

Randall K. Gaylord
SAN JUAN COUNTY PROSECUTING ATTORNEY
350 Court Street • P.O. Box 760 • Friday Harbor, WA 98250
(360) 378-4101 (tel) • (360) 378-3180 (fax)

Victim Services
Elizabeth Pillow

Deputies
Charles Z. Silverman
Karen E. Vedder
Cameron O. Carter
Loreva M. Preuss

August 17, 2004

Mr. Steve Brandt
P.O. Box 1249
Friday Harbor, WA 98250

Dear Steve:

Thank you so much for working on the issues surrounding the construction of a guest house in San Juan County. Your involvement is welcomed by San Juan County. Your fresh outlook is productive and helpful.

Because the proposal you submitted came on your letterhead, this letter is addressed to you. We trust that you will distribute copies to all interested parties. Like your proposal, this is an offer of settlement, and it is not admissible in a proceeding before the Growth Board or the Courts pursuant to ER 408.

PRELIMINARY COMMENTS AND CONCERNS

Your proposal brings forth many issues that have already been decided and resolved through the highest levels of appeal, and are now considered final by the Board of County Commissioners. We recognize that you have not participated in many of those matters from the outset. To the extent that issues have been resolved by final decisions of the courts or the Growth Board, we do not intend to re-visit them at this time or as part of this settlement. To do so would be unfair to the public process that that has been followed to this date.

Presently, there are four forums in which the remaining guest house issues are being considered. This office has taken a prominent role in each forum, consistent with the direction given by the Board of County Commissioners. Our recent action in these forums has been a response to previously set deadlines and should not be construed to mean that the Commissioners are unwilling to consider all reasonable proposals from the Petitioners. Specifically, our office has been involved in the following matters in the past two weeks.

Mr. Steve Brandt
August 17, 2004
Page 2

- In the Court of Appeals, we met our deadline for filing the opening brief on August 9, 2004 (copy enclosed);
- At the Growth Board, on August 10, 2004, we filed a memorandum and declaration in opposition to motions to reconsider the most recent Growth Board Order dated June 30, 2004 (copy enclosed);
- At the state legislature, we have been reviewing and will continue to review proposed legislation to provide a state-wide clarification of the allowance of detached accessory dwelling units as required by the Housing Policy Act.

At the heart of all of this is the desire of the Commissioners to follow the mandate of the Housing Policy Act, and assure that the Growth Board allows the County to arrive at what you call the "local solution." With this goal in mind, we offer the following counter proposal which the Commissioners believe fairly represents the "local solutions" supported by the most number of people.

COUNTER PROPOSAL

At the outset, we should note that the approach taken by the Commissioners will require the adoption of a new ordinance. The Commissioners, by law and public policy, are prohibited from making contracts to change the law. Accordingly, this offer is only an offer to submit certain changes of law to the public process. If the changes are substantially the same, then the Petitioners - Lynn Bahrych, Joe Symons, Maile Johnson and Friends of the San Juans - and the organizations they represent - Friends of the San Juans, Washington Environmental Council, and 1000 Friends of Washington - must affirmatively participate before the Growth Management Hearings Board, in writing, and endorse the proposal as being compliant with the Growth Management Act, without reservation of any kind.

We stress the importance at completing this effort rapidly. We have no intention to delay or voluntarily waive any deadline before the Court, the Growth Board, the advisory ballot or the Legislature to see whether this negotiation can be completed. Because this approach will require action by the parties over the course of several weeks, it is imperative that both sides move quickly.

Finally, if adopted, this approach may or may not eliminate the need for a statewide legislative solution and specific direction to local governments, as proposed in the statewide initiative. As Lynn Bahrych explained to the legislature, CTED now takes the position that the Superior Court decision in this case must be followed, and so that has created problems for other counties. Through this proposal, the Commissioners and the Petitioners reserve all rights with respect to a statewide legislation. You can expect that the Commissioners will support the

efforts of other counties to be able to resolve the appropriateness of detached accessory dwelling units in rural and resource lands locally, just as San Juan County is attempting to do.

The County's proposal has three key elements:

1. A cap or quota on the number of guest house permits for any single year as a percentage of the building permits for single-family residences in the previous year. The proposed limit of 20 permits per year is too restrictive. The Commissioners propose 15 percent, which is equal to the current percentage of accessory dwelling units in the unincorporated areas. A clause for delaying the implementation of this rule to January 2007 is made to allow for the potential of a "catch up" with any pent-up demand since the moratorium in November 2000. We are firm at fixing the cap as a percentage of building permits for the previous year because this is a fair approach and provides a way that is available for audit.

This cap or quota will be how the County responds to the concern of the Growth Board Order regarding unlimited impacts of "structural density." We are confident that, with the support of all the Petitioners, this provision will satisfy the concerns of the Growth Board. In light of this approach, it is unnecessary to create different rules for rural, resource, natural, and conservancy lands.

