

BOARD OF ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - MARCH 19, 2007

The Board of Island County Commissioners met in Special Session on March 19, 2007, beginning at 6:00 p.m., at Four Springs, Meadow Room, 585 Lewis Lane, Camano Island, WA. Mike Shelton, Chairman, Wm. L. McDowell, Member, and John Dean, Member, were present. The Special Session was called for a public hearing on Zoning Amendment ZAA 047/06 by Lenz Enterprises.

HEARING HELD: ZONING AMENDMENT ZAA 047/06 BY LENZ ENTERPRISES.

As scheduled and advertised, the Special Session was called for the purpose of conducting a public hearing on Zoning Amendment ZAA 047/06 by Lenz Enterprises, to change the zoning classification of a 5.32 acre parcel R33228-448-4330 from the Rural Zone to the Rural Village Zone, located on Highway 532 on the north end of Camano Island. The Board will accept public testimony and consider the recommendation of the Island County Planning Commission to approve the application and the recommendation of the Planning and Community Development Department to deny the application.

Attendance:

Staff: Phil Bakke, Planning & Community Development Director
Andrew Hicks, Assistant Planner

Applicant: Lenz Enterprises

Press: Bridgett Budbill, Stanwood/Camano News

Public: Approximately 28 citizens

[Attendance/sign up sheet on file with Clerk of the Board GMA #9219]

Mr. Bakke explained that Lenz Enterprises submitted an application for a rezone on a piece of property that went before the Island County Planning Commission, who held public hearings and deliberations. The Planning Commission transmitted to the Board of Commissioners Findings of Fact and a recommendation to authorize the rezone request from Rural to Rural Village. *[Transmittal packet received by the Board March 15, 2007 GMA #9220]*

The three options before the Board were summarized by Mr. Bakke as follows: a) accept the findings and recommendation of the Planning Commission; b) remand the issue back to the Planning Commission with instructions for further public hearings; or c) conduct an independent public hearing before making a final decision. This public hearing was held because of a difference of professional judgment on the recommendation from the Planning Commission to approve the rezone application and the Planning and Community Development Department to deny the application.

Mr. Hicks explained that ZAA 047/06 application is to change a 5.32 acre parcel from Rural zoning classification to Rural Village zoning classification. The applicant believed an error was made in the 1998 zoning designation, but after reviewing the application, the Planning & Community Development Department concluded that an error had not made in the zoning designation.

Mr. Hicks reviewed the history of the Lenz parcel *[one-page hand-out GMA #9221]* noting that the 1966 Interim Zoning Ordinance identified the parcel, which at the time was only .83 acre, as Non Residential. In 1971 a restaurant was established on that parcel; in 1984 a new Zoning Ordinance was adopted and the parcel retained the Non Residential zoning. The Growth Management Act was adopted in 1990. In 1993, the commercial use ceased. On December 1, 1998 the Board of Commissioners adopted a Comprehensive Plan and a new zoning map which designated the zoning on the subject parcel to no longer be Non Residential, rather Rural. On February 8, 2002, a Boundary Line

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Adjustment was approved expanding the parcel from .83 acre to 5.32 acres. On September 1, 2005 the current owner and applicant, Lenz Enterprises bought the parcel, and in 2006 applied for the zoning amendment. Mr. Hicks outlined the three main reasons that Planning & Community Development cannot recommend approval on the proposed zoning amendment:

1) Parcel does not meet definition of Rural Village, as defined by the Comprehensive Plan. The Comprehensive Plan defines Rural Village as lands or areas of existing Non Residential or mixed use located within areas of more intensive residential development. The word "existing" is within that definition, and the Comprehensive Plan goes on to define "existing" as those uses which were established effective December 1, 1998. There were no commercial uses located on the parcel in 1998. The only structure that existed was the structure that housed the remnants of a sand-filter septic drainfield.

