

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned To:
Originator: County Council		11/06/95		11/14/95	Introduction
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:					

SUBJECT:

Amending Title 20 Regarding Plant Nurseries

ATTACHMENTS:

Ordinance

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

Related County Contract #:	Should clerk schedule a hearing? (Y/N) N	Requested Date:
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This ordinance would allow plant nurseries in the Urban Residential (UR) zone as a conditional use. A prior Planning Commission report recommended this change, but the UR zone was left out of the ordinance previously adopted by the Council. SEPA and hearings were held on the original proposal and do not need to be duplicated.

CLERK'S RECOMMENDED MOTION (for final action):

I move to approve the ordinance.

COUNCIL ACTION TAKEN:

1995-442-

11/14/95: Introduced

11/28/95: Adopted 7-0

Related File Numbers:

Ordinance or Resolution Number (this item only):

1 WHEREAS, it is now necessary for the County Council to take specific action to
2 include Plant Nurseries as a conditional use in the Urban Residential zone; and

3 WHEREAS, the Council adopts the following Findings and Conclusions:

4 Finding:

5 The worthiness of this issue has been previously, and specifically, recommended by the
6 Planning Commission and further action by the County Council on this issue does not
7 require a re-hearing by the Planning Commission.

8 Conclusion:

9 Properly conditioned, nurseries could be allowed in most residential or rural areas.

10 NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that
11 Title 20 be amended as described below:

12 20.20.163

13 Plant nurseries and greenhouses for storage, propagation and culture of plants,
14 including sales as an accessory use, provided:

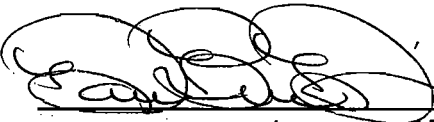
- 15 1. Must be located on a collector arterial or higher classified road.
- 16 2. Covered sales area and associated display areas must not exceed ten
17 percent of the total area of development.
- 18 3. There shall be fixed hours of operation.
- 19 4. Parking lot, indoor sales or other potential impacts related to
20 operations shall be buffered from neighbors.
- 21 5. Signage shall be aesthetically compatible with character of the
22 neighborhood.
- 23 6. All other criteria for conditional use permits must be met.
- 24 7. Outdoor storage of fertilizer is prohibited.
- 25 8. No aerial application of chemical products shall be allowed within
26 50 feet of dissimilar uses.
- 27 9. This type of activity will be prohibited in the Lake Whatcom
28 Watershed and Lummi Island and in other areas deemed to be
29 water quality sensitive, excluding retail nurseries operating chemical
30 free.

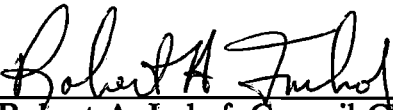
1 BE IT FURTHER ORDAINED, that adjudication of invalidity of any of the sections,
2 clauses, or provisions of this Ordinance shall not affect or impair the validity of the
3 Ordinance as a whole or any part thereof other than the part so declared to be invalid.

4 ADOPTED this 28 day of November, 1995.

5
6 ATTEST:


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

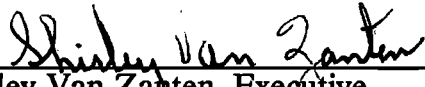
7 
8 Dana Brown-Davis, Council Clerk


Robert A. Imhof, Council Chair

9 APPROVED AS TO FORM:

Approved Denied

10 
11 Dan Gibson
12 Civil Deputy Prosecutor


Shirley Van Zanten, Executive

13 Date: 12-1-95

WHATCOM COUNTY PLANNING DEPARTMENT AGENCY REPORT

IN THE MATTER OF AMENDING TITLE 20 REGARDING PLANT)	
NURSERIES AND FOOD PROCESSING AND TITLE 21)	FINDINGS, REASONS
REGARDING PLAT APPROVALS)	AND MOTIONS
)	

WHEREAS, problems exist and future opportunities are needed in Title 20 regarding plant nurseries and food processing, and in Title 21 regarding plat approval time extentions; and

WHEREAS, plant nurseries are one of the anomalies that are treated differently in different zoning regulations; and

WHEREAS, Title 20 specifies food processing in the General Manufacturing zone and the Heavy Industrial zone, but does not allow it in the Light Industrial zone; and

