

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Dan Taylor	DJT	10-17-94	RECEIVED OCT 19 1994 WHATCOM COUNTY COUNCIL	10/25/94	Council
Division Head: Dan Taylor	DJT			11/8/94	Council
Dept. Head: Nate Brown	NJB	10/18/94			
Prosecutor:	KHE	10/18/94			
Purchasing/Budget:					
Executive:					

SUBJECT: An Ordinance to amend the Lynden Nooksack Valley Subarea Comprehensive Plan Map and the Official Whatcom County Zoning Map from RURAL FIVE ACRES (R5A) TO GENERAL COMMERCIAL (GC) for approximately 13 acres subject to a Concomitant Agreement.

ATTACHMENTS: Proposed Ordinance and Concomitant Agreement
 Agency Report with attached Staff Report
 Draft Planning Commission Minutes

SUMMARY STATEMENT: Please complete sections of box as appropriate & explain the item below.

Related County contract #: n/a	Should Clerk schedule a hearing? NO /X/ YES / / Requested date:
Amount budgeted for this item/project: \$ n/a	Is it (or will it be) within budget? YES / / NO / / (Please explain below) n/a
Budget line item number(s): n/a	

In June 1993, the Planning Commission first considered this rezone request. The staff originally recommended against the rezone and the Commissioners proposed a contract allowing storage uses in the rural area without wanting a rezone. The Prosecutor's Office considered this inappropriate. After discussion with staff, the applicants requested a text amendment to allow commercial storage in the Rural zone as an accessory use. After a public hearing on August 25, 1993, the Planning Commission recommended the text amendment as a conditional use and again proposed a contract to solve the particular problem of the applicant. This was again rejected by the Prosecutor's Office. On June 8, 1994, Planning staff again returned to the Commission and asked that the request be an outright Permitted Use in the Rural Chapter of Title 20. The Planning Commission, with four votes in favor, forwarded a recommendation to allow commercial storage as an administrative use in the Rural zone, with specific conditions enumerated. Council, rather than holding a hearing, remanded the request in the hope of getting a firmer decision from the Commission. On October 12, the Commissioners approved a contract rezone for the Storteboom property.

ORIGINATOR'S RECOMMENDED ACTION: The Director of Planning and Development Services recommends Council accept this recommendation of the Planning Commission and adopt the proposed ordinance.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

- 10/25/94: Council introduced
- 11/8/94: Council adopted the ordinance. 7-0.

Related File Numbers:

Ordinance or Resolution Number (this item only):

SPONSORED BY: Consent

PROPOSED BY: Planning

INTRODUCTION DATE: 10/25/94

ORDINANCE NO. 94-067

1
2 An Ordinance amending the Lynden Nooksack Valley Subarea Comprehensive Plan Map and
3 the Official Whatcom County Zoning Map from RURAL FIVE ACRES (R5A) TO
4 GENERAL COMMERCIAL (GC) for approximately 13 acres subject to a concomitant
5 agreement.

6
7 WHEREAS, a request was made for a comprehensive plan amendment and rezone
8 from Rural Five Acres to General Commercial for approximately 13 acres.

9
10 WHEREAS, pursuant to RCW 36.70.590, legal notice was published in the
11 Bellingham Herald on May 27, 1993; and

12
13 WHEREAS, a Determination of Non-significance had been issued on March 29, 1993
14 by the Responsible Deputy SEPA Official; and

15
16 WHEREAS, the Planning Commission held a public hearing on the proposal on June
17 9, 1993, and heard all testimony; and

18
19 WHEREAS, the Planning Department reviewed the request and prepared a staff
20 report, recommending denial of the comprehensive plan and map amendment and rezone
21 request unless it was subject to a concomitant agreement; and

22
23 WHEREAS, the Commission originally denied the request for a rezone but was
24 generally favorably disposed to the use; and

25
26 WHEREAS, after a number of permutations were explored to solve the problem, the
27 request was returned to the Commission to reconsider as a contract rezone; and

28
29 WHEREAS, the Planning Commission held a work session on October 12, 1994, to
30 reconsider the request, and after due deliberation made a determination that the application
31 be approved subject to the revised concomitant agreement with an additional modification to
32 item #10; and

33
34 WHEREAS, the Council held a public meeting on November 8, 1994, to consider this
35 matter and approved the Planning Commission recommendation including the language of the
36 concomitant agreement; and
37

