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WHATCOM COUNTY COUNCIL  
**Planning and Development Committee**

November 27, 2001

The meeting was called to order at 3:05 p.m. by Committee Chair Dan McShane in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Also Present:  
Connie Hoag  
Sam Crawford

Absent:  
None

**COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

**1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, SECTIONS 20.71.400 – BUILDING SETBACK/BUFFER AREAS AND 20.80.210 – MINIMUM SETBACKS TO ADDRESS BUILDING SETBACKS IN THE WATER RESOURCE PROTECTION OVERLAY DISTRICT (AB2001-370)**

Amy Pederson, Planner I, stated this ordinance makes minor amendments suggested by the Land Use Division of the Planning and Development Department for clarification and administrative ease. Council packet page 203 shows the proposed amendments. They propose to strike language from Whatcom County Code 20.71.401, referring to the urban residential, mixed use (UR-MX) zone, which doesn't exist in the watershed. The table in 20.80.210 is where administrators go to, to determine setbacks. The problem is that the water resource protection overlay (WRPO) district is in a different chapter. There are reduced zoning setbacks that weren't reflected in this table. The amendment incorporated those setbacks into this table.

Hoag asked the rationale for the overhang extending three feet instead of six feet in the WRPO.

Sylvia Goodwin, Planning Division Manager, stated the intent is to decrease the amount of impervious surfaces. One could have a front porch overhang, but the footprint of the house must be smaller.

McShane moved to recommend approval.

Motion carried unanimously.

**2. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE TO EXCLUDE SUBMERGED AQUATIC LANDS FROM PARCEL AREA CALCULATIONS FOR IMPERVIOUS SURFACE, GROSS DENSITY, OPEN SPACE, MINIMUM LOT SIZE AND LOT COVERAGE (AB200-371)**

1 Amy Pederson, Planner I, stated sections of the code pertain to open space,  
2 and say that submerged lands and tidelands are not included in open space  
3 calculations. However, they are not addressed in allowable and impervious surface  
4 restrictions for lot coverage or gross density. This amendment makes those  
5 sections consistent with the open space regulations.  
6

7 Crawford asked if this was the issue that the Planning Commission changed.  
8 Pederson stated the Planning Commission wanted to identify what area they will  
9 use to delineate that water area. One already has to identify the ordinary high  
10 water mark when a shoreline permit comes in. That was a logical piece of language  
11 to add.  
12

13 Crawford asked the difference between Council packet pages 223 and 227.  
14

15 Hoag stated the Planning Commission worked on these as two issues, and  
16 the staff combined them into one issue.  
17

18 Hoag referenced item six on Council packet page 224, exhibit A. This  
19 language change also deleted lands of 20 percent or more, which was referred to  
20 earlier in the document. Pederson stated the Planning Commission discussed it.  
21 The Planning Commission opted to delete it. Item six was reconsidered at a  
22 different Planning Commission meeting, so that discussion is not included in the  
23 Council's packet. The debate was about whether or not they should include steep  
24 slopes that aren't buildable, in addition to the water areas. The rest of the text  
25 amendments pertain only to tidelands and water areas. Lands of 20 percent or  
26 more are not specifically permitted in the zone districts. There aren't any districts  
27 that specifically allow it.  
28

29 Crawford asked the difference between Council packet pages 223 and 227.  
30 Pederson stated they are the same.  
31

32 McShane moved to recommend approval.  
33

34 Crawford questioned what Wiser Lake has to do with it. Pederson stated that  
35 by amending the countywide definitions, it is not specific to Lake Samish and Lake  
36 Whatcom anymore. At this point, this issue is countywide. It originated as a  
37 problem with the WRPO.  
38

39 Crawford stated he was concerned that isn't clear to the public.  
40

41 Hoag stated that is why staff divided these into two ordinances. One is  
42 specific to the WRPO and the other is countywide. She didn't know why anyone  
43 would object to this.  
44

45 Crawford asked what other codes require open space that affect the footprint  
46 of a house.  
47

1 Sylvia Goodwin, Planning Division Manager, stated it wouldn't be about lot  
2 coverage. It would affect someone who might want to do a new subdivision in an  
3 area. The calculation of the amount of allowable land has, in the past, included  
4 land in the water, which would allow more parcels to be developed on a smaller  
5 piece of land. That has been done before. If the minimum lot size is 8,000 square  
6 feet, for example, and there isn't enough land to fit the number of lots without  
7 going into the water, then the owner would have to reduce the number of lots.  
8 There are quite a few areas, especially in Lake Whatcom, where the actual land  
9 area is half of what the parcel says it is.

