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WHATCOM COUNTY COUNCIL
Planning and Development Committee

January 14, 2003

The meeting was called to order at 3:00 p.m. by Committee Chair Dan McShane in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Seth Fleetwood
Laurie Caskey-Schreiber

Absent:

None

Also Present:

Barbara Brenner
L. Ward Nelson
Sharon Roy

COMMITTEE DISCUSSION

1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20, CHAPTER 20.71 – WATER RESOURCE PROTECTION OVERLAY DISTRICT, CHAPTER 20.80 – SUPPLEMENTARY REQUIREMENTS (STORMWATER AND CLEARING), CHAPTER 20.85 – PLANNED UNIT DEVELOPMENTS, AND CHAPTER 20.97 – DEFINITIONS TO PROVIDE ADDITIONAL REGULATORY PROTECTION FOR SENSITIVE WATERSHEDS (AB2002-222B)

McShane stated they would still work on impervious surfaces.

Lynn Henifin, 17 Strawberry Point, Bellingham, stated she wants to tear down her house and rebuild it. She and her husband live right on Lake Whatcom. After doing an impervious surface survey, it was determined that 56 percent of the lot has impervious surfaces. Plans were drawn up, with a reduction to 33 percent of impervious surface. Because they are impacting more than 50 percent of the lot, they have to abide by the new law, which is to have a maximum of 20 percent of the lot in impervious surfaces. Because the current amount is 56 percent, they should have an incentive to reduce to 33 percent. They also want to set the house back further from the lake. None of this was looked at as a positive benefit for the watershed. Her other choice is to stay as is. Nobody wins. Staff had a difficult time interpreting the rules. The goal is to improve the watershed. It is apparent that is what she plans to do.

McShane asked the square footages.

Jamie Henifin, 17 strawberry Point, stated the lot size is 11,900. The total amount of impervious surface is 6,770 square feet currently. The plan was to

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1 reduce the amount of impervious surface to 33 percent of 11,900, pull the house
2 away from the lake and remove all the concrete and asphalt from where it is now.
3 They want to build a two-story house and put in pavers and other pervious
4 surfaces.

5
6 McShane stated the Council will have to consider this kind of scenario at its
7 deliberations on this ordinance.

8
9 Hal Hart, Planning and Development Services Department Director, stated
10 that on a day-to-day basis, he is charged with looking at an application and making
11 a staff determination. He and several department managers looked at the
12 ordinance and legislative intent in this case. He also ran the situation through the
13 County attorney. He will ultimately have to make a decision so he is consistent in
14 all of these situations. It doesn't provide the Henifins with the kind of relief they
15 are looking for in this situation, but it's the best they can do.

16
17 Brenner asked how Mr. Hart felt about the County Council reworking the
18 language to avoid this unintended consequence. Hart stated they have to be very
19 careful, but it's not impossible. Where they want to be is a place where legislation
20 allows them to do the right things in situations they see most of the time. They
21 want to encourage redevelopment.

22
23 McShane stated the Council is looking at a complicated code revision that is
24 taking some time. It will probably be late February or early March before there is
25 final adoption.

26
27 Caskey-Schreiber asked if there is any way to adopt this one section right
28 away to give the Henifins some relief.

29
30 McShane stated they can consider whether or not that is possible.

31
32 Kurt Baumgarten, Planning Technician, stated the Henifins truly understand
33 the intent of the code. This section of the code functions well as intended. If the
34 Council wants to add a percentage to encourage people, they can consider it. Most
35 people are able to come into conformance as they redevelop.

36
37 Brenner suggested including discretionary authority for the administrator to
38 grant approval if there is a net improvement. Baumgarten stated most people will
39 come up with some net reduction, but will not come into conformance. It will
40 become a loophole.

41
42 Roy suggested including wording that would be applicable only to those
43 people who have a choice between the old rules and the new rules.

44
45 McShane asked if Mr. Baumgarten would be willing to create language so
46 there is some motivation for people in this type of situation. The discretion would

1 be to not go quite as far as the requirement, but to allow the people to do the
2 improvement.

3
4 Baumgarten stated the decision needs to be the level at which it is worth it to
5 allow the improvement. Staff can develop some language.

