

**Consolidated Hearing Birchfield FCC
Hearing Examiner and Planning Commission
April 22, 2008
6:00 PM
Lewis County Courthouse
351 NW North St.
Chehalis, WA 98532**

Mr. Mark Scheibmeir, land use Hearing Examiner, called the meeting to order at 6:05 PM. He stated the Lewis County Planning Commission was present and the purpose of the meeting is to continue the Birchfield FCC hearing from March 25, 2008.

Chairman Guenther asked for introductions of the Planning Commission. Chairman Guenther stated after the hearing concluded the Planning Commission would hold a workshop.

Mr. Scheibmeir stated documents received by him and the Planning Commission since the recess of the hearing are Exhibit 933, a letter from John Mudge received March 31; Exhibit 934, a letter and attachments from Mr. Smelser dated April 9. Tonight correspondence was received and signed by 13 individuals, titled Response to Applicants April 9 Motion to Reconsider, Exhibit 935. The applicant Mr. Fox is present, as well as his counsel Curt Smelzer and Aaron Laing. The County is represented by Kernen Lien, Senior Planner and Glenn Carter from the Lewis County Prosecuting Attorney's office. About 10 or 12 members of the public are present as well.

Mr. Scheibmeir asked Mr. Carter to give a brief overview of the matters before the Examiner and Commission.

Mr. Carter stated also present this evening is J. David Fine, Lewis County Prosecuting Attorney's office, Civil Department.

Mr. Carter stated he understood there would be a presentation of the supplemental materials that have been submitted by the applicant, with reference to monitoring the balance of uses as Birchfield FCC develops. This includes the balance of commercial and residential uses, the balance of retail and employment. Materials have been provided that reflect how FCCs have handled this balance in other developments in the State.

Mr. Carter stated a draft monitoring agreement has also been submitted as an example.

Mr. Scheibmeir stated the applicant would do the presenting this evening and recognized Mr. Curt Smelser.

Mr. Smelser stated the applicant would further elaborate on a couple points from the last meeting. The Hearing Examiner had been asked to reconsider clarification of some of his conditions and the applicant has provided supplemental information on that issue.

Mr. Smelser summarized the materials provided that have a direct bearing on Birchfield. Redmond Ridge and Snoqualmie Ridge are both large developments in King County, started in 1995 and continuing. They differ from Birchfield in the approach that the governments took. Redmond Ridge did not want any controls on the market driven aspects of the land use, which are the same as Birchfield, and there were no requirements on the balance of development. It was monitored, however, and records were kept in terms of how many residences were constructed prior to the commercial/retail, and prior to the job related commercial coming on line.

Mr. Smelser went on to say that Snoqualmie Ridge had a condition that there was a monitoring program and they enter into an agreement with the developer and the City. Snoqualmie Ridge had two phases. There was a monitoring program set up and there was an agreement as to the goals of the monitoring program and what they could do. After completing Phase I it was determined the monitoring program was no longer needed.

Mr. Smelser stated it takes substantial amounts of rooftops in order to support the market conditions to acquire retail/commercial. The job-driven commercial lagged far behind the retail; the retail lagged behind the residential rooftops. The elements are fairly well balanced at this point and both governments believe the rest will come in time.

Mr. Scheibmeir stated with respect to the last comment, reading from page 10 of Mr. Smelser's letter regarding statistics, of the allocated business park, only 5% of the retail has been built in ten years.

Mr. Smelser stated the life cycle of the development is 20-30 years out, and this is early in the process. The residential fills up fairly fast, the retail that services the residences is right behind and over a longer period of time will be the job creation. Whether the balancing and monitoring is required or not, the market drives in all instances.

Commissioner Mahoney stated the monitoring reports were to be after four, eight, twelve hundred and sixteen hundred units. He asked at what point the retail/commercial came on.

Mr. Smelser stated it was six years before the significant retail developed.

Commissioner Mahoney asked how many residential rooftops there were at that point.

Mr. Smelser stated there were about 650 homes. He distributed copies of the FCC monitoring agreement

Mr. Scheibmeir stated this document would become Exhibit 936.

