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Date: February 3, 2009
To: RUTA Mediation Group
From: Melody B. McCutcheon *MBM*
Subject: Conclusion of RUTA Mediation Process

At the end of June 2008, representatives of Snohomish County, the City of Snohomish, and the City of Lake Stevens decided to enter into mediation with the following goal for the mediation process:

To identify a politically, technically, legally, and financially acceptable, ultimate southern UGA boundary for the City of Lake Stevens and ultimate northern UGA boundary for the City of Snohomish, with or without a rural separator.

In August 2008, I was jointly selected by the parties to be the mediator. My work in August and September was paid for by the two Cities. A contract for my work was then executed by the County and myself as of September 30, 2008 to cover work after that date. Per the contract, mediation needed to conclude by the end of January 2009. With submittal of this memorandum, the mediation process has concluded.

Described below are the steps undertaken in the mediation process, and the obstacles (as I see them) to agreement at this time. I believe there were several positives from the mediation process, and substantial information that can be built upon for future agreement, notwithstanding the lack of agreement at the present time.

Steps in Mediation Process

I first asked each City and the County to provide background information on the issues associated with the Rural/Urban Transition Area (RUTA) between the City of Lake Stevens and City of Snohomish, including a copy of the Comprehensive Plan amendments for the area submitted by each of the Cities, and the County's decision as to why those amendments would not be considered further. In August and September 2008 I reviewed all of the background information and discussed each party's perspective on the various issues in meetings and telephone calls with the individual parties.

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The next step was to meet with the technical group (Will Hall of the County, Larry Bauman and Corbitt Loch from Snohomish, and Jan Berg and Becky Ableman from Lake Stevens) to develop the data needed for identification of options for a possible ultimate boundary within the RUTA. The technical group met three times in October and November 2008 and generated the following information:

a. Identification of each City's key issues in determining the boundary line:

For Snohomish, the key issues were generation of sufficient retail sales tax to overcome forecasted budget deficits, including the cost of mandated upgrades to the City's sewer treatment plant, and recognizing "Community Affiliation," *i.e.* the desire expressed in some opinion polls that residents and property owners in the RUTA preferred Snohomish to Lake Stevens.

For Lake Stevens, the key issues were generation of sufficient retail sales tax to overcome forecasted budget deficits, and the desire for coordinated planning for the area, consistent with their prior adopted plans that identified the area down to Highway 2 as part of the planning area for Lake Stevens and the Lake Stevens Sewer District.

Given that the perceived need for additional commercial development was a key issue for both Cities, the technical group focused on this issue.

b. Each City's assessment of opportunities for commercial development within its existing City limits and Urban Growth Area (UGA);

c. Given that each City concluded there was insufficient opportunities for commercial development within existing areas, each City provided a rough estimate of its "deficit" of commercial land.

d. An assessment of potential commercial acreage within the RUTA.

After assessing all of the above information, the technical group identified five options for a possible ultimate boundary. In summarizing the analysis and options in a December 8, 2008 memorandum to the RUTA Mediation Group, these five options were analyzed, along with one that I developed as mediator: use of Highway 9 as a divider, with either Snohomish on the east and Lake Stevens on the west, or Snohomish on the west with Lake Stevens on the east. Thus, seven options were analyzed in the December 8, 2008 memorandum.

The entire RUTA Mediation Group discussed these options on December 8, 2008. That discussion generated three additional boundary options to be considered, plus the option of the RUTA remaining rural through retention of existing boundaries. Also at the December meeting, Lake Stevens asked whether the commercial land deficit identified by Snohomish could be reduced if Lake Stevens took on some of the Snohomish sewage treatment needs. Larry Bauman answered "no," explaining that commercial connections

do not yield enough revenue to cover the sewage plant costs, and it was the residential connections that are key. Snohomish felt the sewer issues were separate from the estimate of a commercial land “deficit” and so sewer issues were not discussed further.

Also at the December 8, 2008 RUTA Mediation Group meeting, the technical group was asked to consider some technical information related to the three new boundary options and the “leave rural” option, in light of the feedback at that meeting. The technical group met on December 12, 2008 to evaluate these additional options.

The RUTA Mediation Group then met on January 12, 2009 and reviewed a memorandum that summarized the estimated deficit of commercial land for each City (Snohomish = 45 to 65 acres, and Lake Stevens = 295 to 415 acres), the opportunities for potential commercial land within the RUTA, and discussed all the options. There was no consensus on any particular option, although the high cost of not reaching agreement was noted. The outcome was to have each entity review the options informally with other entity representatives, so broader feedback could be obtained. A memorandum dated January 20, 2009 was produced as an updated summary, with color maps attached, to facilitate that feedback.¹

On January 29, 2009, the RUTA Mediation Group met for the final time to review the feedback from each entity. The City of Snohomish had concluded that several options could be acceptable (options 2, 3b, 6, or 5 with some adjustments for additional acreage fronting on Highway 9). However, Lake Stevens could not support any of the options, out of a concern that there was insufficient reliable data to support the estimates of “deficits” and available commercial land, each of the options would still leave Lake Stevens with a large “deficit,” and that Fire District revenue would be reduced. Lake Stevens also believes the entire RUTA needs to be the subject of a master plan.