WHEREAS, while the Light Impact Industrial zone does have a catch-all category to allow other uses similar to uses listed for the zone, it is difficult for an administrator to allow something that is specifically called out in two zones and yet not listed in the third industrial zone. In addition, the Light Impact Industrial zone does have a conditional use related to food (20.66.153) which specifically excludes processing activities; and

WHEREAS, the present time limit from preliminary to final plat approval in Title 21 is three years plus a one year extension which may be limiting to some developers in certain situations; and

WHEREAS, the present time limit does not provide for phasing which is a logical way to approach some subdivisions; and

WHEREAS, the concern in relaxing the time table from preliminary to final plat approval is not to go too far into the future as development standards and zoning requirements evolve and premature preliminary plats, which lock in final plats too long, could lead to obsolete land use patterns and practices; and

WHEREAS, at Council request, the Planning Commission considered amending Title 20 and Title 21; and

WHEREAS, Determination of Non-Significance was issued by the Deputy SEPA Official on July 27, 1994;

WHEREAS, pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald Saturday, July 16, 1994; and

WHEREAS, the Planning Commission held a public hearing on July 27, 1994 and considered testimony.

NOW THEREFORE BE IT RESOLVED:

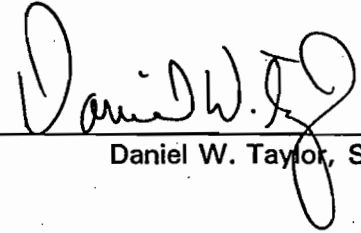
FINDINGS OF FACT AND REASONS FOR ACTION

1. A quorum of Commission members was present during the hearing.
2. The statutory requirement was met regarding legal notice.

- 3. The Planning Commission concurred with the FINDINGS AND CONCLUSIONS presented in the Staff Report, dated July 20, 1994. The RECOMMENDATION, however, was modified and the request was approved.

WHATCOM COUNTY PLANNING COMMISSION

David K. Simpson, Chairman



Daniel W. Taylor, Secretary

Date: _____

Commissioners present at July 27, 1994 hearing:

Dave Simpson, Leslie Hamilton, Phil Urso, Dave Ernst, Elaine McRory, Clare Fogelsong, and Jerry Landcastle.

Vote: Unanimous Ayes

Prepared by: Dan Taylor

WHATCOM COUNTY PLANNING DEPARTMENT STAFF REPORT

APPLICANT: Whatcom County Planning

REQUEST

The request is 1) to amend Title 20, the official Whatcom County Zoning Code, to allow nurseries as a conditional use in residential zones and to allow food processing as an outright permitted use in the Light Impact Industrial zone; and 2) to amend Title 21, the Whatcom County Subdivision Regulations to extend the time period between preliminary plat approval and final plat approval.

STATUTORY REQUIREMENTS

Pursuant to RCW 36.70.590 legal notice was published in the Bellingham Herald on Saturday, July 16, 1994, and a public hearing will be held on July 27, 1994. A SEPA Determination is pending.

REGULATORY EFFECTS OF THE REQUEST

Nurseries, including some retail sales, would be allowed in residential zones subject to conditions. Food processing operations would be allowed in Light Industry zones as they are presently allowed in the General Manufacturing and Heavy Impact Industrial zones. The change to the subdivision regulations would allow developers additional time between preliminary plat approval and final approval beyond the three years, and one year extension presently allowed. A proposal submitted to Council and staff by Chet Lackey would allow up to ten years, total, if there were conditions beyond the applicant's control or if the plat were developed in phases.

BACKGROUND

Each of these proposed changes results from one or more problems that have arisen lately. At Council request, these are being considered to possibly correct existing problems and to provide future opportunity.

ANALYSIS

Nurseries

Plant nurseries are one of the anomalies that are treated differently in different zoning regulations. Many communities recognize them as providing open space relief in otherwise conventional residential neighborhoods. Other communities focus on their

commercial aspect and deem them inappropriate in residential areas. Both views have validity. Nurseries by their nature, generally, have a high rate of outdoor growing or plant storage area relative to indoor sales area or parking lots. They are, however, commercial uses which generate vehicular trips. They also have the potential to utilize fertilizers, herbicides, and pesticides at a scale that may not be in keeping with surrounding residential use. On the other hand, to the extent chemicals are utilized, they are applied by licensed applicators and, therefore, may be more controlled than might be the case with casual residential use.