Mr. Smelser stated the monitoring agreement is based on the concept just discussed recognizing that there is a matter of scale between the King County developments and Birchfield but not in the matter of substance. Under 1.3 is a list of what will be

monitored: the balance of land uses; the balance of housing types; the public infrastructure; the traffic systems; park and recreations; and public services. The applicant is suggesting a 500 unit development first and then for every development that reaches 300 beyond that would be monitored and there would be a report and a checkpoint through to full build out.

Commissioner Mahoney stated the report would not be released until 800 permits had been issued.

Mr. Smelser stated that is correct. By that point retail development would be expected to be seen.

Commissioner Jennings asked if the reporting on employment and range wages would not occur until after 1100 homes are built.

Mr. Smelser stated he is trying to provide a framework of what the development might look like and get all the relevant topics included. This would be the proof of recommendation to the County Commissioners, that this would be negotiated and finalized by the time the BOCC voted on it.

Mr. Scheibmeir stated Mr. Smelser's letter on page 11 states it would be considered after FCC approval. That raises the question of whether it is delegating the Commissioners' job to staff and seems to be inappropriate to do it after the fact.

Mr. Smelser stated that statement is being retracted.

Mr. Smelser stated the purpose of this is to set forth an instrument that we can work from and get an agreement to the County. Once it is signed, it becomes a contractual relationship between the developer and County. Unlike the Snoqualmie Ridge development, this agreement is proposing that the County has a hammer. If the balance does not reasonably meet the expectations the County can refuse to approve the next round of development.

Mr. Scheibmeir asked if the County was ready to respond to this proposal.

Mr. Carter stated the County is not ready to respond to the proposal or the concept at this time.

Mr. Scheibmeir asked what the parties' positions are relative to that proposal. Should we reconvene after consideration has been given to this matter?

Mr. Carter stated as he understands the position of staff, there is not an opposition to the concept. The concept is one they feel fairly comfortable with for exercising some control during the development. With respect to the specific issues of what the trigger points are, the County is not in a position to address those.

Mr. Scheibmeir stated since this is both a proposed and a concept document, and the County does not oppose the concept, that issue has been resolved. Is Mr. Scheibmeir expected to respond further to the proposal, and if so, what is he to receive in advance of his acting on that, or is he being asked to have the BOCC act on this issue?

Mr. Carter stated Mr. Scheibmeir was asked to rule on the balance; this is a way of addressing that issue, at least in concept.

Mr. Scheibmeir stated if the County's official position is that it is ratifying the concept of trigger point mechanism and that it offers to work with the applicant on the details of that, he will acknowledge that and inform the Commissioners that relative to that concept the parties have agreed and he was not asked to make further comment on its terms. Mr. Scheibmeir does not want confusion later on. This is a significant substantive issue, and if he is to be involved he needs to know that.

Mr. Smelser stated originally the applicant asked Mr. Scheibmeir to reconsider some conditions. On page 11, we are asking the Hearing Examiner to replace those three conditions related to balance with this more encompassing condition, which would require the County and the developer (applicant) to enter into an agreement that covers the very things you are concerned about. Once that agreement is done and when a developer is building out this development, you will have this agreement that you will look at in terms of making sure the County has done what is in the agreement and understands what the balance is. It is then that Mr. Scheibmeir can determine if the County and the developer have been compliant with this requirement.

Mr. Scheibmeir stated for the record Mr. Carter had left the room and was not available to comment. Mr. Scheibmeir understands he is being asked by the applicant to approve the language found on page 11 and would like to hear if Mr. Carter has a response to that proposal.

Mr. Scheibmeir explained his understanding to Mr. Carter and asked for the County's position. One change would be "prior to FCC approval" rather than "after FCC approval".

Mr. Carter stated the County would be agreeable to that. From the County's point of view, it is in agreement with the concept; however, issues have been raised by Commissioner Mahoney and others concerning the comparability of Snoqualmie Ridge, which is in a populated area. The County believes in concept this tool fits, but it will be a difficult issue to resolve with the applicant.

Mr. Scheibmeir stated for his portion of this process he will note in a follow-up decision that the applicant has suggested and the County has supported an adjustment to recognize a trigger-point agreement being put in place to provide for greater flexibility relative to various issues. Beyond that, Mr. Scheibmeir stated there are aspects he must work through having just received this information. He may have comments, particularly with respect to traffic. He advised the Commissioners that his supplemental decision is that

the parties have taken an approach, and give his thoughts relative to the new approach on certain aspects of it, together with any other adjustments with his decision making from earlier and what he retained from the earlier decision. That will be his response to this review process. If the Commissioners have issues they want to return to, that will be their directive to Mr. Scheibmeir.

