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WHATCOM COUNTY COUNCIL
Planning and Development Committee

April 8, 2003

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

Present:

Dan McShane
Laurie Caskey-Schreiber

Absent:

None

Also Present:

Barbara Brenner
Sam Crawford

DISCUSSION ONLY

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)

Rich Emerson, Building Industry Association of Whatcom County Government Affairs, stated there is no listing of what point system for seasonal clearing will be followed in the final document. He asked whether it is the intent of the Council to have a point system listed. It should be included in the code.

He is confused about the status of Drayton Harbor. On page 11 of Exhibit A, it is crossed out.

Caskey-Schreiber stated it is moved to page 12 of Exhibit A.

Emerson stated Drayton Harbor is included on page 15 of Exhibit A. They need to clarify whether Drayton Harbor is or is not included in this ordinance.

Regarding tree retention, take into consideration the cost of a survey to determine what percentage of tree retention is or is not allowed. It is another expense that is not necessary. It can be an expensive item. Consider whether or not a survey is necessary to obtain these percentages.

The Building Industry Association (BIA) made an appeal to have the figure for the square footage of impervious surfaces be 3,000 square feet of allowed

1 impervious surfaces rather than 2,500 square feet. He asked the committee to
2 allow 3,000 square feet of impervious surfaces.

3
4 Brenner asked who recommended 3,000 square feet originally.

5
6 McShane stated the County Council amended a portion of this chapter two
7 years ago, and it was changed from 2,000 square feet to 3,000 square feet. The
8 current code allows 3,000 square feet. Prior to that, it was 2,000 square feet.

9
10 Emerson stated the reason for 3,000 feet is because of the restrictions on
11 impervious surfaces and driveways. Homes are better marketed if 3,000 square
12 feet were allowed.

13
14 The BIA is looking at low-impact development housing. This ordinance
15 includes a limit of 16 units per cluster, which he considers a low-impact
16 development. He asked how the Planning staff arrived at the number 16.

17
18 McShane stated the number has little to do with low-impact development,
19 and has to do with the rural element of the County Code. The number 16 was an
20 increase from a lower number that was changed to accommodate a particular
21 development. Under rural, one unit per five acres (R5A) zoning, 80 acres would be
22 the allowed 16 homes. On 80 acres, the 16 lots would be clustered to preserve the
23 majority of the 80 acres. That is where the number comes from.

24
25 Emerson stated the water resource inventory area (WRIA) process has
26 available a survey that outlines where growth can be accommodated, based on
27 where water and land are available. If the density can't be absorbed in the city,
28 and they don't want a bunch of one-acre hobby farms, cluster development may be
29 a solution. If the Council limits the number to 16, the number of developments
30 that occur in the county will multiply.

31
32 McShane stated it is a Growth Management Act (GMA) issue. The County
33 needs to set a cluster limit to maintain a rural character. Emerson asked which is
34 more preferable: more and smaller clusters or larger and fewer clusters.

35
36 When there is discussion about bonds for seasonal clearing, the amount is
37 unspecified. He asked that someone look into specifying an amount.

38
39 Caskey-Schreiber stated the committee decided that the person reviewing
40 the plans would assess and decide a proper amount.

41
42 Kurt Baumgarten, Planning Technician, stated that is correct.

43
44 Emerson stated he would like clarification on the amount of the bond.
45 Contractors would like to have an idea about what kind of bond they need to post.

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1 Caskey-Schreiber stated the amount would vary extremely between large
2 and small jobs. She can't see how they can estimate a range of costs.
3

4 Emerson stated the BIA President has gone to some lengths to show that
5 rooftops do not represent impervious surfaces. Roofs in low impact development
6 projects need not be considered impervious. Gravel is still listed as an impervious
7 surface. This continues to be a debate. He asked if gravel will or will not be an
8 impervious surface. He would like suggestions from the staff about the surfaces
9 that should be used for driveways, other than concrete or gravel, to provide for a
10 convenient entrance to the home without developing tremendous amounts of
11 impervious surfaces.
12

13 Brenner stated pervious pavers and porous concrete are two options.
14 Channel 10 broadcast a presentation that shows the pervious pavers and concrete.
15

16 Emerson stated he would like his concerns clarified. He hoped this version is
17 something that they can rely upon as being that on which the committee will vote.
18 If, for whatever reason, they feel compelled to adopt this ordinance, he hoped the
19 County would fix it when it realizes that they screwed up. No one on this Council
20 fully understands what is in this ordinance, but they are proceeding to pass it
21 anyway.
22

23 Fleetwood stated the committee is allowing time to fully review this
24 ordinance. In the next month or so, the councilmembers need to commit to dive
25 into those issues so they do understand the issues when they vote.
26