By allowing nurseries as conditional uses and setting requirements on their locations and the size of their covered retail sales, their positive attributes can contribute to residential neighborhoods while the potential for negative impacts can be diminished.

Food Processing in Light Impact Industrial

Food processing includes a broad spectrum of uses with a wide range of impacts with the only commonality being an end product that is some type of food. The zoning code specifies food processing in the General Manufacturing zone and the Heavy Industrial zone, but does not allow it in the Light Industrial zone. While the Light Impact Industrial zone does have a catch-all category to allow other uses similar to uses listed for the zone, it is difficult for an administrator to allow something that is specifically called out in two zones and yet not listed in the third industrial zone. In addition, the Light Impact Industrial zone does have a conditional use related to food (20.66.153) which specifically excludes processing activities.

In trying to understand the legislative intent, in not allowing food processing in the LII zone, one has to conclude that food processing in the past conjured the image of intense industrial uses. Canneries, packing plants, and other historical industrial uses in this category would have included large volumes of waste water, odors, solid waste disposal needs, etc. There may still be a demand for these uses. The present requests, however, which generated the need for review of the legislation, have been much more benign and we also have a number of positive examples including Granny's Muffins in Cordata and Darma Juice in Fairhaven. The difficulty is in making the judgement on the amount of impact of any given use. In checking with several jurisdictions, the only distinctions made seem to be to limit the obviously potentially obnoxious uses based primarily on odor, it seems, such as fat rendering, breweries, wineries, and vinegar, sausage, pickles, and saurkraut manufacturing, or fish processing in general.

Because Whatcom County has no Light Impact Industrial areas on the waterfront, where fish processing might be desirable. Therefore if fish and meat processing are precluded, most potential problems are eliminated without creating any major loss of opportunity.

Extension of time between preliminary and final plat approval.

The present limit of three years plus a one year extension may be limiting to some developers in certain situations. It certainly does not provide for phasing which is a logical way to approach some subdivisions. In relaxing the time table, the concern is not to go too far into the future as development standards and zoning requirements evolve and premature preliminary plats, which lock in final plats too long, could lead to obsolete land use patterns and practices. Without a firm idea of what is reasonable or what seems

too much, the request to go up to ten years on a discretionary basis or with a phasing proposal seems excessive. In fact, there is a question of whether four years is not adequate if phasing is not involved.

FINDINGS

- 1) There have been several problems which have arisen lately which might be helped with modifications to existing regulations.
- 2) There appears to be a market for plant nurseries in residential and the rural zones, but these are not presently allowed in any of the three zones.
- 3) Nurseries have some attributes which make them desirable in residential zones including large open areas and greenery.
- 4) Locating nurseries in residential zones has the potential to reduce or shorten vehicular trips.
- 5) Plant nurseries can create a number of problems including traffic generation, noise, odor, and use of chemicals.
- 6) Most of the negative aspects of nurseries can be dealt with under the proper conditions.
- 7) Food processing is not addressed in the Light Impact Industrial zone, except to be specifically excluded as a conditional use, whereas it is specifically called out in the General Manufacturing zone and Heavy Impact Industrial zone.
- 8) There are a wide range of uses under the rubric of food processing, many of which are benign enough to fit in the Light Impact Industrial zone or lower intensity zones.
- 9) The difficulty lies in sorting out what use would appropriately go where. A number of ways exist to handle this which eventually come down to a performance standard judgement.
- 10) The subdivision regulations allow three years between preliminary plat approval and final plat approval with the possibility of a one year extension.
- 11) This can be viewed as ample time or exceedingly short depending on one's perspective and external conditions.
- 12) The notion of phasing is not addressed in the time requirements.

CONCLUSIONS

Plant Nurseries

Properly conditioned, nurseries could be allowed in most residential or rural areas. The UR zones, however, are not considered appropriate because of their densities and land values.

Food Processing

Food processing in general is appropriate in Light Impact Industrial zones. Applying performance standards as necessary and eliminating meat and fish processing eliminates potential problems.

