

**Town of Eatonville**  
**PLANNING COMMISSION MEETING**  
**MONDAY 7:00 PM, MARCH 19, 2007**  
**COMMUNITY CENTER**  
**305 CENTER STREET WEST**

**Chairman Lind** called the meeting to order at 7:00PM .

**Commissioners Present:** Lind, Beach, Valentine, Schaub, Frink, Harris, Harper excused.

**Town Staff Present:** Mayor Smallwood, Nick Bond and Karen Bennett.

**Approval of agenda:** Adopted unanimously w/correction. Move Chair discussion of Open Public Meetings Act to Email Exchanges from Communications and Announcements to Old Business.

**Approval of minutes:** Beach motion to approve minutes from March 5, 2007. Schaub second. Adopted unanimously.

**Communications and Announcements:**

**From Commissioners, Town Officials, other government bodies:**

**Nick Bond** reviewed Ordinance 2007-9 Reduce the number of Planning Commission Members.

**From the Public:** There was none.

**Public Hearings:** None

**New Business:**

**Bond** review of Public Hearings to be set.

**Beach** makes a motion to take up The Annexation, the Eatonville School District, the Capital Facilities and the Town Center on April 2, 2007 and the staff should arrange the order of those hearings in terms of their best judgment as to clearing as many of those as possible on the second.

**Lind** we have a motion on the floor to schedule four Public Hearings for the 2<sup>nd</sup>. The Capital Facilities, The Town Center, The Annexation and the School Conditional Use with instructions that staff schedule them so we can get as many of them done as possible. Do I hear a second?

**Valentine and Harris** second.

**Lind** I hear two seconds for a motion to schedule those four. Capital Facilities, Town Center, Annexation and School Conditional Use for the 2<sup>nd</sup> with instructions to staff to

schedule so we can clear as many as possible. All those in favor of the motion which is to schedule a Capital Facilities Plan, Town Center Grant Application, The Annexation and the School Conditional Use for the 2<sup>nd</sup> and instruct the staff to arrange them in such order that we can dispense with as many as possible. All those in favor say "Aye". All in favor. Let the record show that it was passed unanimously.

**Valentine** I would like to make a motion to schedule a special meeting of the Commission for the hearing of the Sign Ordinance for the fifth Monday of April 30<sup>th</sup>.

**Schaub** second

**Beach** why not schedule it for the 16<sup>th</sup> and then if it goes to the 30<sup>th</sup> then it goes to the 30<sup>th</sup>.

**Valentine** I don't have any objections to the 16<sup>th</sup>. I would like to amend the motion to change the time from April 30<sup>th</sup> to April 16<sup>th</sup> for the Sign Ordinance.

**Lind** we have an amendment to the motion. Do we have a second?

**Schaub** second.

**Lind** any further discussion. Not seeing any. All those in favor of the amendment. All in favor. The amendment is now the main motion which means we will be voting on April 16<sup>th</sup> for the Sign Ordinance. Any discussion on that motion. Not hearing any. All those in favor say "Aye". All in favor. Let the record show that that was adopted unanimously.

**Bond** Mart Kask has asked me to set a Public Hearing for the General Comprehensive Plan Amendment for May 7, 2007.

**Beach** so moved.

**Valentine** second.

**Lind** we have a second to set the Comp Plan for May 7, 2006. Any discussion? Not seeing any. All those in favor say "Aye". All in favor. Let the record show that it was passed unanimously.

**Old Business:** Discussion on Open Public Meetings Act to Email Exchanges.

**Lind** Mr. Beach had asked to have the information put into the record of some of the e-mails that were going back and forth, which I did. In addition, I added some stuff in there from Municipal Research from Mr. Phil Olbrechts to show some more information on that. I have not asked to have the attorney to come because the attorney cost us \$200 per hour and I figured that's probably a \$1000 bucks to come out on this and you get a lot of information from Municipal Research whenever you have an idea and I guess one thing that I forgot to ask Mr. Bond that is have we got a schedule for the training to come out on it?

**Bond** still trying to set up a date for that. I think we want to do this in a study session format before a regular Planning Commission meeting.