1 WHEREAS, the Council has adopted the following Findings and Conclusions:
2

3 Findings
4

- 5 1. Tim Storteboom, represented by Jonathan K. Sitkin, requested a rezone for
6 approximately 13 acres from Rural Five Acres to General Commercial in the Hinote's
7 Corner area of the Lynden Nooksack Valley Subarea
8
- 9 2. The subject parcel is the reserve tract of a cluster short plat approved in 1992 that
10 designated the parcel as being "occupied by a single family-dwelling unit, five
11 accessory outbuildings, and eight agricultural worker housing units; has 0 developable
12 building sites remaining; and shall not be further divided in any manner except as
13 may be provided by WCC 20.36.320.3" which prohibits further division where a
14 privately initiated rezone has been obtained.
15
- 16 3. In 1992, the Hearing Examiner denied an application for a cottage industry
17 conditional use permit to legalize conversion of chicken coops to a storage business
18 previously made without permit approval. The denial was based on inconsistency
19 with the intended scale of cottage industry uses particularly when placed in the
20 context of the total use of the parcel and the surrounding area. The Examiner also
21 expressed some concern over appropriate use of a reserve tract in a cluster
22 subdivision.
23
- 24 4. The Lynden sandy loam soil on the site is a deep, well-drained soil used for hay,
25 pasture, cropland, and woodland. It is rated severely constrained for septic systems
26 due to rapid permeability and poor filtering capacity. When irrigated, it is prime
27 farmland and is one of the best soils in the county for growing red raspberries.
28 Native soils in the area of the residence, storage buildings and graveled drive, parking
29 and turnaround area have been modified. There are no wetlands or significant
30 drainage features that would constrain development.
31
- 32 5. No adverse impacts to surrounding land uses or transportation of services are
33 identified.
34
- 35 6. The 1986 Subarea Comprehensive Plan designated 15 acres above and beyond the
36 then current level of commercial development at Hinote's Corner to allow for future
37 commercial expansion. Research done for this staff report indicates that there are
38 actually 16 acres or more presently available for additional commercial development
39 in this area. Therefore, conditions supporting the 1986 Plan and zoning designation
40 of Rural have not changed to warrant the rezone request. The cluster short plat may
41 be looked upon as a changed condition, but such a change is anticipated by the 1986
42 Comprehensive Plan and does not warrant a commercial rezone.
43
- 44 7. The request does not correct a previously unknown informational error.

- 1 8. The request is not consistent with the goal of utilizing previously committed land
2 areas and existing facility investments before committing new areas for development.
3 It is also not consistent with the goal of providing adequate community and
4 neighborhood commercial facilities in appropriate locations while avoiding the
5 proliferation of unnecessary new commercial areas.
6
- 7 9. The proposed rezone is not consistent with the locational criteria for the General
8 Commercial designation of being provided with urban services including public sewer
9 and water, stormwater drainage, sheriff and fire protection; except that existing
10 concentrations of general commercial uses may be recognized based on adequate
11 levels of wastewater disposal, water and fire flow; and that the designation be
12 configured in concentrated and consolidated manner.
13
- 14 10. The request, however, reflects an existing use which fulfills a need in the area and
15 which has not created any off-site impacts.
16

17 **Conclusion**
18

19 A comprehensive plan amendment and contract rezone would provide an appropriate balance
20 among conflicting objectives.
21

22
23 NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:
24

25 Section 1. The Lynden Nooksack Valley Subarea comprehensive Plan Map and the
26 Official Whatcom County Zoning Map are hereby amended subject to a concomitant
27 agreement (Exhibit A) for parcel X050/Y150, Sec 4, Twn 31N, R3E.
28


29 Section 2. This amendment shall not become effective until and unless all parties have
30 signed the concomitant agreement attached as Exhibit A and the agreement has been recorded
31 in the Whatcom County Auditor's Office.
32

33 Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of
34 this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part
35 thereof other than the part so declared to be invalid.
36
37
38
39

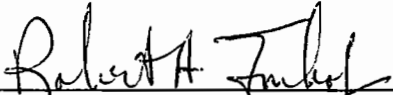
ADOPTED this 8th day of Nov., 1994.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:




Ramona Reeves, Council Clerk



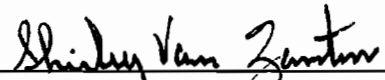
Robert A. Imhof, Chairman

APPROVED as to form & content:

Approved () Denied



Karen Frakes
Civil Deputy Prosecuting Attorney



Shirley Van Zanten, County Executive

Date: 11-9-94

**DENISE STORTEBOOM
CONCOMITANT AGREEMENT**

Agreement supporting zoning amendment for approximately fourteen (14) acres from Rural zone to General Commercial property immediately adjacent to the Hinotes Corner General Commercial zone.

THIS IS AN AGREEMENT made and entered into by the undersigned owner of a certain parcel of real property located in Whatcom County (hereinafter referred to as "**Owner**") and Whatcom County, a municipal corporation (hereinafter referred to as "**County**").