27 Paul Isaacson, Shallow Shore Road, agreed with Mr. Emerson that some
28 councilmembers don't understand the full impact of the ordinance.
29

30 He is glad about the five-acre rule for tree retention regulations. Some parts
31 of the tree retention regulations would not apply to five acres or more.
32

33 He would like to see the same tree retention percentage across the board.
34 There isn't any scientific basis for it. Tree retention is a step in the right direction.
35 Retention of trees should be highlighted in the critical areas ordinance to avoid
36 conversion option harvest plans (co-hops).
37

38 He's concerned that the County will take, without telling the public what it is
39 taking. The general public doesn't really understand tree retention. They can have
40 tree retention without taking. This County should perpetuate desire in its codes
41 and laws so everyone has a good outcome. They can all win on this issue. He
42 suggested a provision that foresters could harvest as long as they replant to
43 appropriate stems per acre level.
44

45 A solution regarding impervious surfaces is to use 1 ½ inch clear rock,
46 referred to as a clear product. It has a great retention value for storm runoff. It is

1 used for many state and highway projects. They can have gravel that is impervious
2 and has retention value.

3
4 He's concerned about the bond requirement. It is too subjective. Look at
5 the cost of replanting to establish the bond amount. The most expensive replant is
6 about \$600 per acre. They could double that cost for the bond requirement, just to
7 make sure. Staff members are not foresters and cannot come up with an
8 appropriate bond value. Require a bond of \$1,200 per acre across the board. He
9 suggested that they require a bond or cash.

10
11 He's concerned that developers will pick the percentage of trees that are
12 most economically valuable for harvesting, and the trees retained would be scrub
13 trees, of lousy value. Allow the harvest of the 30 percent retention area with the
14 requirement for replanting of high value trees.

15
16 Caskey-Schreiber stated there is no point to having a retention schedule if
17 they are going to allow harvesting and replanting. It's not just about retaining the
18 trees. It is also about soil stabilization.

19
20 Isaacson stated soil stabilization doesn't necessarily have to equal
21 harvesting. It is equal to clearing. A harvested site is considerably different. Soil
22 stabilization doesn't come from live trees. It comes from vegetation being in the
23 ground. If they take the stumps out, they have a concern. By the time they sever
24 the trees and replant with an appropriate number of stems per acre, they will have
25 that soil stabilization before the tree stumps rot out.

26
27 Caskey-Schreiber asked for staff comment. Baumgarten stated people aren't
28 going to replant conversions. There is already an exemption for lots over five
29 acres. If they retain the roots and then replant, they will keep the same net benefit
30 of soil retention on a slope. If they are talking about evapo-transpiration, they
31 won't have that until a tree re-establishes the root structure. What Mr. Isaacson is
32 saying is not wrong. When a geo-engineer inspects a project, the geo-engineer
33 may require that a root system remain while replanting. That is much different
34 than attenuating stormwater by retaining large trees or a canopy cover.

35
36 Isaacson stated that is not what he discussed. Most of the time, they will
37 end up with the retained trees being less desirable vegetation.

38
39 Caskey-Schreiber stated the regulations specifically list the kinds of trees
40 that should be left. Isaacson stated they wouldn't necessarily get that. A number
41 of factors could change that. Any forester could determine those trees are danger
42 trees. Instead of having those flaws, determine how they protect the watershed,
43 which is by having a retention area. Require appropriately planted vegetations,
44 which are predominantly conifers. That would solve the problem.

1 He would be in favor of an equal percentage for all properties up to five
2 acres. He would not be in favor of an equal percentage if they did not approve the
3 five-acre rule.

4
5 If they are able to harvest, they have not addressed the loss of value
6 question, which should have been addressed by the State Environmental Policy Act
7 (SEPA).

8
9 Regarding impervious surfaces, the code may need to have provisions for
10 people who become disabled and need to build a wheelchair access ramp.

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

13
14 Isaacson continued to state that other than the concerns he stated, the
15 ordinance is pretty good.

16
17 Brenner stated it might be a good idea to allow an exemption for someone
18 who needs to build a wheelchair ramp.

19
20 McShane stated of modifying a home to accommodate wheelchair access
21 came up previously before the Hearing Examiner. The Hearing Examiner ruled
22 against it. The Council overturned the Hearing Examiner's decision.

23
24 Bob Wiesen, 3314 Douglas Road, stated gravel should not be considered
25 impervious the same way that asphalt and concrete are. Water runs off the
26 concrete, but sits in the gravel until it is absorbed. The Environmental Protection
27 Agency (EPA) gives percentages of absorption of different products. Gravel is rated
28 to absorb water much faster than concrete.