**Lind** those are the ways that we can deal with for the moment. I would say this on these things we are about public business here and we have rulings out of the state supreme court on these kinds of matters that cautions us to be very, very cognizant when we do the public business that we get it in front of the public so they can see and you can see several different lines of reasoning as you go through some of the stuff. Some people say as long as you don't have a majority of the members you haven't got a meeting and then if you go into the Albreck decision you see something a little bit different and you get questions about what is in and what isn't in. In the long run what it comes down to is each individual one of us have to make our own individual decisions as we procedure through this. Because of several different things I talked to Municipal Research attorneys and got some advise on them and any time that I thought that I might be getting close to the line I have used and will use the language that you have seen previously just out of an abundance of caution because that is what I understand is what the courts have on it. I there are some other questions of people maybe we could have a discussion here on it.

**Beach** I appreciate you getting this material from Municipal Research service. I found it really quite interesting. What I find troubling is in fact that statement that you have added to some of your e-mails. I certainly goes beyond the material the Municipal Research service has sent us as you correctly indicate as long as there is not a majority, and that is fairly clear, involved in the e-mail it doesn't constitute a meeting and there is a remedy of some how or other more than three of us involved in an e-mail and that is to make it part of the record of the next meeting to call attention to it and they, in fact, do recommend that on page eight. I think the statement, I hate to have a statement that in some sense is comes down to well this is maybe something we ought to do but we are going to stick it in there anyway. The statement it self, let me read it to the audience so you get some sense of what we are talking about. This is not a statement that Mr. Lind drew up it is one that he got from the Municipal Research service but he has chosen to us it. And it says, after he sent out an e-mail, Note in order to avoid problems with the Open Meeting Act any response to this e-mail should be sent only to me not to the other individuals who have also received this information. Now let sort of deconstruct that sentence. Certainly we need to be very cognizant of the Open Meeting Act and the Chair is quite correct to call this to our attention so that we can avoid any problem with it if at all possible. But then this statement says any response. That's more than an e-mail, that is any response. Response can take a wide variety of forms besides e-mail and so it say any response goes to the Chair. So if I wink and nod. . .

**Lind** excuse me Mr. Beach I would correct you it doesn't say it goes to the Chair.

**Beach** it says goes to me.

**Lind** anybody that would do the same thing should use the same one. Doesn't say go to the Chair.

**Beach** I was assuming only the Chair would use this. But you may be correct that somebody might use this. But any response is a very broad statement, certainly goes beyond e-mail should be set only not to the individuals who also received this information. Well, we have an addition to the Planning Commissioners, we have the town clerk, we have the

recording secretary for the Planning Commission we have the secretary in the Planning Public Works Dept., we have the town's planning consultant, we have the Mayor and Mr. Bond. This is more than the Planning Commission. And these people are not involved in the quorum of the Planning Commission in any fashion what-so-ever. This is the list of people this was sent to. We have got quite a list of individuals that apparently are governed by this particular notice. I was shocked at how broad this statement was in terms of trying to impose some kind of restriction on communication among the members. Particularly when we can communicate. It's pretty clear from the materials that was sent by the Municipal Research Service that any three of us can communication on any subject that we wish to communicate on and that if some how or another a fourth member or anyone thinks a fourth member of the Commission has gotten involved in this that this be put on the public record and that deals with that problem. That essentially summarizes my views on the subject I'd like to see that note just simply go away and we have to rely on the good judgment of the people who are on the Planning Commission. Inform them of what the law is and what is applicable and then rely on their good judgment to perform that. And if any of them becomes aware or has any question in their mind that there may be a possible violation of it then they should bring it to the rest of our attention in the public meeting.

**Elizabeth Harris** I had some questions in terms of, and I guess this is really a question more for the Town of Eatonville in terms of a lot of the e-mail recipients this is their personal e-mail address opposed to the town address and what type of notes or e-mail server is being used by the town because there are e-mail servers and applications that have the controls in them that are very easy because of these problems with e-mails that have come up over the last ten years. It's more of a question in terms of is there a remedy that the town already has, perhaps that would abate this problem. For instance one application that is used for e-mail transmissions in the business environment is Lotus Notes and it has the capability that you can limit the number of times an e-mail can be forwarded. It has capability to see if somebody has opened their e-mail and read it. It has the capability to see if they did forward it off and it is set up that you can track e-mails going back and forth. My question is more one of does the town's e-mail, the eatonville-wa.gov is that, I realize that it is probably through Rainier Connect, but.