6
7 Fleetwood asked how often people have come in with applications that
8 trigger section 20.71.302(5). Baumgarten stated most applications trigger that
9 section. Within the last year, there have been 50 to 100 applications. This part of
10 the code has been in force since 1999.

11
12 Caskey-Schreiber asked if it is possible to create allowance for a net
13 reduction of impervious surfaces, based on the current square footage.
14 Baumgarten stated that would be something that is reasonable to look at.

15
16 Jaime Henifin stated the City of Bellingham has a statute that allows removal
17 of existing impervious areas at a ration of two square feet of impervious area for
18 one square foot of new building footprint until the desired project is achieved or the
19 development is within impervious limits. For example, one could remove two
20 square feet of concrete driveway for every one square foot of new building footprint
21 to be added. He wants to take out concrete walkways and driveways to make the
22 footprint bigger. He asked if the Council could move on this quicker than February
23 or March.

24
25 McShane stated that would be problematic.

26
27 Goodwin stated they could do a revised interim ordinance for this section.

28
29 McShane stated the committee would like to see some flexibility on this
30 issue.

31
32 Nelson stated they are trying to accomplish reducing the amount of flow that
33 washes into the lake from stormwater when they set impervious surface limits. He
34 asked the effectiveness of the percentages. Baumgarten stated there is a large
35 body of knowledge that identifies ten percent of impervious surface as the level
36 when they begin to see biologic degradation.

37
38 Nelson asked why they can't come up with a more flexible stormwater policy
39 in which they can outline goals and objectives and allow homeowners to come
40 forward with innovative approaches. It seems like all they are doing is compacting
41 the amount of allowed impervious surfaces. There may be other options.
42 Baumgarten stated options are allowed as mitigation. It is another step and
43 another way the code would have to be written. He administers the stormwater
44 special district standards with support from the Engineering Division. They are
45 embedded in the development standards.

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1 Jaime Henifin asked what footprint would be allowed if they decide to build a
2 three-story home. He will have 6,670 square feet of impervious surfaces.
3 Baumgarten stated the house could have a footprint of 6,670 square feet, with no
4 walkway or driveway made of impervious surfaces.
5

6 Lynn Henifin stated that they are allowed to impact less than 33 percent of
7 their impervious surfaces on their lot. If they impact 32.99 percent, then they are
8 okay. If they impact less than 50 percent of the impervious surface, they can keep
9 their nonconforming use. They can impact 32.99 percent of their impervious
10 surface.
11

12 McShane stated they would begin working where they left off previously, on
13 Council packet page 163. The committee has made a number of changes already.
14 Staff will present language regarding the Henifin's situation at the next meeting.
15 They will begin working at section 20.71.604 regarding vehicular access.
16

17 Brenner referenced section 20.80.634(1)(a) on Council packet page 167,
18 "Stormwater discharges must be controlled and treated ~~to provide all known~~
19 ~~available and reasonable methods of prevention, control, and treatment~~ as required
20 by law." The language is confusing as it is. This requires someone to have to do all
21 known prevention and control treatment, even if it is repetitious.
22

23 Sylvia Goodwin, Planning Division Manager, stated she totally agrees with
24 Councilmember Brenner's suggestion.
25

26 **McShane moved** to amend section 20.80.634(1)(a), "Stormwater
27 discharges must be controlled and treated ~~to provide all known available and~~
28 ~~reasonable methods of prevention, control, and treatment~~ as required by law."
29

30 **Motion carried unanimously.**
31

32 Brenner referenced section 20.80.634(1)(f). She asked why they removed
33 "education" and "recreation" from that section.
34

35 Amy Pederson, Planner I, stated the Planning Commission did not want to
36 encourage people to go into these areas for safety reasons.
37

38 Caskey-Schreiber education is about maintenance as well. She asked if there
39 would have to be some community association responsible for it. Goodwin stated
40 recreation is sometimes a dual function of stormwater facilities. There are
41 instances where a stormwater facility for retention overflow could be played on.
42 They don't necessarily have to be fenced off.
43

44 **McShane moved** to amend section 20.80.634(1)(f) to include "recreation"
45 and "education."
46

47 **Motion carried unanimously.**

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1
2 Brenner referenced section 20.80.634(2). She took the erosion and
3 sediment control course through the Building Industry Association (BIA) and
4 Association of General Contractors (AGC). The last sentence should be amended to
5 include, "All projects should be overseen by a sediment control lead."

