RECORD OF PROCEEDING OF CITY COUNCIL

CITY OF BELLINGHAM, WASHINGTON

Lake Whatcom Joint Councils and Commission Meeting
Bellingham City Council Chambers
Wednesday, March 26, 2014, 06:30 PM
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Special Meeting

Called To Order The meeting was called to order by Bellingham City Council President Cathy Lehman.

Roll Call

Present:

Excused:

AB 20368 1. Annual Lake Whatcom Joint Councils and Commission Meeting

1. Call to order and roll call

Cathy Lehman called the meeting to order at 6:32 P.M. The three legislative bodies were called to order.

Bellingham City Council:
Present: Cathy Lehman, Jack Weiss, Pinky Vargas, Michael Lilliquist, Roxanne Murphy
Absent: Terry Bornemann and Gene Knutson

Whatcom County Council:
Present: Carl Weimer, Rud Brown, Barbara Brenner, Barry Buchanan, Pete Kremen, Ken Mann
Absent: Sam Crawford

Lake Whatcom Water and Sewer District Board:
Present: Leslie McRoberts, Deb Lambert
Absent: Todd Citron, John "Ian" Millar, Laura Weide

Leslie McRoberts noted that, in the absence of a quorum of the Water District board, the joint resolutions to be considered at this meeting will be scheduled for consideration at the next meeting of the board.

2. Address by Executives of the three jurisdictions

Kelli Linville, Mayor of the City of Bellingham, welcomed all attendees to the meeting and noted the cooperation from all the organizations to protect Lake Whatcom, which is a drinking water source for over half the County population. The lake is also an ecological treasure and is important for recreation. She noted that the jurisdictions have worked together on three successive five-year year plans. The next plan will cover the 2015-19 time frame and should produce a number of results for the lake. We have more cooperation, knowledge and experience, and that will lead to success. We have had successes in reducing phosphorus while protecting our watershed. The jurisdictions have learned a lot about treating stormwater to reduce phosphorus and have also gained knowledge regarding prevention. Staff of the jurisdictions have also been working with residents to reduce the amount of phosphorus from their properties that is going into the lake. The executives are also meeting quarterly to decide what we are going to do and how we can improve our outcomes.

Patrick Sorensen, General Manager of the Lake Whatcom Water and Sewer District, stated that the Water District is excited to work with the City and the County to clean up the lake. The district has invested a few million dollars over the last two years in the sewage collection side, which also reduces the threat of overflows or contamination. We also serve communities outside of the City with drinking water. The water district board is committed to addressing these issues and to serve as a partner, including for stormwater issues in the incorporated county.

Jack Louws, Whatcom County Executive, thanked the City of Bellingham for hosting the meeting and the Councils and the Water and Sewer District for the work they have done to improve the lake. He also thanked the watershed advisory board, plus the staff who have all worked together to improve the environment. We are at the point where we are bending the curves to get more done because of the cooperation we're getting from the different organizations. If you look at the City's work on Northshore, the County's work on Coronado and Fremont areas, and the joint project to treat runoff on that hillside, cooperation is making a difference.

We've expanded the homeowner retrofit project to include the County and there is a joint public works project near Academy Road. Land preservation is also important and the highlight was the Whatcom County Council voting to re-convey 8,800 acres back to Whatcom County. If you look at the map of the watershed you can see that the green areas are protected, the purple areas have been retrofitted, and those in blue are areas we are planning to retrofit through 2018. This means we have thousands of acres protected and we have retrofitted about 1,090 acres of developed land and will add another 530 acres in the next few years. Working with the Water and Sewer District and the residents of Sudden Valley will be important in the next few years so we can add as much secondary treatment to that area as possible. We've invited a member of the Sudden Valley Community Association to our meetings so we'll continue to cooperate to see what we can do there.

3. **Presentation: Annual Program Review**

Jon Hutchings presented the annual program review. Staff come together each year to put together the information needed to report out on the work completed in the prior year. The focus for this year's report will be the phosphorus reduction work that gets done by the Lake Whatcom Management Program. We hope to provide a better understanding of the goals of the five year planning process and provide increased confidence in phosphorus reduction plans going forward. We've been working on the five year plans since the late 1990's and have spent about 15 years understanding how to deliver these services.