10  
11 Crawford asked where properties fall within the jurisdiction of Shoreline  
12 Management Program. Pederson stated the program applies to all marine  
13 shorelines, lakes, and certain sized streams. Not all parcels own submerged land or  
14 tideland. Some parcels actually stop at the waterline.

15  
16 Crawford asked if properties on the Nooksack River go into the river.  
17 Pederson stated they do.

18  
19 Goodwin stated most of the residential zones have language regarding lot  
20 coverage, and say that buildings shall not cover 35 percent or 2,500 square feet,  
21 whichever is greater of the total area.

22  
23 Hoag asked if there is anyplace countywide where the County does not  
24 specifically permit lands that include lands of a 20 percent slope or greater in the  
25 gross density calculation. Pederson stated none of the zone districts specifically say  
26 how lands of 20 percent or more, tidelands, and water areas can be used. When  
27 calculating acreage, a potential subdivision cannot include in the calculation any  
28 steep slopes.

29  
30 Hoag asked if it applies to an individual owner, or only to a subdivision.  
31 Pederson stated it wouldn't be an issue for one property owner not planning to  
32 subdivide.

33  
34 Motion carried unanimously.

35  
36 **3. ORDINANCE AMENDING ORDINANCE 2000-014 TO EXTEND THE**  
37 **PROVISIONAL SHORT TERM PLANNING AREA FOR THE DRAYTON**  
38 **HARBOR AREA OF THE BLAINE URBAN GROWTH AREA FOR AN**  
39 **ADDITIONAL TWO YEARS AS PROVIDED IN ORDINANCE 99-071**  
40 **(AB2001-373)**

41  
42 Sylvia Goodwin, Planning Division Manager, stated the County Council gave  
43 the property owners two years to look into the feasibility of sewer, and allowed a  
44 two-year extension if there has been progress. There has been progress. The  
45 holdup is with the City of Blaine.

46  
47 Hoag asked if the County Council could make the area a short-term planning  
48 area again when the City of Blaine is ready. Goodwin stated citizens have

1 expectations about being able to develop their property. They haven't gone  
2 forward in doing their own engineering because they think they can tie in with the  
3 City of Blaine. If it is not feasible, then they won't be able to put sewer in. If it is  
4 feasible, the City will put the line through there and it doesn't hurt having it a  
5 short-term planning area because nothing is going to happen meanwhile.

6  
7 Hoag stated a number of people were going to be forced to be included.  
8 Goodwin stated most of those people were excluded from the short-term planning  
9 area.

10  
11 Hoag stated she also heard that the cost is more than anticipated. Goodwin  
12 stated they don't know what the cost is, because they don't know what the City will  
13 do. If the City puts in a regional line to Birch Bay, the cost will be very affordable.  
14 If the City doesn't, the cost will be cost-prohibitive, and a local improvement district  
15 (LID) probably won't go.

16  
17 Crawford moved to recommend approval.

18  
19 Motion failed 1-2 with Crawford in favor.

20  
21 Goodwin stated staff opted to not send this back to the Planning Commission.  
22 The ordinance said it could be extended if there was progress, and there has been  
23 progress. Staff didn't want to hold it up in the Planning Commission.

24  
25 **4. RESOLUTION ADOPTING RECOMMENDATIONS FOR OPEN**  
26 **SPACE/OPEN SPACE, OPEN SPACE/FARM AND AGRICULTURE**  
27 **CONSERVATION AND OPEN SPACE TIMBER APPLICATIONS (AB2001-**  
28 **389)**

29  
30 Elizabeth Olsen, Planner II, stated she was available for questions.

31  
32 McShane moved to recommend approval of the Ben Nydam Open  
33 Space/Farm and Agriculture Conservation application on Council packet page 271.

34  
35 Motion carried unanimously.

36  
37 Olsen stated Forster put in for his own parcel of land that has no  
38 qualifications. It is not formally designated as agriculture, it is not being used for  
39 agriculture, and there are no prime soils. The land around it is being sold for rural,  
40 one dwelling unit per five acres (R5A) lots. The recommendation is for denial.