6
7 Nelson asked the incentive. It is an additional regulatory practice.

8
9 *(Clerk's Note: End of tape one, side A.)*

10
11 Nelson continued to state that people might have to attend jobs that won't
12 allow them to take a course.

13
14 Fleetwood asked the cost and time to attend the courses.

15
16 Brenner stated the BIA course is one day. The AGC course is two days.
17 They are also offered online that could be done at any time of day.

18
19 Goodwin stated the BIA course cost is \$200.

20
21 Caskey-Schreiber stated she would not like to burden people if the County
22 can put together a packet of information for this kind of education.

23
24 Brenner stated the course may cost \$200, but there are contractors that
25 don't know about proper sediment control. It is a little money that is well spent.

26
27 Caskey-Schreiber referenced section 20.85.634(6). She asked if the County
28 requires assurance that maintenance plans are done on a regular basis.
29 Baumgarten stated the Engineering Division requires plans as subdivisions are built.
30 A homeowner's association is required to pay for maintenance, but there is no
31 follow up. There may be future discussion on stormwater maintenance plans and
32 phase two permits.

33
34 Caskey-Schreiber stated they need to develop a way to make sure the
35 homeowner's association follows through on maintenance.

36
37 Brenner referenced section 20.80.634(5), and suggested adding language,
38 "...shall provide adequate water quality treatment..." Someone needs to be
39 responsible for making sure the treatment system is adequate.

40
41 **Caskey-Schreiber moved** to amend section 20.80.634(5), and suggested
42 adding language, "...shall provide adequate water quality treatment..."

43
44 Baumgarten stated the Public Works Department, Engineering Division,
45 recommended that text.

1 McShane stated they never really say what adequate is, only that the
2 treatment should occur.

3
4 **Caskey-Schreiber amended her motion** to amend section 20.80.634(5),
5 and suggested adding language, "...shall provide appropriate water quality
6 treatment...."

7
8 Roy stated they need to have some sort of qualifier in there. Just requiring a
9 system isn't good enough.

10
11 **Motion carried unanimously.**

12
13 Steve Hood, Washington State Department of Ecology (DOE), stated the
14 runoff control regulations are not consistent with DOE guidelines. They are to meet
15 the Puget Sound Water Quality Action Team management plan by having a basic
16 stormwater program, including guidance consistent with DOE's stormwater manual.
17 It wasn't. DOE wrote to the County identifying that deficiency. Now would be a
18 good time to fix those existing deficiencies. Coming into compliance is something
19 the County will need to do by the time phase two comes up.

20
21 McShane stated he believes the Public Works Department is working on it.
22 The main focus of this exercise is on the stormwater special districts and surface
23 water protection overlays. Because they go in hand with the overall stormwater
24 regulations, there have been some changes to try and make them conforming.
25 There will be a point when the Council will have to make a decision on whether or
26 not to adopt the Puget Sound water quality manual. Jeff Monsen hasn't brought it
27 forward yet.

28
29 Hood stated they are supposed to have a permit by March 2003.

30
31 Caskey-Schreiber suggested talking about that at the next Water Resources
32 work session.

33
34 Roy asked if this item meshes with the stormwater plan they will have to
35 adopt. She asked if they are or are not taking that information into consideration.

36
37 McShane stated he was trying to. The main focus of this is to upgrade the
38 stormwater special district requirements. That requires some change in the
39 language in the whole stormwater section.

40
41 Roy asked if the Council is going to have to make sure all this matches after
42 they adopt the countywide stormwater management plan. Baumgarten stated they
43 will have to go back and review the stormwater special district standards in light of
44 what comes out in the National Pollution Discharge and Elimination System
45 (NPDES) permit. However, those standards were developed with the new DOE
46 manual in mind. That's why they are more restrictive than what they have for the
47 rest of the county.