Extending Plat Approval

Allowing for phasing in logical units with a time period of up to six years would provide ample flexibility for subdivision developers while leaving a reasonable end date for residents of the area for changed conditions if the plat does not get finalized within that time period.

RECOMMENDATION

1. Amend Title 20 as follows:

- Amend Chapters 20.32, 20.34, and 20.36 to allow plant nurseries and greenhouses for storage, propagation and culture of plants including sales as an accessory use.

20.32.163

20.34.163

20.36.174

1. Must be located on a collector arterial or higher classified road.
2. Covered sales area and associated display areas must not exceed ten percent of the total area of development.
3. There shall be fixed hours of operation.
4. Parking lot, indoor sales or other potential impacts related to operations shall be buffered from neighbors.
5. Signage shall be aesthetically compatible with character of the neighborhood.
6. All other criteria for conditional use permits must be met.
7. Outdoor storage of fertilizer is prohibited.
8. No aerosol application of chemical products shall be allowed within 50 feet of dissimilar uses.

- Amend Chapter 20.60 as follows:

20.66.051

The Manufacturing and processing of food of a nature that meets the purpose and performance standards of this district excluding meat and fish products.

Re-number existing list

20.66.153

~~Collection, transfer, repacking, cutting, grading and similar nonprocessing activities for animal, dairy, fruit, vegetable, seafood, bakery and beverage products.~~

2. Amend Section 21.20.110 of the Whatcom County Subdivision Regulations:

21.20.110 Lapse of Approval and Time Extensions

~~Approval of a preliminary plat shall become invalid unless the final plat is submitted in proper form for final approval within 36 months of the date of preliminary plat approval. An applicant who files a written request with the Whatcom County Council at least 30 days before the expiration of this three year period shall be granted one one year extension upon a showing that the applicant has attempted in good faith to submit the final plat with the three year period.~~

1. Approval of a preliminary plat shall become invalid unless a final plat is submitted in proper form for final plat approval, within three (3) years of the date of preliminary plat approval. This expiration date may be extended as follows:

A. An applicant who files written request with the Whatcom County Council prior to expiration of the three (3) year expiration period shall be granted a one (1) year extension upon showing that the applicant has attempted in good faith to complete the requirements necessary for submittal of a final plat within one (1) year from the date of preliminary plat approval.

B. Applicants may develop subdivisions in phases. These phases shall be logical units of no less than ten (10) lots which are approved as part of the preliminary plat approval. The final plat for the first phase must be approved within the time set forth above. Final plat approval for each subsequent phase must be within two (2) years of the final plat approval of the previous phase with the possibility of a one-year extension. However, in no case will final plat approval for the entire subdivision exceed six (6) years from the original preliminary plat approval.

RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION

Special Meeting

July 27, 1994

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CALL TO ORDER The meeting was called to order by Chairperson, David Simpson, at 1:40 P.M. The meeting was held in Cooperative Extension Service large meeting room, 1000 North Forest, Bellingham, Washington.

ROLL CALL PRESENT: Dave Ernst, Leslie Hamilton, Elaine McRory, Phil Urso, Clare Fogelsong, Jerry Landcastle, and David Simpson

STAFF PRESENT Dan Taylor and Carole Magner

Approval of Minutes was postponed.

1. File #21-94:ZT Text Amendments: Plant Nurseries/Food Processing/Minimum Lot Size/Plat Approvals. Taylor presented staff report, beginning with food processing in LII. Staff is recommending approval of food processing in LII, excluding meat and fish processing.

David Bell, Chair Fourth Corner Economic Development Group, who testified that he has been working with the granola project that has a potential location in LII. The company requires a minimum of five acres. Minimum impact facility. Materials used in product are organically grown and nothing is stored outside. Minimal dust inside and out. One noisy machine, but it does not translate through to the office area. Bell is very positive and the company feels good about locating in area. Bell would like to see maximum flexibility in the text, but would not want to see standard that would go against the integrity of the area.

Bob Anderson, 203 West Holly, Bellingham, representing John and Cathy Olsen owners of site on Grandview Road. He was surprised to see that granola processing plant would be excluded from LII. This language is fine. This fairly benign manufacturing would not interfere with critical area. Olsens' support the text amendment.

Ernst moved, Fogelsong seconded to accept staff's recommendation, adding "excluding primary processing" before "meat and fish products. Motion Carried unanimously.