41  
42 Hoag questioned whether this is really a transfer from Open  
43 Space/Agriculture. Olsen stated that when properties were put into the Open  
44 Space/Agriculture designation in the early 1970's, those properties did not have to  
45 have prime agricultural soils. Generally speaking, the owner was getting some sort  
46 of income from the land that could cover the basic costs. This proposal is to go  
47 from the Open Space/Agriculture to Open Space/Farm and Agriculture  
48 Conservation.

1  
2 Hoag questioned whether 35 percent of the lot has prime agricultural soils.  
3 Olsen stated it does, however it is not the best prime quality soil. There is still a  
4 high water level and seasonal ponds.  
5

6 Crawford moved to recommend accepting the Planning Commission  
7 recommendation to deny the Roy and Helen Forster Open Space/Farm and  
8 Agriculture Conservation application on Council packet page 273.  
9

10 Motion carried unanimously.  
11

12 Olsen stated each of the three parcels on the next application are for sale as  
13 a residential lot. They are totally wooded, and there is nothing in the way of  
14 benefits that can be received from them. The public benefit rating system was not  
15 enough to give sufficient points for approval. The recommendation is for denial.  
16

17 Hoag moved to recommend accepting the Planning Commission  
18 recommendation for denial of the Helen and Roy Forster Open Space/Open Space  
19 applications for three parcels on Council packet page 275.  
20

21 Motion carried unanimously.  
22

23 Crawford moved to recommend accepting the Planning Commission  
24 recommendation for approval of the Whatcom Land Trust Open Space/Open Space  
25 application on Council packet page 278, for 71 acres on the Rutsatz Road.  
26

27 Motion carried unanimously.  
28

29 Olsen stated the second application from the Whatcom Land Trust is on the  
30 North Fork Road. It is 394.96 acres. The recommendation is for approval.  
31

32 Hoag questioned whether properties designated Open Space/Open Space  
33 have to provide a public benefit, and how the Whatcom Land Trust is providing that  
34 benefit. Olsen stated this property includes the Racehorse Creek delta fan, and the  
35 entire frontage on the north fork of the Nooksack River is salmon habitat and eagle  
36 habitat. The access to the actual north fork of the river is difficult. People can go  
37 into the area.  
38

39 Hoag questioned whether the point of changing the designation from  
40 Classified Forest to Open Space/Open Space is that the Land Trust will not log the  
41 property, so they want a lower tax classification. Olsen stated that is correct. They  
42 also want to monitor the buffers along the banks of the Nooksack River for salmon  
43 habitat and for eagle nesting trees and perch trees. The Land Trust hopes to  
44 provide access to the property on their other application on Council packet page  
45 278. There is a herd of elk that winter in that area. The Land Trust hopes to  
46 provide reasonable access without disturbing the wildlife.  
47

1 McShane to recommend accepting the Planning Commission recommendation  
2 for approval of the Whatcom Land Trust Open Space/Open Space application on  
3 Council packet page 280.

4  
5 Motion carried unanimously.  
6

7 Olsen stated the Carter application is on Council packet page 282. It is in the  
8 North Ferndale area. It is a wide, private road. The owners are enthusiastic about  
9 providing public access to the property. They have already submitted their public  
10 access statement.

11  
12 *(Clerk's Note: End of tape one, side A.)*  
13

14 McShane moved to recommend approving the Planning Commission  
15 recommendation for approval of the William and Teri Carter Open Space/Open  
16 Space application on Council packet page 282.

17  
18 Motion carried unanimously.  
19

20 Olsen stated the MaryAnn Burk Carver application is on Council packet page  
21 286. She and her forebears had much acreage. A portion of the area designated  
22 Open Space/Timber is mainly a pond and a building site to the east of the pond.  
23 Because of that, the staff has put a no access necessary requirement on the area.  
24 It provides prime habitat for species on the pond, with a 100-foot buffer. The  
25 recommendation is for approval.