2. A siting limitation that requires a guest house or any detached accessory dwelling unit to be sited within 100 feet (about 40 paces) from the main house, subject to a variance.

The proposal to limit the distance to 75 feet is rejected. Please remember that this standard is proposed as a **maximum** distance, not a minimum requirement. Many guest houses are likely to be within the 75-foot limitation too. A variance is provided for to cover limitations on the siting. The County variance criteria is a strict standard that is not met with any casual request.

3. The color, design and style of the detached accessory dwelling unit must be designed to give the appearance that the property is a single-family residence.

This is a new provision without standards that would aid enforcement, but it is a start. A similar provision is part of the model ordinance and further assures that issues of "structural density" do not affect the rural character using appropriate architecture and design.

RESPONSE TO YOUR PROPOSAL

The responses to the other provisions of your proposal are as follows:

1. Minimum Lot Size. The minimum lot size is inconsistent with the direction of the Housing Policy Act, and the Model Ordinance from CTED. The selection of the parcel size is

arbitrary. We cannot replay the history pre-dating the GMA of lawfully creating many small lots under four acres in size. To establish different rules for those people who lawfully divided their lots into a size of four acres or less is unjust. This is addressed in a straight-forward manner by limitations on the cap on the number of dwelling units, not an arbitrary limitation on the size of the lot on which the unit may be placed.

2. Transient Rentals. The Commissioners do not wish to make any commitment on the issue of transient rentals as part of this settlement. To make any promises on this issue would violate the public process. This issue was litigated to the Growth Board and we now have final orders on this topic. This matter may come before the Commissioners at a later time, and it may not. To bring this matter forward, it will simply require a majority of the Commissioners to agree to look at the issue. Petitioners will be allowed to participate just the same as any other citizen. We cannot agree to the request that we award special status to the Petitioners as participants on the transient rental issue as a concession or settlement of this case. To do so would not be fair in the eyes of the many other people who would also like such special status.

3. Water Quantity. The water requirements for single family residences are addressed by other rules. It is not necessary to address them here. We will, however, include a provision, at the request of the Town of Friday Harbor, that no permits be issued for detached accessory dwellings in areas served by the Town of Friday Harbor, as long as the Town of Friday Harbor prohibits accessory dwellings throughout its jurisdiction.

4. Counting Accessory Dwellings as Households for Other Purposes. In light of our response to the minimum lot size requirement, we make no commitment to how an accessory dwelling may be "counted" for purposes by other government agencies. They will adopt rules that they see fit. This is a land use issue and a housing issue, and the approach taken by other jurisdictions does not play into this in any way.

5. Provisions regarding Structures That Qualify as Existing Guest Houses. There is no lingering issue regarding structures that qualify as existing guest houses - or the sequence in which the main house and guest house are constructed, and we do not intend to revisit that issue in this settlement negotiation. That issue was decided when a Final Order was issued on April 6, 2001. The County intends to comply with that Order and the entire issue becomes moot once this ordinance is approved. Under the existing final orders, a main house can be built (1) on a lot of record; (2) where a structure built or permitted as of November 30, 2000; (3) which satisfies the standards of SJCC 18.40.240 and the appropriate provisions of the Shoreline Management Act. Whether the main house is built first or second, the guest house must comply with the requirements of SJCC 18.40.240.

We do not understand the purpose of the reference to the redesignation provisions of SJCC 18.90.030. The redesignation process of 18.90.030 is intended to apply to redesignation of land use districts, not the identification or labeling of a guest house or main house on a

Mr. Steve Brandt
August 17, 2004
Page 5

property or plot plan.

6. Elimination of Apartment Garages in the Shoreline. We simply fail to see the principle, logic or philosophy behind the elimination of apartment garages in the shoreline. We said this in mediation and we repeat it here. We have stringent rules regarding the height of structures in the shoreline. The apartment garage reduces construction costs and improves affordability of the dwelling unit. It should be encouraged, not discouraged.

7. Miscellaneous. You propose several significant changes to the definitions. The Commissioners have no interest in modifying the definition of “family” because the Growth Board has already entered a Final Order approving the current definition. The Commissioners are not interested in modifying other definitions. We note that definitions should be definitions, not the location of regulatory standards. Because a guest house is considered integral to the main house, the restrictions on home occupation or cottage enterprises is not appropriate. Finally, we do not understand the rationale to limit size from 1000 square feet to 900 square feet.

CONCLUSION

We believe the public process has led to a fair ordinance regarding detached accessory dwelling units. The ordinance is consistent with the law and good public policy. We hope that all of the people involved in this matter will rally around a local solution.

Very truly yours,

Randall K. Gaylord
San Juan County Prosecutor

RKG/tb

c: Board of County Commissioners
Francine Shaw, Interim Director, Community Development and Planning