2) Parcel does not meet all Designation Criteria of the Rural Village zone in the Comprehensive Plan. In 1998 it did not meet the minimum 5 acre requirement as it was only .83 acre. Since there were no existing uses on the property in 1998, it did not meet the requirement that it be characterized by existing development that is predominantly non-residential and mixed use. Neither could the property meet the requirement that it be located within a mixed-use area of more intensive development as established by forming a logical outer boundary. The properties surrounding the parcel were zoned Rural in 1998 and it was not a part of the outer commercial boundary.

3) The Comprehensive Plan's first policy for the Rural Village zone is that it shall be contained within designated Mixed-Use RAIDs with a non-expandable outer boundary. If that .83 parcel had been zoned Rural Village in 1998, expansion of the outer boundary would not have been allowed for the reason stated in the Designation Criteria, but also because the area around it would have remained in Rural zoning. A Boundary Line Adjustment cannot be approved between two separate zones.

Jason Lenz, 288th Street, N.W., Stanwood, Vice President of Lenz Enterprises, stated that the property was purchased in 2005 with the intent of providing conveniences to the people of Camano Island in the form of landscaping products and services as provided at their Stanwood site, including retail sale of rock, soils, gravel, compost, specialty stone, and nursery stock. In addition to delivering the products purchased, they planned to accept soils, yard waste, brush, and wood waste per Island County regulations. He noted that Ryan Lenz performed the Short Plat Alteration on the 3 five-acre lots south of this lot and performed the Boundary Line Adjustment that reduced the original 8.7 acre piece which encompassed the .83 acre piece to the 5.32 acre piece that exists today. The work was performed for the previous owner, Glen Rengen, for the vested interest in the sale of the lots. Lenz Enterprises purchased the property based on their interpretation of the Designation Criteria: available water, available septic, property containing non-residential uses, established prior to July 1, 1990, five acres larger in size, and having parcels adjacent to it on two sides zoned Rural Village. He noted Lenz Enterprises was a community committed business and would go up and beyond with their reputation as good stewards of the property.

Ryan Lenz, Maple Street, added that when the Short Plat Alteration and Boundary Line Adjustment were done Mr. Rengen, intent was to sell the parcel, but could not find a buyer because it was not suitable for residential use.

Tom Lenz, 9th Ave. N.E., Stanwood, pointed out it was an .83 acre on which the restaurant existed, but the surrounding parcels were used for parking, storage, the well and septic system. The history has been a commercial use. The roadway excavation covers the majority of the property and the asphalt still remains behind the shed. He noted the residences across the street are now zoned Rural Village and were used as commercial before they were zoned Rural Village.

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Richard Langabeer, Langabeer & Tull, P.S., Dupont Street, Bellingham, submitted a Memorandum in Support of the Planning Commission's Recommendation of Approval dated March 19, 2007, with attached map, into the record. *[on file with Clerk of the Board GMA #9222]*. He thought it important to recognize some significant differences between staff's position and interpretation of the Comprehensive Plan; he believes from what RCW 36.70A.070(5)(d) provides and what the Growth Management Hearings Board states is the correct determination of the word "existing". Mr. Langabeer stated that Mr. Hicks indicated the Comprehensive Plan provides, when determining RAIDs or LAMIRDs or Rural Villages, looking at what the Non Residential Mixed Use was as the date of adoption of the Comprehensive Plan December 1, 1998, which Mr. Langabeer contends the Comprehensive plan does not say. The definition in the Comprehensive Plan of Rural Village: are smaller, existing non-residential mixed-use areas located within mixed-use areas of more intensive rural development, primarily intended for retail sale and convenience goods, as well as personal and business. The term "existing" Non Residential and Mixed Use is not defined in the Comprehensive Plan and there is no date that specifies or stipulates when you determine when those Non Residential Mixed Uses were in existence. You need to look to the Growth Management Act, RCW 36.70A.070(5)(d) and (v)(a) indicating when the term "existing" is used in regards to RAIDS or the logical outer boundaries areas specifically means when the Growth Management Act was adopted July 1, 1990. July 1, 1990 is the date to use when determining where the logical outer boundaries are.