26  
27 Hoag asked what kind of species are there so that it should be closed to  
28 public access. Olsen stated it is a natural pond in its natural setting. Nothing has  
29 been done artificially. The Revised Code of Washington (RCW) says there is no  
30 need to have public access to it. In this case, she strongly recommends that there  
31 be no public access. The property is at the end of a long private lane.  
32

33 Crawford asked if there is a management plan. Olsen stated there is no  
34 timber to manage. In this case, public access would be more of a hindrance than a  
35 benefit to the public.  
36

37 McShane moved to recommend approving the Planning Commission  
38 recommendation for approval of the MaryAnn Burk Carver Open Space/Open Space  
39 application on Council packet page 286. It still meets the score, even if the no  
40 public access provision is removed.  
41

42 Crawford questioned why no points were given for enhanced scenic  
43 resources. Olsen stated the parcel is buried in the woods. One of the reasons that  
44 the owner is taking the property out of the Open Space/Timber classification is  
45 because there is no commercial timber. To save the life of the pond, there is a  
46 buffer, but it is not merchantable timber.  
47

48 Motion carried unanimously.

1  
2 Olsen stated the Kim and Diane Scott applications for Open Space/Timber  
3 are on Council packet page 288 through 299. Until the owner segregates the lots,  
4 the designation cannot be recorded. It is up to the owner to segregate the lots. If  
5 he doesn't segregate the land and record each individual lot, then the owner will  
6 not be able to continue on with the Open Space/Timber application for each lot.  
7 Once segregated, each parcel will be recorded with it's own acreage and points for  
8 the Open Space/Timber qualifications.  
9

10 McShane stated there will be six Open Space/Timber lots that are five acres.  
11 Olsen stated that is correct.  
12

13 Crawford questioned whether the owner has thirty acres in one parcel. Olsen  
14 stated the owner has forty acres.  
15

16 Crawford stated this is a forty acre tract with no subdivision. The owner is  
17 saying that he wants to subdivide the parcel. Olsen stated he is transferring the  
18 designation from Designated Forestry to Open Space/Timber for each of the lots.  
19

20 Hoag stated the six lots have separate parcel numbers. Olsen stated the  
21 parcel is in the process of being subdivided. People are often coming forward to do  
22 an application for Open Space while also segregating the parcel. A parcel  
23 designated Classified Forestry has to be at least twenty acres. When the parcel is  
24 subdivided, it could be classified as Open Space/Timber. This is the only way to  
25 change the classification. The owner wants to give each family member a parcel.  
26

27 Crawford asked the zoning. Olsen stated the zoning is R5A.  
28

29 Crawford asked the purpose of a subdivision of forestry land, other than  
30 giving equal parts to the heirs. He assumed that the intent of subdividing is to  
31 ultimately develop it. Olsen stated the heirs don't have to develop the property.  
32 However, they can build a house. They would need to remove a nominal one acre  
33 for the building site. More than five acres would remain in Open Space/Timber.  
34 The minimum lot size for Open Space/Timber is five acres. The owner wants to  
35 keep up with a management and stewardship program for the trees in that area.  
36

37 Hoag moved to recommend approving the Planning Commission  
38 recommendation for approval of the six Kim and Diane Scott Open Space/Timber  
39 applications on Council packet pages 288 through 299. She doesn't like the forest  
40 plan to clear cut, given those slopes and that elevation in the Lake Whatcom  
41 watershed. Olsen stated the owner must replant.  
42

43 McShane stated parcels one, two, and three are pretty flat. The owner might  
44 have a little trouble with parcels four, five, and six.  
45

46 Crawford stated it is weird that there is a harvest plan for a clear cut, yet the  
47 owner testified that he has no interest in logging his property.  
48

1 McShane stated they can't force people to cut their trees. The owner can still  
2 have a harvest plan and wait for the right time to cut, which may be many years  
3 away.

4  
5 Olsen stated the owner will have to replant trees.

6  
7 Hoag stated that doesn't do anything for the erosion the first few years.

8  
9 McShane stated Councilmember Hoag presupposes erosion from a timber  
10 harvest. That is not always the case.

11  
12 Hoag stated it is on a clear cut.

13  
14 McShane stated it is not.

15  
16 Motion carried unanimously.

17  
18 Olsen stated the Planning Commission tabled the Victoria Luhrs Open  
19 Space/Open Space application. It might be tabled again.

20  
21  
22 **ADJOURN**

23  
24 The meeting adjourned at 4:08 p.m.

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28 \_\_\_\_\_  
Jill Nixon, Minutes Transcription

29  
30  
31 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

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36  
37 \_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_

Dan McShane, Committee Chair