**Mayor Smallwood** spoke away from the microphone.

**Harris** will it be possible then for all of the Planning Commission members to be on that? Because I think that would alleviate both Mr. Lind and Mr. Beach's concerns.

**Smallwood** spoke away from microphone.

**Frink** I just, Mr. Chair, I just want to make myself clear on this. This is to me an issue about e-mailing. It's about e-mailing back and forth between commissioners about a particular issue. Is this what everybody is reading into this? Or is it not. Or am I way off base? Because I have a statement.

**Lind** it's more than just e-mailing. It goes to open public meetings. You can cross the line in not just e-mails but in discussions outside and there are things like we been instructed on rolling corms where one person goes to one person and then another person and another person. It is important, we have been told by the courts that the deliberations, the business

of the people get done in front of the people at meetings that are previously scheduled and I think it's a decision called the Wood Decision which happened in to involve e-mails. A school district was found to have gotten over the line on the particular one and some of the best attorneys we have in the state who deal with work at Municipal Research they get call out of Municipalities throughout the state and have worked on this up one side and down the other. That is where I have looked for guidance as I work on this. I will honor your request that you make a statement or whatever you want Mr. Frink.

**Frink** this to me this is just a cautionary thing that we should be concerned about communication with other members of the commission, council, whatever. This is what I have read into this and so we talked about having other servers and so forth, but what I really see is that we all need to be cautious when there is something before the committee that we don't go talking about it unless we are in this body. We are not to e-mail each other and that type of thing. Is this what I'm reading here? This is what I read into it was that we don't discuss this outside our meeting so that it appears we are having our own meeting without a public hearing or without the public being able to respond.

**Lind** and that was my sense of it.

**Michael Jeffries**, 133 Mashell Avenue, Eatonville, WA

There is intent involved in Open Public Meeting Law. It is possible to set up an e-mail system that limits the public's knowledge and protects local government in its conversations and exchanges of information. It is possible to set up a system that guarantees that matters that should be open to public scrutiny are easily available for public scrutiny. The Open Public Meeting Law goes back to trying to keep the public informed. It's very easy not to inform the public and it's very easy to limit and even in your discussion of who emails would go to just by limiting that list you have already limited the public's knowledge of what's going on and you have already limited the public's access to what should be public meetings. I think e-mail's are a valuable tool but it can also be a tool that limits the public's knowledge or it can be a tool that expands the public's knowledge.

**Beach** what occasioned this was e-mails but the same facts exist if four of us were to get together and have a conversation. Or we were to use the Post Office instead of the e-mails. The same thing would occur so it is just the application of a newer technology to this and obviously the phone. You don't have to have all the people on the line at the same time and that is quite right a serial kind of thing, I call A and A calls B and B calls C and C calls D and so on and before long you have the whole commission into this conversation without any more than two members talking to each other. And that is what the Open Public Meeting Law is trying to curtail or to prevent and to me that is reasonable. I have no quarrel with the Open Public Meeting Law but I do think that two members, and in the case of this commission three members, ought to be able to talk about a matter whether it is by e-mail or whether it is by telephone or whether it is by direct discussion or a wink and a nod. I don't care what it is about matters that are or maybe before the commission. Other than the ex parte matters which are a different matter. It's often would be useful to do that and it may be that one member wants to find out whether another member would support a particular motion or something of that kind and can they draw up a motion so both of them can support it. I think that is perfectly reasonable to do. So trying to direct these communications I think in that sense is simply wrong and over reaching. But we do have to