Mr. Langabeer further explained the Growth Management Hearings Board (GMHB) when it issued its Final Decision and Order approving Island County's Comprehensive Plan and Development Regulations, said that the County must minimize and contain existing areas or uses of more intensive rural development. RCW36.070A.070(5)(d)(iv). Lands included in these existing areas or uses must not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. The Act defines existing areas as those that are clearly identifiable and contained and where there is a logical boundary. The act does not define existing uses other than to say an existing area or use is one that was in existence on July 1, 1990. In adopting Island County's Comprehensive Plan, the GMHB specifically used July 1, 1990 for the term "existing", rather than looking at the date when the Comprehensive Plan was adopted in 1998. Referring to Mr. Hicks' May 9, 2006 Memorandum to the Planning Commission [included in the transmittal packet] stated that existing intuitively means existing at the time the Comprehensive Plan was adopted on December 1, 1998. However, Mr. Langabeer contends it was not an intuitive interpretation, and that the Act specifically states the date as July 1, 1990 and from that basic misunderstanding or mistaken premise, staff said there was not a commercial use in 1998, therefore the parcel is outside the logical outer boundary of the Rural Village. The widening of Highway 532 took away the restaurant commercial business that was on that property, but it was there when the act was adopted on July 1, 1990.

In reference to Jason Lenz's comments, Mr. Langabeer also noted it was not the just the .83 acre of land that was used for the restaurant (zoned non-residential), but the record is clear that the use of the property also included the larger 8.7 acre parcel which actually had the commercial use on it – the restaurant, the installed commercial septic system, and a parking area, all common facilities related to a commercial restaurant use. In 2002 the Boundary Line Adjustment decreased the restaurant site from 8.7 acre to 5.32 acres. The .83 area was designated commercial under the prior zoning, and it had nothing to do with the non-residential and mixed-use of the property on July 1, 1990.

Mr. Langabeer also pointed out in reference to the December 1, 1998 date, the statute provides that in determining the logical outer boundaries on the Rural Village or RAID, the as-built environment must be considered. The GMHB made it clear the as-built environment refers to man-made facilities situated on the property or in the area. The septic sewer system, drainfield, and existing well were physical

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man-made facilities. It is not as staff says a "commercial use", but non-residential mixed-use facilities on that property in 1998. There was a parking lot, fill and debris from the road work, a building that housed the septic filtration system, commercial drainfield and sewer system on that property. On one end of the property there is an existing well. If you take either date, the argument does not follow that this property is outside of a logical outer boundary of Rural Village. The County stated without a commercial use in 1998 the property could not be brought into Rural Village. The outer boundary was not that boundary that was necessarily established with the Comprehensive Plan and zoning mapping, but the property as of July 1, 1990 that had non-residential mixed uses on that property. If that was the case, the property can still be brought in to the RAID or Rural Village. Bringing this property into the Rural Village zone would not expand the logical outer boundary because that property is within the logical outer boundary; it is not an expansion of commercial uses. This proposal is different than what other counties have proposed; this is making a map change to reflect the logical outer boundary that was established on July 1, 1990.

Mr. Langabeer asked that the Board consider the letter dated July 25, 2006 [GMA #8865] from Mr. Willman regarding the Designation Criteria that is satisfied with this property being included in the Rural Village zone. After extensive review of staff comments, the minutes, responses, and the Planning Commission minutes and verbal responses by staff, Mr. Langabeer could not find one valid argument why this property is outside of the Designation Criteria and felt this proposal was a perfect fit for this property.