A principal message is that the program reaches farther than required by the Clean Water Act for phosphorus reduction under the TMDL [Total Maximum Daily Load] and is broader than just reducing phosphorus. The plan does contain a substantial focus on preventing and reducing phosphorus. We are ahead of the TMDL schedule which has not been formalized. This year is the last year of the current 5 year plan. We agree that more should be done to keep us ahead of schedule. The Lake Whatcom program has evolved over time and phosphorus removal is now the most important element. The new plan needs to be consistent with the TMDL requirements. We should note that we have a number of projects planned for the lake to reduce phosphorus that will go forward while we develop the next plan, and a pound of phosphorus removed now is worth more than one removed ten years from now.

The lake is very large and has a long history of activities such as forest practices that were not up to today's standards that have introduced excess phosphorus into the lake. Basin One has been mostly developed. Basin Two is the small basin where the City takes its water. Basin Three is very large and is mostly undeveloped. In 1992 a joint management agreement between the City, County, and the water district was created with specific goals and objectives for collaborative management. A 1998 interlocal agreement included funding for a joint program of activities to improve the lake, and that is the precursor to the Lake Whatcom Management Program. The first five year plan started in 2000. There have been a series of actions including land use requirements, removal of lots from development in Sudden Valley, downzones of existing lots, the creation of a transfer of development rights program and an acquisition program, fertilizer bans, and a ban on polluting two-stroke engines.

In 2009 there was an update to the City's Silver Beach ordinance with standards now requiring no net impact from new development. In 2013 the County adopted its version of these protections. There have also been a number of public systems developed around the lake. In all there are 13 program areas. Not all are related to phosphorus reduction, however. For example the plan includes a spill response plan.
Why are we concerned about phosphorus? When the phosphorus content rises it stimulates algae growth which results in low oxygen. Various water quality issues can result from this including an impact on water treatment. Low oxygen is bad for fish. Phosphorus loading correlates with storm events. There are many sources of excess phosphorus, including animal waste, failing septic systems, yard waste, etc. The program has methods to deal with all of these sources with the exception of

atmospheric deposition and phosphorus in the existing lake sediments.

Cathy Craver reviewed the major accomplishments of the 2013 program. In the acquisition program 29 acres were acquired, and another 8844 acres were re-conveyed from the state Department of Natural Resources to Whatcom County. A number of capital projects were completed including at Coronado and Fremont which is treating runoff from about 179 acres. Two projects were completed in Sudden Valley. In the HIP program 41 projects in the City were completed and 40 or more projects are queued up across the City and the County. In 2014 the City will complete retrofit projects at Bloedel Donovan, Northshore Drive, and Huntington/Shepardson Streets, and the County will complete a second phase in the Coronado-Fremont neighborhood. The City and County will complete a joint city-county project at Academy Road involving both filtration and infiltration treating about 80 acres.

In 2013 the County updated its development standards and the City has been working on streamlining its Silver Beach ordinance. A number of community outreach events were completed in 2013 including a Watershed-Friendly Project Expo, a Sustainable Landscaping Gardening Green program, and a Rain Garden Tour. The Homeowner Incentive Program (HIP) project recently held a one day workshop which attracted 80 participants. The Lake Whatcom program also includes an ongoing program of data collection and management. Some of this information is used to monitor performance of facilities and some will be used to update the phosphorus loading model.

Jon Hutchings provided a summing up of recent activities and the total impact on phosphorus reduction. More than 20 major capital projects have been completed, and with HIP 84 properties total have been retrofitted. Development standards have been strengthened watershed-wide. As estimated total of 312 pounds of phosphorus have been removed. Also, 1787 acres have been removed from potential development and 164 acres have been donated. Adding in the re-conveyance a total of 10,800 acres have been protected.