be cautious and that is that we don't get a quorum involved in these discussions either directly or indirectly. In other words if I were to call up another member and say would you support blah blah blah. Well I could call one other person or they could call one other person but we both can't call another person because that's going to get it into a violation of this. If any of us has a suspicion that there is a violation they ought to bring it to the attention of the commission and the public, therefore, in an open meeting and say there may have been communications of this kind. The Freedom Of Information Act actually allows a citizen, because when I was Chairman of the Planning Commission there was a citizen in Eatonville who wanted all the Chairman of the Planning Commissions e-mails that dealt with the Planning Commission. They got all the e-mails that were still on my computer that had anything to do with the Planning Commission. Now some of them they probably wish hadn't of gotten because all it said was "thank you" and they had to pay their ten cents. They got everything and so what I am saying also in terms of e-mail's and other types of discussion if there is anything your going to communicate to another commissioner that you don't want the public to know then you ought not to communicate it. That's all there is to that. It's a little more far reaching even than the seems to me the three individuals. But I don't think we should tie ourselves in knots about this. There ought to be a way for members of the commission, just like the Town Council, in that case it's just two and not three, to communicate with each other and exchange their views because I think that helps in the long run as long as we are not actually making decisions for the commission in the process of doing that. That's my objection to this statement. As I said in my e-mail it's over broad, over reaching. It really ought not to be. Thank you.

**Lind** Mr. Frink has the right tone and tenor of what was intended and what the legal council had when they did it. I might respond to a couple other comments. There is a specific reason that the Town Clerk is on there and some of the other people are on there and that is to make sure that whatever communications I do as the Chair and on the Planning Commission are in a place where the chief records keeper who is the Clerk of the Town of Eatonville will have them and if anybody ever wanted to look for those records, those records would be in Town Hall. They go to the other people because they work with us and they are effected by these things. Obviously staff is not a part of the Open Public Records as those of us that serve as either elected or appointed ones. I think that we have talked about this a good deal and the spirit in that is something that I want to use in the future whenever I do it and I have occasion to send something out and the only reason that I happen to send that particular document out was because I was the one sitting here with a computer and I took the notes in on it and had the most accurate and up-to-date stuff on it. Some of the rest of you wanted to have that information and Town Hall needed it to deal with it. That having been said is this something we can move on with now or is there other comments that anybody has.

**Valentine** I agree with Mr. Beach I do in everything he said. I think that each commissioner has to rely on his own judgment in responding to an issue. I think what we need to avoid is giving the impression or even, literally, showing that we are trying to arrive at collective decision. I think that passive interchange and exchange is a good thing whether it's with commissioners or council member or whatever in gathering communications. I feel like sometimes we take this so far that it feels like your trying to put handcuffs on the people that are trying to do the job. I think that if we practice some discretion, respond in passive ways

to maintain our impartiality and not try to mold or formulate a collective decision using e-mail. It's a simple process.

**Public Comments:**

**Charles McTee**, 408 Ridge Road, Eatonville, WA

At the last Planning Commission meeting I was restricted in speaking by Mr. Lind and I appreciate that he was instructed to keep me from speaking by either Mr. Bond or their Town Attorney and he had to fulfill that obligation. I don't exactly know why because I don't see any reason that anything that I would have said would have made any difference to anything. And the only thing that I want to say about all this is that after this was all over he told me I had to clear what I wanted to say with town staff. I do not intend to ever go to town staff and ask them if I can speak about any particular subject at a Planning Commission meeting or a Council meeting.

**Michael Jefferies**, 133 Mashell Avenue, Eatonville, WA

Setting up a new e-mail system is great and setting up your own server is great and I think it is an opportunity to intentionally track communications that are going on and make them easily accessible. Because we have had town officials run off with computer hard drives that had certain things on them and we have had all kinds of things. I think we have really good people in there now but I think the intent is also to make the job easier on town staff. If there is a record that deals with a certain area it can automatically be saved in that area. Makes things easier and make communications generate less suspicion of communications that you are not aware of which always go along with government and everything else as peoples perceptions or miss perceptions.

**Mayor Smallwood** received an e-mail from Extreme Town Make-over and the town was not selected.

**Commissioner Comments:** Discussion between commissioners regarding ex parte communications.

**Valentine** I really feel we have an obligation to protect the integrity of ex parte communication. But I really feel that maybe in some instances we have over stepped those boundaries and I don't believe that that doctrine applies until an application has been filed and I mean filed to the Planning Commission. I hate to see us put out warnings that you can't investigate, you can converse, you can't talk with anyone under ex parte when in fact I don't believe that was applicable at the time this was given to us. If I am wrong then let someone correct me and I will certainly absorb that. I want people to know that I feel like I should be able to investigate, converse and talk and come up with an impartial decision on matters that might be coming to the Planning Commission. I believe ex parte was prematurely imposed because the application had not been filed. My concerns I have worked out through other processes. But I feel like I need to make that public statement after doing my own research on it.