Mr. Carter stated he recognizes the frustration, which he shares. He believes this allows for more flexibility.

Mr. Scheibmeir agrees there is more flexibility. The purpose was not to be arbitrary; but to impose standards where they did not otherwise exist. He is not stuck to a concept if there are better concepts. There will need to be time for reflection which may be unfortunate to the parties because Mr. Scheibmeir does not have a chance to get the parties' positions and his comments may be unexpected.

Commissioner Mahoney referenced page 4, paragraph 242 of the monitoring agreement which states if the county reasonably determines the demand for affordable housing created by the employment of the FCC exceeds the available supply of affordable housing in the vicinity, the applicant should cooperate with the County to pursue mitigation. Commissioner Mahoney understands this type of housing would be confined within the LAMIRD of Onalaska, the UGA of Chehalis or the FCC and believes the FCC is to provide within its boundaries this type of housing and not push it into another community. He is not comfortable with the implication.

Mr. Smelser stated he did not believe it was intended to go in that direction. We still have to provide the affordable housing. Rather than use county-wide data in King County which may skew the data, they used only the North Snoqualmie Valley. There was specific data for that and they were requiring these developments to match that level of affordable housing. That is what this was getting to; not that we would not provide our fair share of balance of affordable housing.

Mr. Scheibmeir stated in Snoqualmie there were triggering levels which specifically imposed low income housing based on the County's income levels. We are being asked to adopt the concept which includes the issue of low income housing, which the applicant is asking that we move away from as part of its consideration. The model for this had addressed this in specific ways of fractional requirements to meet. What is the applicant's response?

Mr. Smelser stated he is trying to relay that the County's conditions require that we assure. This agreement could have been done totally out of the sight of the hearing examiner and planning commission with the County staff and County Commissioners to come up with a way to ensure. This is not required by law, other than the assurance; how you do it is the mechanism. What we are proposing is that we adapt some tried and true mechanism that was developed in King County to the situation in Lewis County and perhaps improve upon. It would not be prudent for us to get into what it says in terms of

the specific, because that is all to be negotiated. If the County wishes to do that negotiation with the Planning Commission that is their prerogative.

Mr. Scheibmeir understands it is not the applicant's intention to impose low income housing triggering events as part of the draft document.

Mr. Smelser stated that is correct. It may be that the developer comes up with the conclusion that is the best way to do it, but that is part of the negotiations.

Mr. Scheibmeir stated he is moving in Mr. Smelser's direction with the interpretation of that provision. As he looks at Mr. Smelser's careful analysis, he believes Mr. Smelser has done a good job of explaining why that may not be the case. He is looking at the language and reconsidering his insistence upon that; however, it does reference it in the ordinance and while it may or may not impose it as a mandate, it is worthy of some consideration.

Mr. Smelser, referred to page 11, which reads "following FCC approval" and was changed to "prior to" and believes it should be "concurrent with". The applicant would not want to enter into an agreement prior to the decision being made by the County.

Mr. Scheibmeir agreed.

Mr. Smelser stated Mr. Laing pointed out that in King County there are provisions in their ordinance that requires a percentage of certain things and in Lewis County there is not a housing provision.

Mr. Scheibmeir believed the reason we didn't find more of that in the Redmond Ridge is because the County did not have specific provisions.

Mr. Laing stated what was different is King County's code has express provisions that require not just senior housing, or affordable housing, but have formulas within the code that are not in Lewis County. The Trilogy Development was required under King County code.

After some discussion, Mr. Smelser stated this is a way we can assure that there is a balance that is achieved by the end of this 25-30 year cycle. We were showing you an agreement that might or might not come after negotiations with the County. He apologized for throwing this in but believed it was better to risk the confusion by providing an example of what the applicant is talking about. There is a lot of work to do; the concept is good and this is a mechanism we can work with.

Mr. Scheibmeir asked what the Planning Commission should expect regarding cleaning up the development regulations.