We are developing an improved lake phosphorus response model. We have learned much about how to reduce phosphorus as well as about the costs of doing so and the Policy Group will be focusing on advancing this work in the next few years. We also have an improved education program. The initial program relied too much on general communications such as mailers and handouts and the current marketing approaches focus on specific problems to be solved.

As a result of new and ongoing measures we expect to see an additional 116 additional pounds removed by 2018 for a total of 428 pounds a year. These do not include additional HIP projects, Sudden Valley projects, etc. This will represent about 36 percent of needed phosphorus removal from basins One and Two. At the end of 2012 we were at about 23 percent removed, this year we are at about 26 percent removed. Watershed wide, we will be at about 18 percent by 2018.

We are waiting for the final TMDL document to come back from DOE and the EPA and are still looking at two possible pathways to achieve the TMDL -- hitting targets

in 50 years v. an accelerated target. We have 5 years from Ecology to adopt the initial plan. Conversely, we expect to complete the work for deciding on a pathway to meet the TMDL, including timelines and budgets, by the end of 2016. The TMDL must be completed in 50 years, maximum.

The Policy Group will examine the cost of phosphorus reduction and the financial requirements to meet the TMDL. In the last quarter of this year we will conduct a public and legislative review of the 5 year plan. The expectation is that we will adopt the next 5 year plan in the second quarter of 2015.

4. **Legislator question and answer with staff, and discussion.**

Barbara Brenner asked staff regarding why the chart labeled fish and forest was not labeled fish, forest, and habitat.

Jon Hutchings stated that the item in question was one selection among all the programs areas. There is also a recreation element and a habitat element.

Ken Mann noted that a graph showed a correlation between rainfall and phosphorus loading in Silver Beach. How does the recently completed Silver Beach project affect this?

Jon Hutchings said he did not know if new models had been run and specifically how much each project contributes.

Bill Reilly noted that some of the projects need to be seeded and have plant growth etc. to be fully functional. Sampling will occur to examine whether they are working as planned.

Barbara Brenner asked staff to provide more details about the retrofits on individual properties.

Bill Reilly stated that homeowner retrofit projects include a wide range of activities and owners are compensated according to how much of their property they are treating for phosphorus. Projects include full infiltration, to lawn removal, to the construction of rain gardens that are designed to remove phosphorus.

Cathy Lehman asked about the slides showing 312 pounds removed compared to 428 pounds in the near future. Since the easy projects have been done first, how will that affect the response going forward?

Jon Hutchings said that the calculations show that we are making about 3 percent a year in loading improvements. There are differences in what we need to do between rural and urban areas. Rural areas may require different techniques. In the acquisition program, properties purchased in the future will remove fewer potential development units compared to earlier purchases. In Basins One and Two we are at about 36 percent removal over about ten years so over 30 years we could be at the target except that it takes more effort to remove phosphorus over time. A 50 year trajectory is possible to get to the target. For some projects we will see less phosphorus removed per investment dollar over time because we've already got the

low hanging fruit. Annually the total expenditures in 2013 were about $7 million total if you include acquisition plus capital.

Rud Browne asked what happens to the phosphorus with the different techniques you use when it goes into the ground. Is it bound with the soil or does it reach a saturation point?

Jon Hutchings noted that there are a number of techniques including mechanical filtration, and others use bioinfiltration which draws phosphorus out of the water. With other techniques stormwater is infiltrated into the ground and the phosphorus binds with the soil. The soil must be kept stable.

Michael Lilliquist stated that there is always some phosphorus bound up in plants within a natural system and our goal is to keep that phosphorus in that natural system.

Barbara Brenner asked who she could send additional questions to and whether anyone is looking at oxygenators for the Lake.

Jon Hutchings stated that questions can be sent to him or to any other staff person. Oxygenators are not being looked at.

Pete Kremen thanked staff for very informative presentations and stated that it showed that all three entities were working together. He was impressed by the presentations and encouraged with the plan and goals going forward.

