

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Carl Batchelor	CB	8/14/95	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> RECEIVED AUG 30 1995 WHATCOM COUNTY COUNCIL </div>	9/5/95	Council Introduction
Division Head: Dan Taylor	DT	8/17/95		9/19/95	P & D / Council
Dept. Head: Nate Brown	NWB	8/25/95			
Prosecutor:	KNF	8/25/95			
Purchasing/Budget:					
Executive:		8/28/95			

SUBJECT: An Ordinance to amend the Lynden Nooksack Valley Subarea Comprehensive Plan Map and the Official Whatcom County Zoning Map from Agriculture (AG) to Rural Five Acres (RSA) subject to a concomitant agreement for approximately 31.65 acres.

ATTACHMENTS: Proposed Ordinance with 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 / / 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	

Originally recommended denial of the proposed Comprehensive Plan amendment based on the fact that it is highly productive prime agricultural land; there have been no changed conditions to support the change; and there is no public need for the proposed amendment. The Planning Commission found that changed zoning adjacent to the subject property constituted the requisite changed conditions and also discussed hearing testimony that the property had been two separate parcels in 1968 but later became joined as one legal lot of record.

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, subject to a concomitant agreement implementing the terms recommended by the Planning Commission.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

9/5/95: Council Introduction

~~9/14/95:~~

10/3/95: Adopted 6 - 1, Imhof opposed

Related File Numbers: 11-94:CZM

Ordinance or Resolution Number (this item only):

SPONSORED BY: Consent

PROPOSED BY: Carl Batchelor

INTRODUCTION DATE: 9/5/95

ORDINANCE NO. 95-049

AN ORDINANCE AMENDING THE LYNDEN NOOKSACK VALLEY SUBAREA
COMPREHENSIVE PLAN MAP AND THE OFFICIAL WHATCOM COUNTY ZONING MAP FROM
AGRICULTURE (AG) TO RURAL FIVE ACRES (R5A) FOR APPROXIMATELY 32.65 ACRES
SUBJECT TO A CONCOMITANT AGREEMENT

WHEREAS, the Daynor Nelson, Barnes Trust, represented by Lesa Starkenburg has requested that the Lynden Nooksack Valley Subarea Comprehensive Plan Map and the Official Whatcom County Zoning Map be amended from Agriculture (AG) to Rural Five Acres (R5A) for approximately 32.65 acres; and

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on July 20, 1995; and

WHEREAS, the Deputy SEPA Official issued a Determination of Nonsignificance on December 20, 1994 ; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on August 3, 1995 and considered all testimony; and

WHEREAS, the Council held a public meeting on September 19, 1995 to consider this matter and approved the Planning Commission recommendation including the language of the concomitant agreement; and

WHEREAS, the Council found the amendments in the best interest of the public health, safety, and welfare; and

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

FINDINGS

1. The property was designated Agriculture in the 1970 Comprehensive Plan and zoned Agriculture in 1979. The designations were reaffirmed with the adoption of the Lynden-Nooksack Valley Subarea Comprehensive Plan in 1986 and with the adoption of Interim Resource Lands Designations in 1992. Prior to 1987, the Agriculture zoning boundary was one half mile west of the subject property.
2. The property was placed in the Daynor Nelson Barnes Trust in 1992 which stipulates that upon Mr. Barnes' death the property be divided into two equal halves (contrary to zoning regulations) to be deeded individually to Darrell Barnes and his sister Carol Bauthues.
3. Topography of the site is fairly flat with the exception of a low swale associated with the Dakota

1 Creek drainage. Soils are 60% Lynden sandy loam, 0-3% slopes, Prime farmland (when
2 irrigated), capability class IIIs; 18% Laxton Loam, 0-3% slopes, Prime farmland, Capability
3 class IIw; 11% Puyallup fine sandy loam, 0-2% slopes, Prime farmland where protected from
4 flooding or not frequently flooded during the growing season, capability class IIw; and 11%
5 Lynden sandy loam, 3-8% slopes, Prime farmland where irrigated, capability class IIIe.
6