1
2 Hood stated the March 2003 date is when DOE should have a permit
3 prepared for the County. DOE will not meet that deadline. DOE has been
4 communicating with Jeff Monsen about what the County needs to do to protect
5 itself against the liability of noncompliance with that rule.
6

7 Brenner referenced section 20.80.636(2) regarding stormwater special
8 district requirements and renovation projects. She doesn't see a relationship
9 between assessed value and impacts. It should be directly related to impacts, not
10 assessed value. Hood stated the DOE 1992 manual had a section on
11 redevelopment. It was a trigger for when redevelopment would need to meet
12 additional requirements. The idea is that people are doing big projects and making
13 major changes. Those are the projects that need to go back and deal with current
14 deficiencies. They need some threshold for determining when that needs to be
15 done. When spending a lot of money to make a substantial change is when a
16 homeowner should do it.
17

18 Brenner asked if the County is required by State law to have this language.
19 Hood stated he thinks the law has changed somewhat.
20

21 Baumgarten stated that language is also used in the Uniform Building Code
22 (UBC).
23

24 McShane asked if someone could do it incrementally, and if the Planning
25 Department can track these things. Baumgarten stated the Assessor's data tracks
26 how the value has changed over time.
27

28 Fleetwood asked if there is a rational relationship between assessment and
29 water quality.
30

31 McShane stated it is only a threshold for determining whether someone
32 needs to do the upgrade.
33

34 Hood stated that if they are going to adopt DOE's stormwater manual by
35 reference or go through the County Code to make it compliant, then this is an area
36 they should look at.
37

38 Fleetwood stated the object is to use some language to trigger a heightened
39 review. This language doesn't do it. It is arbitrary.
40

41 Brenner stated she does not like the language. There is an assumption that
42 someone spending a lot of money is making massive structural changes. That may
43 or may not be true. There needs to be a relationship.
44

45 Brenner referenced section 20.80.636(2), "...and energy upgrades ~~shall be~~
46 **are** exempt from this requirement." The term "shall be" implies something that will
47 be exempt in the future, as opposed to something that is exempt now.

1
2 McShane stated he is fine with the language the way it is.
3

4 McShane asked about the reference to section WCC 20.80.735 in the section
5 regarding land clearing applicability. Pederson stated staff asked that that
6 reference be stricken. The activities exempted under that section exempts
7 activities from the seasonal clearing limitations. Anything exempt under that
8 section would not be exempt from the entire section.
9

10 **McShane moved** to amend 20.80.732, "...unless specifically exempted in
11 20.80.733 and ~~20.80.735~~..."
12

13 **Motion carried unanimously.**
14

15 Caskey-Schreiber asked the reason for striking language in section
16 20.80.733(2). Goodwin stated it is redundant to language in section 20.80.732.
17

18 McShane referenced section 20.80.734, County Review Thresholds.
19 Pederson stated the section staff was concerned about was subsection (4) from the
20 Planning Commission. Staff suggested alternate language in its December 10
21 memo.
22

23 **Caskey-Schreiber moved** to adopt staff's alternate language for section
24 20.80.734(4) as proposed in its December 10, 2002 memo, "Any clearing activity
25 within 300 feet of a water body regulated under WCC Title 23, or within 300 feet of
26 a wetland, habitat conservation area (HCA), frequently flooded area, or geo-hazard
27 regulated under WCC Title 16."
28

29 **(Clerk's Note: Caskey-Schreiber's motion was not voted on.)**
30

31 Brenner stated that section should establish a threshold amount of land
32 clearing that would trigger the regulations. As the language is now, someone could
33 dig up a bush and it would be considered land clearing. This is the rural zone.
34 Pederson stated the critical areas ordinance requires review of any activity. There
35 isn't a threshold. A critical areas review doesn't have a permit. It needs a permit
36 to activate critical areas review. Under this regulation, that would bring clearing
37 activities to a critical areas review staff for review.
38

39 Brenner stated they need to reduce the footage back to 100 or 200 and
40 establish a minimum size of clearing activity. It should depend on how close one is
41 to the critical area. The further away a person is, the more clearing that person
42 should be able to do. In forestry and rural zones, there will be the kinds of
43 activities that are natural to that kind of existence and that shouldn't require a
44 review.
45

46 **McShane moved** to amend section 20.80.734(4) "Any clearing activity
47 greater than 500 square feet within 300 feet regulated under WCC Title 23 or within