Larry Willman, Intergroup Development Corporation, Commercial Street, Bellingham, reminded the Board of his comments during the public comment period at the Board's regular meeting of February 26, 2007 [Minutes GMA #9180] regarding this proposed amendment and review of the process issues he felt were abnormal. He believed staff did a good job of trying to convince everyone that this parcel does not fit under a RAID and that it should be not be rezoned, although the facts very clearly show that it does. Mr. Willman referred to a Memorandum to the Planning Commission by staff (Andrew Hicks) dated August 21, 2006 [GMA #8919] intended to address concerns raised during the public hearing for ZAA 047/06. Mr. Willman was upset that it did not include any of his concerns outlined in a letter sent to Planning & Community Development dated July 25, 2006 addressing staff comments and the Designation Criteria outlined in A. – F. He requested that the Board to review his letter again.

David Platter, Lightning Way, mentioned that the State was spending \$80 million on highway improvements coming in from I-5 to Terry's Corner. As he understood the code, if a property was surrounded on two or more sides by existing Rural Village and had a pre-existing structure that was commercial, then it shall be rezoned, and felt the County was required to rezone the parcel.

Roy Leshner, Lakewood Drive, reviewed the septic system history of this parcel and noted there had been two failed septic systems on this whole property leading to the remaining sand filter system that exists there today. His concern was whether the small parcel could accommodate an operating septic system and felt the septic system location needed to be identified in order to consider the rezoning.

Ryan Lenz stated that when the Short Plat Alteration was done, there was an approved septic design for all four parcels, and pointed out on the map where those approved septic designs were on the property. He clarified that the County required the Short Plat Alteration because there were more than three parcels.

Allison Warner, Dove Drive, submitted comments by e-mail [e-mail dated 3/19/07 on file with Clerk of the Board GMA #9223] and noted that she had no opposition to the idea of Lenz having a landscaping business on the Island in Rural Village zoned parcels. However, she was concerned about some of the

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procedural aspects of varying from the County code definition of “existing use”. She stated the “existing use provisions” within the code are clearly defined as the date of enactment of the Comprehensive Plan. Since the restaurant closed five years before enactment of the Comprehensive Plan, that use would not be considered an existing use, and the septic system would not be considered an existing use on its own. She was concerned that the Planning Commission considered that it would be an existing use.

Barbara Brady, Sunrise Boulevard, expressed difficulty in understanding how the County could say it was anything but Non Residential or ever was. In the late 1960’s it was a drive-in and has always been a commercial use. She felt there was no consideration given for the Comprehensive Plan goals to provide services to the community.

Tom Lenz added to note that this is an abandoned commercial lot that is not attractive and could be improved with landscaping, an improvement to Island County.

Deb Eidsness, Sunrise Boulevard, was aware of the difficulty trying to understand the legality of the codes and appreciated all the work that had been done. In her opinion, the property had become an orphan since it is not suitable for a private residence.

Commissioner Dean asked whether there was a home and a driveway behind the property.

Mr. Hicks replied that there were two single family residences behind the property. He believed another residential permit had been issued, but none had been applied for along Highway 532.

Commissioner McDowell asked Mr. Bakke to address the issue of “existing use” for Rural Village that refers to December 1, 1998, in that he understood Mr. Langabeer to say it was not defined in County code, only defined in the RCW.

Mr. Bakke explained that Island County Code 17.03.040 and the County Comprehensive Plan defines existing or vested on the effective date of the Chapter, December 1, 1998. Since 1984, the County has had provisions for non-conforming parcels or uses. In 1998 that changed to become existing parcels or uses. Specific provisions of the code that address uses that are orphaned or no longer consistent with the underlying zoning, spell out a three year period where an applicant can renew that use. The property owner was compensated when the highway was expanded and the restaurant closed so it was not an issue that the use ended. The County Code does not acknowledge a drain field as a residential or non residential use. When the Plat Alteration and Boundary Line Adjustment were done, the property perked for residential uses, not commercial uses. The Water Availability Verification forms were approved for residential use. Island County Code defines what “existing use” is as well as the Comprehensive Plan. Designation Criteria was applied based on that code and the previous code.

Commissioner McDowell asked Mr. Langabeer clarify his statement regarding “existing use” in the Chapter referring to Rural Villages was not in the code.