- 7 4. The property is in the Drayton Harbor watershed and is crossed by the South Fork of Dakota
8 Creek. The creek corridor is designated a 100-year floodplain. There are wetlands in the creek
9 corridor and at the north end of the property. The creek and associated wetlands are highly
10 productive habitat for spawning populations of chum and coho salmon, cutthroat and steelhead.
11
- 12 5. The property is presently used for agriculture with agricultural buildings and a single family
13 residence and is in Agriculture Open Space Taxation. Surrounding land uses include agriculture
14 as well as single family residences on smaller parcels both in the Agriculture zone and in the
15 adjacent Rural zone. There are numerous neighboring parcels in Agriculture Open Space
16 Taxation.
17
- 18 6. Domestic water and wastewater treatment are provided by individual wells and septic systems.
19
- 20 7. The subject property meets the locational criteria for the Rural Plan designation.
21
- 22 8. The 1987 adoption of the Birch Bay Blaine Subarea Comprehensive Plan in 1987, which rezoned
23 the property adjacent to the west of the subject property from Agriculture to Rural Five Acres
24 (R5A) constitutes sufficient changed conditions to meet normal rezoning criteria and the criteria
25 for amending the Lynden Nooksack Valley Subarea Comprehensive Plan.
26
- 27 9. If the property owner agrees to a contract with a deed restriction to not allow the property to be
28 further split into more than two pieces and to use the center line of Dakota Creek as the dividing
29 line between the pieces, then the proposed amendment is consistent with the Comprehensive Plan
30 goals of long term preservation of agricultural land and preventing conflicts with incompatible
31 uses.
32

33 CONCLUSIONS

34
35
36 The subject property meets the locational criteria for the Rural Plan designation. With the concomitant
37 agreement, the proposal does provide the mandated long term protection of agricultural resource lands of
38 long term commercial significance. The proposal is consistent with locally adopted, state mandated, and
39 generally utilized comprehensive plan amendment and rezone criteria.
40

41
42 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:

43
44 Section 1. The Lynden Nooksack Valley Subarea Comprehensive Plan Map and the Official Whatcom
45 County Zoning Map are hereby amended subject to a concomitant agreement (EXHIBIT A) from
46 Agriculture (AG) to Rural Five Acres (R5A) for approximately 32.65 acres (Assessor's Parcel Number
47 400219 048377).

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

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

ADOPTED this 3 day of October, 1995.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Marina Mollister
for Dana Brown-Davis, Clerk of the Council

Robert Imhof
Robert Imhof, Council Chair

APPROVED as to form

() Approved () Denied

Karen R. Fraker
Civil Deputy Prosecutor

Shirley Van Zanten, Executive

Date: _____

10-6-95-
I decline to
sign:
S. Van Zanten

*** Clerk's Note: The Executive declined to sign this ordinance on 10/6/95 because she disagrees with it, according to an informal, handwritten note initialed S. VanZanten, which states, "I decline to sign." Whatcom County Home Rule Charter Section 2.30 states, in part: "If the Executive does not either sign or veto and ordinance within ten (10) Days, Saturdays, Sundays, and holidays excepted, after presentation of the ordinance by the Council, it shall become law without the Executive's signature." this ordinance was adopted 10/3/95; therefore it takes effect 10/17/95

Dana Brown-Davis, Council Clerk . dated:

g:\nh\sig

**DAYNOR NELSON BARNES TRUST
CONCOMITANT AGREEMENT**

Agreement supporting amendments to the Comprehensive Plan Map and the Official Whatcom County Zoning Map from Agriculture (AG) to Rural Five Acres (R5A) for a parcel of approximately 32.65 acres (file #11-94:CZM).

THIS AGREEMENT made and entered into this ____ day of _____, 1995 by and between the Daynor Nelson Barnes Trust as the owner of a certain parcel of real property located in Whatcom County, Washington (hereinafter referred to as "**Owner**") and Whatcom County, a municipal corporation (hereinafter referred to as "**the 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 more fully described in the attachments to Ordinance #95-__ ; and

II. WHEREAS, The **Owner** applied for a comprehensive plan and zoning designation change to change the **Subject Property** classification from Agriculture to Rural 5 Acres.

III. WHEREAS, after a public hearing, the Whatcom County Planning Commission has recommended in favor of such reclassification with conditions; and

IV. WHEREAS, the **County** has authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby control the use and development of property within its jurisdiction; and

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

NOW THEREFORE, in consideration of the Whatcom County Council's enactment of an ordinance reclassifying the Subject Property from Agriculture to Rural 5 Acres, the **Owner** does hereby covenant and agree on their behalf and on behalf of their successors and assigns, as follows:

1. **Owner** agrees that the **Subject Property** will not be subdivided into more than two legal lots.

2. **Owner** further agrees that the centerline of Dakota Creek shall mark the line of any future division of the **Subject Property**.

This Agreement shall constitute a covenant running with the land and shall be binding on the **Owner**, their heirs, successors, and assigns and shall be recorded at **Owner's** expense in the Whatcom County Auditor's Office within five days of execution.

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 the applicable ordinances and regulations.

OWNER

Executed by _____ This _____ day of _____, 1995
Darrell Barnes - Trustee
on behalf of the Daynor Nelson Barnes Trust

STATE OF WASHINGTON)
County of Whatcom) ss.