Given the lack of agreement on an option at the January 29th meeting, we also discussed the possibility of a “stand still” agreement for some period of time wherein neither City would advance a Comprehensive Plan amendment for the RUTA. There was no support for that from the Cities. The resulting situation is that each City can advance a Comprehensive Plan amendment to try to claim some or all of the RUTA, or the County could advance its own amendment regarding the RUTA.

My Observations as to Current Obstacles to Agreement

1. There is a substantial disparity between the Cities as to the factors motivating selection of a boundary within the RUTA: Snohomish is highly motivated to select a boundary because the gain of *any* potential commercial land north of Highway 2

¹ The January 20, 2009 memorandum with its attached maps represents the final written analysis of options and would be the logical starting point if the RUTA issues are addressed in the future.

is a real benefit to Snohomish, given the limited opportunities for new commercial land within its UGA. However, Lake Stevens has little motivation to have any boundary north of Highway 2, because even if all of the potential commercial land north of Highway 2 were to be in Lake Stevens, it is still not enough to meet the “deficit” identified by Lake Stevens. Finally, the “negatives” of the status quo are not so onerous as to compel compromise.

2. Each City estimated its “deficit” of commercial land, and the entire technical group estimated the potential commercial acreage within the RUTA. However, the technical group noted that all the estimates were subjective, and there was insufficient technical data and analysis at the present time to confirm the accuracy of the “deficit” offered by each City.

As mediator, I was not looking for each City to convince me or the other parties of a specific estimate of their commercial land deficit. Rather, in the absence of adequate time and resources to develop convincing data, I concluded that each City had estimated its deficit in good faith, and mediation should proceed to identify a boundary under which each City would have a portion of its need met. However, at the end of the process, the lack of certainty about the underlying estimates was a major factor preventing agreement.

Therefore, to the extent this dispute can be resolved through an assessment of data, each City would put itself in an improved position if it conducted a more detailed and objective assessment of the factors driving a boundary within the RUTA. Snohomish would need to “prove” that land north of Highway 2 is needed, and Lake Stevens would need to “prove” that its estimated deficit is not inflated. If this can be done, then each City will have made a more compelling case for land within the RUTA. That may help overcome the present disparity in the Cities’ positions.

3. The issues related to the cost of Snohomish sewer treatment facilities is not well understood by the parties. Snohomish stated that the cost of upgrading its facilities was one of the key factors driving the need for increased retail revenue. Yet for reasons that did not get fully explored in the mediation process, other ways to address sewer costs were advanced by Lake Stevens, but were considered by Snohomish to be unrelated to mediation. I do not think any party (including me) fully understands these issues, and there would be benefit of further discussion between the two Cities, totally apart from the RUTA boundary issue.

4. Each City continues to be quite wary of the other’s motives and actions with respect to the RUTA. The initial linkage between the City of Snohomish and private developer actions was seen as contributing a lot of the negativity.

5. For Snohomish, it is a significant factor that the community opinion polling favors Snohomish, rather than Lake Stevens. That is a sore point for Lake Stevens, and they are critical of the polling method and feel that the results should not be given the weight that Snohomish gives them.

6. The County wants the Cities to be able to agree on a boundary, if possible. Ultimately, though, it is the County's decision as to the disposition of the RUTA, and the County will likely need to take a more active role in resolving the issues in the future, notwithstanding the lack of resources for joint planning. A more active County role could change the dynamic between the parties and help compel a resolution.

Conclusion

The mediation process did not result in agreement, but there were several positives from that process. The parties achieved a better understanding of each other, and some very good technical analysis was done of deficits and availability of commercial land. Heretofore, no specific boundary locations had been identified and analyzed. Now, options have been identified, and some of the data needed to assess them has been prepared. Future work can build upon this base of information.

From a planning perspective, I believe that at the right time there is a basis for the parties to agree on an ultimate boundary. The concept that seems to have some promise for discussion is for Lake Stevens to pick up all the property east of Highway 9, and about half of the 83-acre area identified west of Highway 9 (a total of almost 156 acres). Snohomish would pick up the remaining area west of Highway 9, including the other half of the 83-acre area. (Snohomish would also pick up the 12 acres south of Joywood, although this would of limited utility for commercial purposes since it lacks Highway 9 frontage.) Under this concept, Lake Stevens is picking up most of the available commercial land, while Snohomish is getting some, and Highway 9 is helping to provide a logical dividing line between the Cities.

It is my hope that with continued assessment of the information, the parties will be able to resume discussions of the RUTA in a productive way.

Thank you for the opportunity to serve as mediator.