29
30 Roger Almskaar, 3610 Meridian, stated he supported Mr. Emerson's
31 comments on the total amount of impervious surfaces. The amount of 2,500
32 square feet of allowable impervious surfaces is a bit too tight. Roof runoff is much
33 different than water that runs along roads and picks up oil and pollutants.

34
35 Regarding seasonal clearing, don't make any changes in that text. It was a
36 reasonable compromise. Approve it as it is without changing the numbers on the
37 worksheet. See how it works for a few months, and then staff can suggest any
38 needed changes. It is a judgment call.

39
40 Drayton Harbor is a completely different watershed than the Lake Samish
41 and Lake Whatcom watersheds. Don't include it in the ordinance.

42
43 He doesn't agree with the tree survey, but get the intent clear and keep it
44 simple so the ordinary person doesn't have to hire an expensive consultant to come
45 up with the tree retention plan.

46

1 Part of the problem with bonds is that they need to define the concept and
2 include letters of credit from financial institutions, which is almost as good as cash.

3
4 Crawford stated it is called an assignment of savings.

5
6 Tom Pratum, N. Cascades Audubon Society, stated the County staff tried to
7 use scientific evidence on which to base the regulations. A paper was published in
8 June of 2002, which he put in the file. There is peer-reviewed evidence that what
9 the Council is trying to do is legitimate. It shows that clearing and impervious
10 surface restrictions achieve stipulated goals for resource protection. The most
11 commonly chosen thresholds are a maximum of ten percent impervious surfaces
12 and a minimum of 65 percent of forest cover mark an observed transition in
13 downstream channel from minimally to severely degraded stream conditions.
14 There is evidence that they need to preserve forest cover. Fifty percent tree
15 retention isn't enough. The paper continues to say that development that
16 minimizes the damage to aquatic resources cannot rely on structural best
17 management practices (BMP's) because there is no evidence that they can mitigate
18 anything but the most egregious consequences of urbanization. Control of
19 watershed land cover changes must be incorporated. Staff has used scientific
20 evidence to come up with the ordinance.

21
22 The way they've changed the impervious surface limitations for the urban
23 residential (UR) zones is good. That is where most of the homes will be built.
24 There are alternative surfacing materials available that will reduce the necessity to
25 asphalt paved driveways.

26
27 He has a big problem with exempting lots over five acres in the tree
28 retention section. According to a recent analysis of the Assessor's database, there
29 are 138 parcels greater than ten acres in all zones. Any of them could be
30 subdivided and can get around the tree retention exemption.

31
32 Replanting is not as good as retaining mature trees, which have a canopy
33 and intercept a lot of precipitation. There is a place for replanting because it is
34 better than housing.

35
36 Take zoning into account. People are probably not practicing forestry in the
37 urban zones.

38
39 He doesn't like the land clearing checklist procedure. It's good that they
40 removed the possibility of getting the project approved just because there is an
41 engineered plan.

42
43 They have to get rid of the five-acre exemption. It is a loophole.

44
45 Brenner stated that he's attended timber tours for the last ten years. It is
46 almost always raining and is very wet. However, she's never seen water running
47 across the ground. Pratum stated it depends on the soil type. If there are

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1 permeable soils, then the water soaks in. If there is a site that doesn't have
2 permeable soils, or it has a steep slope, a better tree canopy will protect the water
3 from running down the hill.

4
5 Brenner stated an idea might be to treat it on a site-specific basis, taking
6 soils into consideration. Pratum stated it's not like that in the Lake Whatcom
7 watershed. There is a lot of standing water.

8
9 If they are going to allow replanting, think about who is going to make sure
10 that the trees will grow. That is an enforcement problem.

11
12 Crawford asked if there is science on which to base a tree retention policy.

13
14 Caskey-Schreiber stated there is a massive amount of science that says
15 retaining trees in a watershed is beneficial.

16
17 Isaacson stated they did the five-acre exemption because they can be
18 exempted by the State, and the harvest would not have the critical area ordinance
19 regulations. It is not a loophole. He practices forestry in the residential zone.
20 Zoning doesn't have anything to do with it. He has the pervious pavers at his
21 home. They are very impervious. One of the founders of Greenpeace said one of
22 the best things to do in a watershed is timber management.

23
24 Crawford stated it seems most everything in section 20.80.735, the first
25 paragraph, leads to tree retention. There is a statement that says "Preservation of
26 existing trees onsite improves the quantity and quality of stormwater leaving a site
27 during and after development activities by encouraging interception, infiltration,
28 and evapotranspiration of rainfall and surface runoff." He asked if that is an
29 unequivocally true statement. If it is, they have to buy into the tree retention
30 concept. If not, they could cut all the trees, replant, and have as good or better
31 quality. Isaacson stated it is true for the entire watershed, but not necessarily true
32 per lot. It totally depends on the vegetation. Even if all the private landowners in
33 the watershed harvest everything, they still will have 65 percent of the trees in the
34 watershed because there is a massive amount of public lands in this watershed.