On this day personally appeared before me DARRELL BARNES as TRUSTEE for the DAYNOR NELSON BARNES TRUST, to me known to be the individual described herein and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 1995.

NOTARY PUBLIC in and for the
State of Washington, residing at _____

EXECUTED BY WHATCOM COUNTY this _____ day of _____, 1995.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Robert A. Imhof
Robert A. Imhof, Chairperson

Shirley Van Zanten
Shirley Van Zanten, County Executive

ATTEST:

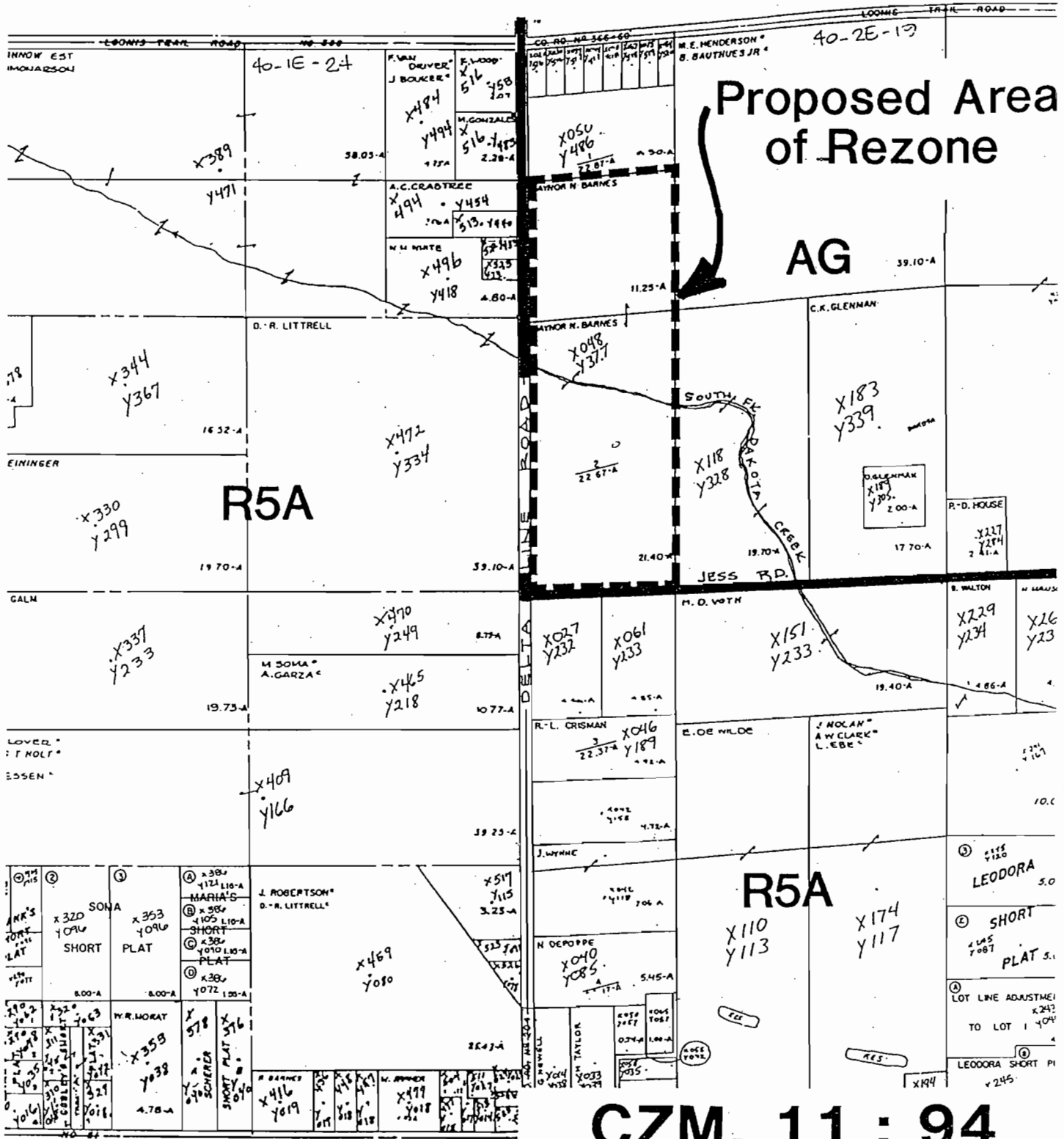
Marena Wallister
for Clerk of the Council

APPROVED AS TO FORM:

Kevin A. Fahn
Civil Deputy Prosecuting Attorney

Date 10-6-95

EXHIBIT "B"



CZM. 11 : 94
PROPOSED REZONE FROM
AG TO R5A
D. N. BARNES TRUST