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1 300 feet of a wetland, habitat conservation area (HCA), frequently flooded area, or
2 geo-hazard regulated under WCC Title 16.” Goodwin stated that would work. One
3 of the staff’s concerns is within a wetland, critical area, or buffer, they want to
4 make sure the 500 square feet threshold doesn’t apply. Even if they do 200 square
5 feet within a critical area or buffer, it would be a violation of the critical areas
6 ordinance. They don’t want to exempt people from small clearing.
7

8 **McShane amended his motion** to amend section 20.80.734(4) “Any
9 clearing activity **greater than 500 square feet** within 300 feet regulated under WCC
10 Title 23 or within 300 feet of a wetland, habitat conservation area (HCA), frequently
11 flooded area, or geo-hazard regulated under WCC Title 16 **or any clearing within a**
12 **critical area or critical area buffer.**” Someone could clear as much as 500 square
13 feet outside of the critical area.
14

15 Brenner stated it is a small amount of clearing in a rural or forestry zone.
16 Without this language at all, everything is still covered. It is a lot of extra work.
17 Buffers are already covered.
18

19 Goodwin stated this does not apply just to the Lake Whatcom watershed.
20 This section applies countywide. The concern was that there is no permit required
21 because of the way the critical areas ordinance is written. Someone, not knowing
22 that he or she is in a wetland, could go in and clear the entire wetland, would never
23 have come in for a permit, and no one would ever know. There is no review.
24

25 McShane stated that when someone comes in for a clearing permit, the
26 County wants to bring it to their attention that there may be wetland issues.
27

28 *(Clerk’s Note: End of tape one, side B.)*
29

30 McShane stated the rule is already there. This is an opportunity to make the
31 person aware of the rule.
32

33 Brenner stated most people are going to ignore this rule and will be violators.
34

35 **Caskey-Schreiber proposed a friendly amendment** to reduce the buffer
36 to 200 square feet.
37

38 **McShane accepted** the friendly amendment to amend section 20.80.734(4)
39 “Any clearing activity **greater than 500 square feet** within 200 feet regulated under
40 WCC Title 23 or within 200 feet of a wetland, habitat conservation area (HCA),
41 frequently flooded area, or geo-hazard regulated under WCC Title 16 **or any**
42 **clearing within a critical area or critical area buffer.**”
43

44 **Motion to approve McShane’s amendment carried unanimously.**
45

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1 Brenner referenced section 20.80.735(2)(a), "...the Whatcom County
2 Development Standards. A certified soil and erosion lead shall oversee clearing
3 activity."

4
5 Caskey-Schreiber asked if the clearing restrictions will be applicable to all
6 three areas.

7
8 McShane stated they will be applicable to Lake Whatcom, Lake Samish, and
9 Drayton Harbor.

10
11 Brenner stated everyone who wants to work on land should have the benefit
12 of that information. It is not a punishment. It is a great opportunity for people to
13 have that education and information. The BIA is going to offer the certified soil and
14 erosion lead course ongoing.

15
16 Fleetwood referenced section 20.80.735(2)(b), regarding phased clearing.
17 He asked if more appropriate language would be, "Construction activity and land
18 clearing activities may will be phased to limit the amount of..." Baumgarten stated
19 that language would enable it to be a condition of a permit. If site conditions
20 warrant, they could condition a permit to require phasing.

21
22 Fleetwood asked why it would be discretionary if deemed appropriate.

23
24 McShane stated it depends on the conditions of the site. It provides
25 flexibility.

26
27 Baumgarten stated it is better to say "will" or "shall." Otherwise they might
28 as well not have the rest of the text.

29
30 **Fleetwood moved** to amend section 20.80.735(2)(b), "Construction activity
31 and land clearing activities may shall be phased to limit the amount of..."

32
33 **Motion carried unanimously.**

34
35 Roy asked if the Land Clearing Working Group recommendations are
36 included. Goodwin stated they are incorporated, but the Planning Commission
37 modified some of the recommendations.

38
39 Caskey-Schreiber asked if the soil stabilization section was incorporated
40 elsewhere or morphed into the tree retention section. Pederson stated the Planning
41 Commission struck soil stabilization because they felt it was redundant of
42 subsection (a). Staff has asked that the soil stabilization section be included.

43
44 **Caskey-Schreiber moved** to reinsert the original language on soil
45 stabilization, as recommended by staff. That section was 20.80.735(2)(c).

46
47 **Motion carried unanimously.**