Mr. Langabeer explained the County Code did not explain an existing non-conforming use. That has nothing to do with the designation of Rural Village. All zoning codes deal with existing, non-conforming uses and abandonment clauses. If a use was not allowed in a zone any longer and it was discontinued for three years, then that use is abandoned. The discussion is not about non-conforming uses that were vested at the time of adoption of the Comprehensive Plan, but a Rural Village designation. RCW 36.70A.070(5)(d)(v)(A) specifically states that for purposes of subsection (d)(i) through (iv) (LAMRIDS and RAIDS) existing area or existing use is one that was in existence as of

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July 1, 1990. The Growth Management Hearings Board stated an existing area or use is one that was in existence on July 1, 1990. He stated it was not correct to say December 1, 1998. Regarding the Designation Criteria, Mr. Langabeer pointed out in reviewing the Planning Commission's June 13, 2006 Summary of Minutes (*GMA #8856*), he reviewed topic A-F and indicated why he believed the Designation Criteria had been met.

Commissioner McDowell asked staff if the date was July 1, 1990, would it be appropriate for this parcel to be Rural Village.

Mr. Hicks answered no, since it was not a five acre parcel at that time. Mr. Bakke stated in the Comprehensive Plan, E. Rural Village Designation Criteria E. Characterized by Existing Development. The Glossary on page 163 of the published Island County Comprehensive Plan – Policies, Plan, Land Use Element, the Comprehensive Plan defines “existing”. It says unless otherwise expressly stated existing or vested on the effective date of this Comprehensive Plan, December 1, 1998. The Comp Plan also defines an existing lot. The definition of an existing lot states under the Comprehensive Plan that a parcel of land that meets the definition of existing and was also a record of a lawfully established and maintained including those which because of enactment of this Comp Plan no longer conforms to the land use designation in which it is located. The County adopted a standard for “existing” that is more restrictive than the Act.

Mr. Lanagbeer countered that the Board must consider the Growth Management Hearings Board Final Decision and Order approving the County's Comprehensive Plan and specifically identified and described the date July 1, 1990.

Ms. Warner thought whether or not 1990 was the date was irrelevant because it had been fourteen years since the 1993 use on that property was abandoned. The County Comprehensive Plan stated if the existing use was abandoned for three years then the property must come into current zoning.

Chairman Shelton closed the public testimony period at 7:25 p.m.

Chairman Shelton understood the issue: when the Comprehensive Plan was approved there was a .83 acre parcel of commercial property that had a commercial building on it in 1990 and in 1998 it was gone. Looking at the logical outer boundary for the RAID that was developed to include the .83 acres, which did not at the time have a commercial use, he thought did not make sense. He felt that it did not make sense to do a Boundary Line Adjustment and make it a 5.32 acre parcel and that it should all be zoned non-residential. The proposed use is an appropriate use, but believed it did not meet the County requirements and felt the County had to deny the rezone.

Commissioner McDowell felt the date was important since the .83 acre and the surrounding parcel 8.7 acres had a commercial use to support that business. The Comprehensive Plan stated it was the December 1, 1998 date, or unless something else takes precedence. He felt the date from the Growth Management Hearings Board on their approval could be the “something else”. He wanted to review the record and perhaps get legal advice if possible.

Commissioner Dean desired following the County's laws and needed more time to review the laws. He had always thought of that property as commercial property. He was in favor of reviewing the record or obtaining legal counsel before making a decision.

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Commissioner Dean moved to continue the Public Hearing to March 26, 2007 at 5:30 p.m. at Four Springs, Camano Island, on Zoning Amendment ZAA 047/06 by Lenz Enterprises; motion seconded by Commissioner McDowell, carried by majority vote; Chairman Shelton voted in opposition.

There being no further business to come before the Board at this time, the meeting adjourned at 7:35 p.m. The Board will meet next in Regular Session on March 26, 2007 beginning at 11:00 a.m., County Annex Building, Coupeville, WA,

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

John Dean, Member

ATTEST:

Elaine Marlow
Clerk of the Board