WITNESSETH:

I. WHEREAS, the undersigned party designated **Owner** is the owner of that certain parcel of real property (hereinafter referred to as "**Subject Property**") located in Whatcom County, which parcel is shown on a map and fully described in Exhibit A, attached hereto and incorporated by reference; and

II. WHEREAS, **Owner** has applied for a plan redesignation and zoning reclassification of the **Subject Property** from Rural-5 Acres to General Commercial, and the Planning Commission has recommended in favor of such reclassification with conditions; and

III. WHEREAS, **Owner** has voluntarily entered into this Concomitant Agreement in order to obtain approval of the **County** for her application for reclassification of the **Subject Property**.

DENISE STORTEBOOM
CONCOMITANT AGREEMENT

NOW, THEREFORE, in consideration of the council's enactment of an ordinance reclassifying the **Subject Property** from Rural-5 Acres to General Commercial, the **Owner** does hereby covenant and agree on behalf of herself, and her successors and assigns, as follows:

1. **Owner** agrees not to apply for permits for any land use, except commercial rental storage subject to the limitations set forth in further detail below, that would not be allowed within a Rural zone district, unless and until **County** further amends the underlying zoning of the **Subject Property**.

2. **Owner** agrees to comply with performance standards contained in Exhibit B, attached hereto and incorporated by reference.

3. **Owner** agrees that there shall be no expansion of this operation, except for the modification of a building to create single, separate storage lockers, which, in any event, shall not involve an increase in the bulk or dimensions of the preexisting agricultural building.

4. There shall be no additions or expansions or modifications of the three (3) accessory buildings used as commercial storage operations, unless provided for herein.

5. The commercial storage buildings shall be allowed to be repaired or maintained subject to the limitations herein.

6. In the event of a building's destruction due to peril, disaster, or other catastrophe, such as, but not limited to, wind storms, fire, or weather, then the **Owner** shall be allowed to rebuild the structure on the footprint of the preexisting building and

**DENISE STORTEBOOM
CONCOMITANT AGREEMENT**

in no event shall the repair or reconstruction result in a building larger in size, bulk, or dimension than the preexisting building prior to its loss or destruction.

7. All conditions, covenants, and/or restrictions of the Storteboom Short Plat, filed under Auditor's File No. _____, are incorporated by reference herein and shall have full force and effect under this agreement.

8. The natural tree buffer surrounding the accessory agricultural buildings and existing commercial storage operation shall not be removed.

This agreement shall constitute a covenant running with the land and shall be binding upon **Owner**, her heirs, successors, and assigns and shall be recorded at **Owner's** expense in the Whatcom County Auditor's Office.

Any amendments or modifications of this agreement shall be valid only if agreed upon by the Whatcom County Council following a public hearing and after being reduced to writing and recorded in the Whatcom County Auditor's Office.

Nothing in this agreement shall be construed to restrict the authority of the **County** to exercise its police powers nor to prevent the **County** from initiating a zoning change in accordance with applicable ordinances and regulations.

Executed by _____, this day of _____, 1994.
Denise Storteboom

**DENISE STORTEBOOM
CONCOMITANT AGREEMENT**

STATE OF WASHINGTON)
) ss.
County of Whatcom)

On this day personally appeared before me DENISE STORTEBOOM, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 1994.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

Executed by Whatcom County this _____ day of _____, 1994.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Robert Imhof, Chairperson

ATTEST:

Clerk of the Council

Shirley Van Zanten, County Executive

APPROVED AS TO FORM:

Karen Frakes
Civil Deputy Prosecuting Attorney

Date _____

**EXHIBIT B TO DENISE STORTEBOOM
CONCOMITANT AGREEMENT**

1. Commercial rental storage shall be located within no more than three (3) of the existing agricultural buildings.
2. The storage operation shall not expand beyond the footprint or dimensions of the existing agricultural buildings. Existing, mentioned herein, shall mean in existence for at least twenty (20) years.
3. The storage areas shall be located entirely within the structure.
4. Hours of operation shall be limited to 8 a.m. to 10 p.m., Monday through Saturday, except in emergencies.
5. There shall be no increase in paved or impervious surface area resulting from or in conjunction with the storage operation, unless necessary for complying with fire code or handicapped parking requirements.
6. All lighting shall be designed and installed to prevent the illumination of adjacent properties during business hours; however, security lighting may be permitted during non-business hours if it is designed to prevent the illumination of adjacent properties.
7. One non-illuminated sign, not to exceed four (4) square feet in size, mounted on the property.
8. Traffic generated from the storage operation is limited to the amount which may occur with other uses permitted in the Rural zone.
9. Adequate fire flow is provided by either an on-site or off-site source.
10. The storage operation shall be visually screened from adjacent properties using existing vegetation wherever possible and consistent with the buffering and landscaping requirements of the Supplementary Requirements (WCC 20.80.325 and .345).