35
36 Everett Babbitt, 3205 Eagleridge Way, stated he is involved in a specific
37 issue. He is in the process of selling his home and purchasing another piece of
38 property in Eagle Ridge. Zoning was changed on the lot to allow a maximum of
39 2,000 square feet of impervious surfaces. Five to seven lots in the development
40 are not developed. It is difficult to build to a 2,000 square foot impervious surface
41 requirement. There are other covenants in the development, such as not allowing
42 a boat to show on the property. This change in zoning for this subdivision is
43 temporary and has to come up for renewal, which will happen in June. This is a
44 very different application. It is already a developed subdivision with a couple of
45 undeveloped lots within it.

46
47 McShane stated three individuals have contacted him about this location.

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1
2 Brenner stated she is very sympathetic to Mr. Babbitt's concern, but they are
3 working watershed-wide, not just for Eagle Ridge. Consider enlarging that
4 impervious area a bit. She asked if 3,000 square feet would work for Mr. Babbitt.
5 Babbitt stated it probably would. A 20 percent limit is what it was previously.
6

7 McShane stated the Planning Commission made a decision to wait on the
8 interim zoning for Eagle Ridge. He's almost certain that area will revert back to its
9 original zoning, so this issue will go away. He's not sure he wants to play around
10 with that number, based solely on Eagle Ridge, when the zoning will take care of it.
11 The County Council has to redo the interim zone if it wants the interim zone to
12 continue. Keep Eagle Ridge in mind at that time. He's more interested in the
13 impervious surface limits on small lots in Sudden Valley, for example. Those are
14 the lots that it applies to. A lot of people are not happy with the 2,500 square foot
15 minimum. However, those people have to realize that, if they have a 15,000
16 square foot lot that conforms to urban zoning in the watershed, they get to go up
17 to 3,000 square feet. The 2,500 square foot limit is only for the smaller,
18 nonconforming lots. It's giving people who have nonconforming lots a break. It
19 was never meant to apply to a place like Eagle Ridge.
20

21 Crawford stated he would submit a memo on his thoughts on this version of
22 the ordinance (*on file*). He is interested in staff working on road development
23 standards and consistency between the Planning Department and Public Works
24 Department. He understands that the Technical Advisory Committee is redoing the
25 development standards anyway, which is why there hasn't been an effort internally
26 to make it all cohesive.
27

28 Baumgarten stated that as staff went through this part of Title 20, it was
29 reviewed by the Technical Advisory Committee to see if what was being proposed is
30 consistent with the direction in which the Technical Advisory Committee is going.
31

32 (*Clerk's Note: End of tape one, side B.*)
33

34 Fleetwood stated this item would not be introduced at the Council meeting
35 tonight. This item will be held in committee for two weeks.
36
37

38 **OTHER BUSINESS**

39

40 Hal Hart, Planning and Development Services Director, stated that during the
41 first quarter of the year, his department saw \$40 million worth of new value of
42 single-family homes. That is a 26 percent increase above last year. At this rate,
43 they need to consider what to do to meet the staffing need. The issue is what the
44 growth is doing to the County staff.
45

46 Many companies are looking for light industrial properties in Whatcom
47 County. They may want to reuse agricultural buildings in areas that aren't allowed

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1 in the Comprehensive Plan. There are 200,000 jobs in British Columbia related to
2 exporting. Seventy-five percent of those exports go to the U.S. market. If they
3 start having trouble at the border, he gets phone calls from those companies who
4 want to have a location here. It could become a land use supply issue for
5 commercially available light industrial properties. He's seeing an upward trend in
6 those phone calls.
7

8 Fleetwood asked if the department is bound to serve all those requests. The
9 Whatcom County Planning and Development Services (PDS) Department is bound
10 by a customer service model. That's why he's working on a one-stop shop. They
11 are designing themselves around the customer while balancing all the interests in
12 the Comprehensive Plan.
13

14 Caskey-Schreiber stated she has been getting an increasing number of phone
15 calls on lack of enforcement. She asked for a suggested solution. Hart suggested
16 they put the problem on the agenda and discuss it. For the last year, they have
17 been short an enforcement position, which they just hired for. Part of the
18 enforcement problem is also in the Prosecuting Attorney's Office. He suggested
19 that councilmembers tell the public to contact the enforcement staff at PDS.
20
21

22 **ADJOURN**
23

24 The meeting adjourned at 4:50 p.m.
25
26

27 _____
28 Jill Nixon, Minutes Transcription
29
30

31 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

32
33
34
35
36 _____
37 Dana Brown-Davis, Council Clerk
38

Seth Fleetwood, Committee Chair