Mr. Lien stated there will be two more workshops on Birchfield following this hearing to resolve those issues.

Mr. Scheibmeir opened the public testimony and asked anyone who wished to speak to come to the podium.

Mr. Eugene Butler, 196 Taylor Rd., Chehalis, addressed the concerns of the monitoring agreement and the fact that there was no prior knowledge of its contents. The GMA requires that the public be afforded early and continuous public participation and this is not an example of early participation. Mr. Butler did not feel the public would have any input as to the negotiations of the agreement.

Mr. Butler had a prepared response for the submissions that counsel had provided to him and Mr. Vinatieri and that response was submitted this evening. His group has not all had the opportunity to respond. His understanding of what was submitted was a motion to reconsider and not a proposal for a draft of other conditions. Had it been a proposal for other conditions, then as he reads the county ordinance, it would have required that the Planning Commission first look at that proposal and decide if it would be submitted for public hearing. That has not happened nor has the time limit been observed.

An issue raised by the Hearing Examiner and addressed by Mr. Smelser was whether or not senior housing was required. We believe the Hearing Examiner was correct when he concluded that senior housing is required. The ordinance requires that the master plan shall provide for a mix of residential uses and a list of "may includes" which grammatically states there must be senior housing.

Mr. Scheibmeir stated he expressed his reconsideration of his earlier position on that and ultimately the adopters of that language will conclude for themselves what they meant by it; meaning whatever happens here will go to the BOCC for final decision making. Mr. Scheibmeir intends to note there is some vagueness in the term and ask the BOCC to recognize the interpretation can differ in the paragraph, and they as drafters need to resolve what they meant by the language.

Mr. Butler went on to say his group believes there are significant differences between Snoqualmie Ridge and Redmond Ridge developments. One is [Birchfield] talking about two different school and fire districts and the problem of how a proposal is styled for monitoring how impact fees will be ascertained. To clarify a question by Mr. Scheibmeir, he stated it is his understanding the developer does not necessarily want to be bound to the 1-2-3 format for phasing. His group is suggesting if not bound he ought to be confined to a governmental unit, such as a school district or fire district and to develop one district at a time rather than jump around. While not opposed to the phasing, there should be limits to the phasing flexibility.

Mr. Butler has a concern about the requirement that new infrastructure be provided for. His understanding that infrastructure for classrooms, fire protection and roads has not been provided for by the developer. The applicant is claiming that parks are not part of the infrastructure and although it's not mentioned in the statute as infrastructure, it is part of the infrastructure of the development and needs to be shown how it is to be provided

for; particularly where parks are to be developed in areas that may be borderline or over the borderline of critical areas.

Mr. Butler stated the development has exceeded the authority granted in the comprehensive plan that they have not developed the requirements within the five year window and that a new application is required. The regulations related to impact fees have not been written and the way all deficiencies are corrected is by a new application. Mr. Butler thanked the commission and hearing examiner for their time.

Mr. Scheibmeir recognized Mr. Vinatieri. Mr. Vinatieri stated he has reconsidered and has no further comment.

Mr. Scheibmeir recognized Mr. Richard Curtis.

Mr. Curtis stated Birchfield is located in a fairly sparsely populated County compared to where Redmond Ridge and Snoqualmie Ridge are located. He also sees a huge difference in income levels, education levels and possibly life styles between the two Counties. He thanked the Commission for the opportunity to speak.

Mr. Scheibmeir stated there were no other individuals who wish to speak. He asked if the County or applicant had anything further. There were no other comments.

Mr. Scheibmeir concluded the Hearing Examiner hearing and thanked the Planning Commission for its assistance. He stated he would soon conclude his decision making and present his adjustments to earlier decisions to the BOCC for their action. The Planning Commission will continue to work on the development regulations and land use regulations related to this proposal.

Having received the trigger point document and allowing time to respond, Mr. Scheibmeir will hold open until May 2nd the opportunity to provide comment before making any decisions. He will consider review matters brought on by the County, issues that may have been addressed and not fully resolved last year, and the seeking of clarification or the reconsideration by the applicant relative to certain issues. These will be addressed in a comprehensive decision. Once the deadline for additional input has passed, he will begin work on these issues.

As there were no further questions, the hearing adjourned at 7:29 PM.