**Beach** I guess I agree with the spirit in some sense of what Mr. Valentine has said. But I think he is somewhat inaccurate. The RCW42.36.060 says during the pendency. Now what exactly that means it doesn't necessarily would mean that it is formally before us. Perhaps

there is more of a restriction in that and Mr. Valentine had indicated. Along the same line the chair called that Mr. McTee was out of order in the last meeting and apparently, because this is not clear in the record, it's not clear any place that he was fearful that Mr. McTee was going to say something about a hearing or something of that kind. The Chair certainly has the right, the obligation, in fact to rule people out of order if they are violating various kinds of rules. But the commission also has the right and the commission has the right to know whether the chair is appropriately exercising his power of declaring people out of order. And there is no way for the commission to know that without knowing the topic that the person was going to talk about. Mr. McTee was not given an opportunity to say what it was that he wished to talk about. He should have been given that opportunity. I cannot conceive that stating a topic is a violation of ex parte communications because there is no substance to a topic it's just a topic. I cannot conceive of how that can be a violation of ex parte communication. Now if Mr. McTee said he was going to talk about something that the Chair believed to be encroaching upon this concern about ex parte communications he could tell Mr. McTee that in his judgment he should not talk about that and in fact say I will rule you out of order if you do try to talk about that. The commission needs to hear that and needs to hear why the Chair is ruling someone out of order and we heard absolutely nothing about that and we should have. We have an obligation to and that is to see that the Chair exercises powers appropriately. He may have exercised them appropriately I don't frankly know if he exercised them appropriately or not and I don't think anybody else does either. I don't think that the topic is a violation of ex parte communication. I can't conceive of how a topic is. Actually when we set the hearing that's a topic itself. It's kind of a contradiction in terms. The other is which raises a question I do not know the answer to but I think as a interesting question along this line and that is, is it even possible to violate ex parte communications in a regular meeting with a speaker recognized by the Chair and therefore going into the record of the meeting. That is not a private conversation. I skirted on that line when I was Chair to and I exercised the kind of discretion to a great extent that our Chair exercised the other night in this regards, possibly. I'm not sure and I think that this would be an interesting question for our attorney to address and that is can there be a violation, and if so under what circumstances do ex parte communications if the communications take place as a result of the Chairman recognizing a speaker and that that speakers statement is going to be recorded in the minutes. Is that an ex parte communication that is forbidden or not. It certainly not a private communication. And it is in the record. I don't know the answer to that question but I think it is a question worth addressing.

**Lind** Mr. Beach I would answer you this way because I think that there is answer should be answered. As far as ex parte communications if you go into a court of law and there is only one side present they do not allow them to go forward with their arguments till the other side is there. I think that answers your theoretical question.

**Beach** I don't think that is an answer at all.

**Lind** that was my judgment on it at that point in time and my understanding of ex parte communication. The Planning Commission was here and they heard my cautionary tone to Mr. McTee and before that to another gentleman as to subjects that I would wished not to be gone into. I had every reason to believe that those were going to breach and as a matter of fact after the meeting Mr. McTee and spoke to me and when he spoke to me he said

schools as one of the subjects that was involved. Confirming what I believed he was going to get into and confirming my belief that I probably made a proper resolution on the issue before hand. I don't know if Mr. McTee would like to confirm or deny what he told me after the meeting, but that is the case.

**Beach** neither of us are lawyers. I don't think we know the answer to that question that I posed. The mere mention of the word school when we are going to presumably set a Public Hearing on Conditional Use Permits regarding schools. The mere mention of the word school is certainly no violation of ex parte. And he could talk about, presumably, anything he wanted to about schools as long as he did not touch upon the Conditional Use Permit question.

**Lind** Mr. Beach I was sharing with you and the rest of the Planning Commission members what went through in my mind and what was the basis of why I said what I did. I think that is enough said on that.

**Next Meeting:** April 2, 2007

**Beach** motion for adjournment.

**Valentine** second.

**Adjournment at 08:14 PM**

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PC Chairman, Steve Lind

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PC Recorder, Karen T. Bennett

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PC Secretary, Larry Frink