Subdivision amendment: Staff recommends four year extension. In the case of phasing, final plat approval for each subsequent phase must be within two years of the final plat approval of the previous phase with the possibility of a one-year extension.

Jack Swanson, Attorney, 103 East Holly, Bellingham, representing McCloud Road/Northern Heights project developers. He submitted Exhibit 1, "Proposed Amendment to Whatcom County Code, Section 21.210.110." A developer needs to have guarantee that phased projects will be allowed the necessary ability to extend plat approval. Health and safety regs are not "grandfathered;" thus, regulations cannot be avoided even if there are time lapses.

Bill Florea, Whatcom County Land Use Division. He stands with staff recommendation. Staff started with the proposal submitted by Swanson and revised it. The difference between the two that he doesn't like is that the ten year planning cycle is too long ... standards change, zoning may change, entire comp plan could change. Ten lots seem like a reasonable size to staff.

Nate Brown, Director Planning and Development Service. There needs to be a minimum lot size with established time for phasing the project. Tweed Twenty has inadequate storm drainage regulations and exemplifies the County not being in a position to tweak the project as time and regulations have changed.

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WHATCOM COUNTY PLANNING COMMISSION

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Moved by McRory to accept staff recommendation. No second.

Moved by Simpson, seconded by Landcastle to approve proposal submitted by Swanson with the proviso that a phase consist of at least five lots.

Fogelsong expressed concern about (#2) ... Swanson mentioned that two projects would be effected with the retroactivity. These two projects brought this proposal forward (Lincoln Green and Northern Heights).

Simpson offered to amend his motion, adding "active" after any to #2. It was decided that Commission will leave it and if there are more than two projects, staff will return with info before this goes to Council. Brown added, however, this benefits two individual projects but how does the Commission know that other projects didn't die.

Call for question ... motion failed.

Ernst has mixed feelings about accommodating the super large developers of the county.

Simpson suggested letting the Council decide about the extension ... if it is ten years, or six years, or two years.

Brown would recommend for time extension: Ten year requirement would be acceptable if County can be comfortable with the phased review. Taylor thinks Swanson's proposal covers issues.

Moved by Simpson to reconsider his motion; seconded by Landcastle.

Ernst suggested modifying Exhibit 1, B: six years will be "three years, up to a maximum of six years" from the date of preliminary plat approval. Brown explained that staff has a problem with the word "may" in B ... we do not have the assurance there will be close examination of the extensions ... may will be changed to "shall." (C) will be "three years" instead of two years.

Simpson asked to add to (C): "Such phases shall be conditioned upon compliance with any Whatcom County development standards in effect as of the date of application for the extension of the next phase.)"

Definition will read: "A phased subdivision is any subdivision consisting of at least five lots intended for phased development where the applicant intends to develop the subdivision in stages, with each stage receiving final plat approval as completed. It will appear in Definition Section of Title 20 and Title 21.

Fogelsong moved to exclude paragraph 2 from Simpson's motion. Fogelsong and Brown are concerned about give special consideration to two projects ... item (2). This amendment to Simpson's motion failed.

Motion as amended was approved unanimously.

Nurseries

Kent's Nursery on Northwest Road ... Barbara Brenner requested review. Staff is proposing in Rural and Rural Residential and Rural Residential Island, but not in Urban Residential zone.

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Accessory Uses presently must be grown on the site.

Moved by Fogelsong and seconded by Ernst to accept staff recommendation. Landcastle thinks they should remain in UR until zone converts to urban uses. Fogelsong and Ernst agreed to Landcastle's request. Motion carried.

Simpson would like staff to review minimum lot size ... smaller than five acres must take into account sewer easements and access easements ... can't build on ingress and egress but can develop over sewer easements. Simpson would like staff to return with language that addresses this. Brown explained that the Commission needs to understand staff time is not available now because it is taken up by the tight timeline of the comp plan adoption process.

The Commissioners requested staff include this as a future agenda item so public has an opportunity to respond if this is a problem or not ... staff says there's not a problem.

Bob Anderson explained that there are situations of record where minimum buildable area and minimum area of zoning code lot size when ... Simpson moved for staff to prepare definition buildable minimum size to zoning minimum size that are separated definitions in Title 20 and Title 21. Motion carried.