5. **Presentation and consideration of Resolutions regarding Lake Whatcom**

Cathy Lehman introduced two resolutions. These originated from discussion with members of the Lake Whatcom Policy Group and with staff. Discussions also occurred with new City and County Council Members. These resolutions reaffirm commitments to what we are trying to accomplish in the lake to reduce phosphorus loading and also set some clear direction for the Policy Group to develop the next 5 year plan and the TMDL response plan. These represent a strong commitment of the legislative bodies to do the work. We will also need to be making decisions about money.

Leslie McRoberts noted that all the jurisdictions have identical resolutions and everyone has read these beforehand. The City and County Councils can vote and the water district will bring these back to the next meeting when there is a quorum.

Cathy Lehman read the introductory statements to the resolutions. There are two resolutions. One sets goals for the Policy Group and the other invites the Sudden Valley Community Association to participate in the Policy Group. The first resolution sets three milestones for the 2014-16 period. These are, in 2014, establish policy principles for each area of investment and identify expenditures needed to achieve load reduction goals in each area; in 2015, analyze expenditure and funding levels and set specific timetables for each area of investment; and in 2016, complete an implementation plan for phosphorus reduction and the control of fecal coliform to meet requirements of the TMDL, protect drinking water, and restore lake and tributary water quality. This puts the onus on the jurisdictions to speed up the joint response and points out how the Policy Group will contribute to these efforts.

Michael Lilliquist spoke in favor of the first resolution. The jurisdictions want to be ahead of schedule. With the required TMDL process it takes too long to get to a completed implementation plan. The DOE and the EPA have still not approved the draft plan. We need to get to a full restoration plan. Steady progress is not the same as success and this resolution will help focus our efforts to achieve the TMDL on an accelerated timescale that is necessary and doable.

Barry Buchanan moved approval of the resolutions for the Whatcom County Council.

Carl Weimer stated his support for the resolution and noted that he was somewhat skeptical of these resolutions at the beginning since many statements have been made over the years saying we are committed to the lake that haven't made a real difference. This time is different. We are committing to move faster than DOE requires. The Policy Group will likely come forward with proposals that involve raising taxes or fees or that put more regulations on existing development. If you are not in favor of some of those things you should not vote for this resolution. The County does not have dedicated funding for the Lake.

Barbara Brenner stated that she is in favor of the resolution but does not agree we need more funds. We need to prioritize.

COUNTY VOTE: Passed 6-0 with Sam Crawford absent.

Jack Weiss moved approval for the Bellingham City Council.

Pinky Vargas seconded the motion.

CITY VOTE: Passed 5-0 with Gene Knutson and Terry Bornemann absent.

Leslie McRoberts noted that the Lake Whatcom Water and Sewer District Board has discussed the resolution and opinion was in favor and she expected it to pass at their next meeting.

Cathy Lehman read the second resolution inviting the Sudden Valley Community Association to send a representative to the Lake Whatcom Policy Group.

Jack Weiss moved that the City Council pass the second resolution.

Roxanne Murphy seconded.

CITY VOTE ON SECOND RESOLUTION: Passed 5-0 with Gene Knutson and Terry Bornemann absent.

Carl Weimer introduced the second resolution for the County and noted that he will support it. The Sudden Valley Community Association has been attending the meetings for a number of years and it makes sense for them to be at the table.

Pete Kremen moved approval.

COUNTY VOTE ON SECOND RESOLUTION: Passed 6-0 with Sam Crawford absent.

6. **Public Comment Period**

Paul Taylor thanked participants in the meeting for promoting lake health. There is an issue regarding expansion of vacation rentals by owner. These are unregulated hotels and result in more trips into the watershed and more use of septic systems. The septic systems are rated for three people but the advertisements for the homes say they sleep up to 10. A resort experience is being created with boats, jet skis, private boat launches, etc. It should be hard to get permits for this kind of development. There are 14 of these on the lake but no one is keeping track. The number is going up. This does nothing to promote lake health and these developments are detrimental. Staff should add this to the agenda to investigate and should eliminate these in the watershed.

