tell someone that they can exceed that density until the infrastructure is in the ground which includes a treatment facility.

Chairman McDowell assured the audience that the County will look into the issue of pollution in Holmes Harbor regardless of what is done with the Freeland NMUGA. About the urban area and building discussed on Freeland Hill, the detail work will be in the development regulations still to be created with plenty of opportunity for comment. The Chairman does not support a design committee.

Commissioner Bakke, recalling the Rules of Proceedings, said that in a public meeting the Board is not authorized under statute to make substantive changes to the Comprehensive Plan in order to respond to any questions or issues raised. In order to make such changes the Board can either remand the matter back to the Planning Commission for further review and instructions or advertise and conduct a public hearing. He asked for further questions or concerns from Commissioner Dean.

Commissioner Dean said again he believes the issue of "should" vs. "shall" is an easy fix. He needs to know, however, where in the Plan the design review language is, how strong it is, to ensure that Freeland is acceptable in appearance 50 years from now. He feels what is needed is a policy and goal making it a value.

Commissioner Bakke commented he would be prepared to make a motion to include instructions to the Planning Department to prepare Findings which can detail the Board's desires for design. He is not prepared to dictate strongly one way or the other what the form will be until the standards are known. Commissioner Bakke believes the process is an exercise in futility if it does not come with design.

Mr. Tate referred the Board to pages 107-108 of the Plan, Design Standards, citing several policies including architectural standards, finishing, roofing, siding materials, and colors with parameters set to encourage a type of style unique to Freeland, among others. He reminded everyone that under state law developed regulations cannot be inconsistent with one another so policies carry much weight.

The Chairman asked Mr. Tate if the implementation policy that talks about design standards means that somewhere along the line before all is said and done, there will be design standards. Mr. Tate believes there will be, saying there is mention about community dialogue required in order to develop those types of standards.

The Chairman mentioned a letter received from the Committee that referred to Non-Residential Design Standards versus the Plan that mentions both residential and non-residential. He does have a concern about costs attributed to Non-Residential Design Standards. Commissioner Bakke

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clarified that concern by saying the reason residential standards are included in the implementation strategy is because when moving into the center core the density is higher.

Chairman McDowell indicated another concern about the two asterisked parcels on the map and the fact it does not seem fair treatment when differentiating those properties and surrounding properties. He would like to see this issue dealt with in the legislative portion or in the zoning code.

Mr. Tate remarked that Commissioner Dean's idea to revise the policy by using action verbs instead of "should" and "shall" is a worthwhile suggestion and he will begin that review and change.

Motion

Commissioner Bakke moved that the Board adopt the Freeland Subarea Plan, Volumes 1-2 dated November 2007 and instruct Planning and Community Development to prepare for the Board's review Findings of Fact to accompany the Comprehensive Plan. The Findings of Fact should include discussion of future steps and reference a resolution that outlines an implementation strategy for the comprehensive plan that details, as well as in the Findings, future steps in the implementation of the implementation section of the plan at pages 105, 106, 107, 108 specifically dealing with design standards. Commissioner Dean seconded the motion, unanimously carried.

The meeting adjourned at 9:15 p.m.

BOARD OF COUNTY COMMISSIONERS  
ISLAND COUNTY, WASHINGTON

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Wm. L. McDowell, Chairman

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John Dean, Member

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Phillip Bakke, Member

ATTEST:

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Elaine Marlow  
Clerk of the Board