Brooks Anderson expressed gratitude for the work that is being done. The term water quality is used a lot when discussing the lake but she didn't see that mentioned in the presentations. An article in the Herald noted that we have a new water treatment plant to treat toxins going into the treatment plant but the problem is that toxins that are detrimental to health are going into the treatment plant. This is not just about money but education is also important. We need to move aggressively for clean, quality water and to get the people involved in this. There are many plans for water right now. We need a clamor about high quality, clean water. She is stunned at the amount of recreational use on the lake including planes, boats, and dogs, and we need to roll this back.

Wendy Harris noted that she has reviewed the latest Lake Whatcom monitoring report by Dr. Matthews of Western and the report shows the highest level of carcinogens ever in our treated drinking water. We need to address watershed growth and need proper regulation. Incentives and engineered approaches transfer costs from developers to the public. Right now we have an engineering approach, not a comprehensive watershed-based approach to ecosystem restoration. Clean water is a by-product of a healthy lake. A fully engineered stormwater approach for new development is now allowed. This approach downplays limits on impervious surfaces and allows vegetation removal. The required vegetation does not function as a forest.

Downslope properties now have to deal with ever greater amounts of runoff. She is dealing with water sheeting down the alley despite extensive retrofits and was told by the City that it was her responsibility to manage water flowing down the alley. She asked to see data comparing the fully engineered v. the fully forested approach. We have not used the authority we have to require that developers bear the costs rather than the public. We routinely issue SEPA DNS [Declaration of Non-Significance] despite evidence that shoreline projects degrade water quality, and we do not require adequate mitigation. There are many new developments being allowed. What we need is no net increase of overwater structures and ideally we would outright prohibit these structures. Our Asian clam infestation is due to recreational uses of the lake. Recreational water use is encouraged and watershed recreation is listed as an accomplishment in the 2013 staff report. There is a new

competitive rowing team boathouse. Seaplanes are flying in and out subject only to self-inspection. We need no boats or recreational use of the lake and severe restrictions on shoreline development. We need regulation for reduced impervious surfaces and more true forest cover with larger buffers. LID [Low Impact Development] techniques should be required. Too many water improvement plans have been unfunded wish lists. We need the political will to move forward.

Marian Beddill congratulated staff for the reports and presentations but stated that they sounded like a sales pitch. The 1992 joint management plan set 21 goals and we should look at the list. Some are taken care of and some are not. The acquisition program to hold properties in forest land is a good program. This was started with a Citizen initiative on the ballot. It narrowly failed at the polls but 1 year later a program was started. We need to keep citizens involved. I want to make a technical point as a civil engineer with experience in water systems. Regarding the HIP [homeowner incentive] program, there are doubts about the costs and efficiency of these systems. This program may not be sufficient for the long term. There is a focus on engineered phosphorus removal systems but these only remove about half of the phosphorus going in. In a big rain storm the water doesn't even go into these systems. We need to monitor costs and effectiveness of treatment facilities. Let's get the lake clean up done because it is our drinking water.

Gaythia Weis stated that data from Dr. Matthew of WWU is missing from the discussion. Regarding amending the soil, Lake Whatcom soils are thin and have less biological activity and may not be effective in removing phosphorus. We may create water movement that is itself a problem. I question reported City treatment removal rates. We need to measure downslope from the facilities and not just use estimates from elsewhere. Matt Schultz of the University of Washington has completed a study of the impact of runoff on Coho salmon and this study has shown that impervious surfaces cause fish to die.

Kate Blystone of ReSources described the organization as being devoted to advocacy and action. When she first moved here all everyone talked about was Lake Whatcom. Lake Whatcom was a big topic in 1999. Some of that momentum has been lost but we may be getting some of it back. We thank you for the resolutions and agree some of it will involve hard decisions. We need to work together to accelerate the pace set by Ecology and even from that set in the resolution. She is supportive of moving to protect the lake. The resolution will lead to hard decisions. Clean water is just too important.

Cathy Lehman closed the public comment period. She noted that the Lake Whatcom Policy Group meets on Mondays and that interesting work to advance these topics will happen there. The public is welcome to attend those meetings.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:25 p.m.

Cathy Lehman, Council President

ATTEST: Mark Gardner, Council Legislative Analyst
APPROVED: 05/05/2014

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