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WHATCOM COUNTY COUNCIL
Planning and Development Committee

April 22, 2003

The meeting was called to order at 3:05 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

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL

1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING TEXT, CHAPTER 20.40, AGRICULTURE DISTRICT (AB2003-153)

Kraig Olason, Senior Planner, stated the proposed amendment has two sections. The first section addresses secondary businesses in the agricultural zone. The agricultural code allows for goods and services businesses that are agriculture related in the agricultural zone.

Sometimes it becomes difficult to maintain the businesses strictly on agricultural services. This proposal will broaden it and allow the same function and type of business to service beyond the agricultural zone.

Staff made several limitations or conditions to use to evaluate a proposal, which would be reviewed by the Hearing Examiner in a public hearing. They would require a statement of intent that the supplemental use would be the subordinate use, not the primary use. They could also request an annual affidavit from the business if there is a question about that. A third requirement is that the business doesn't require additional area. They want to make sure the footprint doesn't enlarge. A fourth requirement is that it goes before the Hearing Examiner and is reviewed with the conditions of every conditional use permit, such as those regarding traffic.

The proposal provides additional opportunities without opening the door wide open. There were comments at the public hearing regarding mushroom composting. This specifically does not apply to mushroom composting.

Caskey-Schreiber stated she is wary of examples listed in the language. Enforcement of planning issues in the County is lacking, so she is leery of getting into that situation. Olason stated the proposal broadens the original approved use.

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1 Any conditional use is only as good as the enforcement of the conditions. That is
2 always a concern.

3
4 Brenner stated that if they take that concern to the ultimate, the County
5 wouldn't allow anyone to do anything. This will be complaint-driven. If someone
6 doesn't have an appropriate use, there would be enforcement. The County can do
7 things to help farmers be viable on their land.

8
9 Fleetwood asked if the Planning Commission, Agricultural Advisory
10 Committee, and staff recommend approval of item #1. Olason stated they do.

11
12 **McShane moved** to approve item one in exhibit one on Council packet page
13 202.

14
15 Caskey-Schreiber asked if someone could make an argument that it applies
16 to any use, since the prohibited uses are not listed. Olason stated they could never
17 list everything. The test will be whether a farmer's proposal seems to be in line
18 with the items listed. There is judgment there.

19
20 Fleetwood stated the Hearing Examiner makes the interpretation that
21 something is in line with the regulation. It could be appealed to the Council.

22
23 Caskey-Schreiber stated there was a case where the County was obligated to
24 allow something because it was specifically not listed. Olason stated anyone could
25 argue anything when it comes to code interpretation. The farmer's proposed use
26 has to look like the examples listed.

27
28 **Motion to recommend approval of item one on exhibit one carried**
29 **unanimously.**

30
31 **Caskey-Schreiber moved** to recommend approval of item two in exhibit 1.

32
33 *(Clerk's Note: There was no vote on the motion.)*

34
35 Olason stated this item would expand commercial storage use in the
36 agricultural zone. Staff did not recommend this request. The Planning Commission
37 did support it. The Agricultural Advisory Committee did not support item two.
38 What was changed from the original language was a couple of items to put some
39 parameters into the language. Existing structures were clarified to be those built
40 before 1990.

41
42 Caskey-Schreiber asked why the Agricultural Advisory Committee was not in
43 favor of the request. Olason stated there was a lot of concern from the fire
44 marshal about potential liability. The issue was that there is a lot of property that
45 could be involved. Some of the buildings are very large. Another issue is that it is
46 a displacement of agricultural use. The Agricultural Advisory Committee wondered
47 if it wouldn't convert properties out of an agricultural use. Item one is a business

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1 that supports agricultural uses. Item two is for anyone with a barn. Item one
2 requires an agricultural business that has to be maintained as an agricultural
3 business. They also discussed limiting the footprint.
4

5 This request also does not allow mushroom composting or storage. It is not
6 intended to augment a mushroom operation. One of the concerns was about what
7 is appropriate. There weren't any parameters to say what is okay and what is not
8 okay. They don't want to reopen the cottage industry discussion.
9

10 McShane asked if it would have an affect on their Open Space/Agriculture
11 tax dedication if someone used the property for non-agricultural purposes. Olason
12 stated he didn't know.
13

14 Fleetwood stated a summary of the request is that someone can use an
15 existing building for non-agricultural uses, the use is behind four walls, and the
16 building was previously used for agricultural purposes.
17

18 Lesa Starkenburg-Kroontje, Front Street, Lynden, stated the intention of the
19 request is for property owners with surplus agricultural buildings to be able to use
20 them. A number of agricultural property owners are currently storing things
21 commercially, such as vehicles, boats, recreational vehicles (RV's), and trailers.
22 There are a number of places in the county that advertise their storage. That is all
23 happening illegally, so there isn't a way for people to count on that income, or
24 make improvements. One property owner wants to upgrade his buildings, but the
25 building is over the size limit for a cottage industry. These buildings haven't been
26 used for agriculture for years.
27

28 This would be a conditional use permit, so the Hearing Examiner would have
29 to find that the proposal met the eight criteria. These are existing buildings that
30 don't lend themselves to conversion of existing agricultural land.
31

32 The Agricultural Advisory Committee first voted in favor of the proposal when
33 she presented the information to the committee. The fire marshal can track these
34 things better when it is a conditional use permit. The impact to agriculture is the
35 same. Signs won't be allowed. The Assessor may value the buildings for more if
36 they are used for storage. If the farmer is in the Open Space/Agriculture program,
37 an acre of the parcel is already removed for the buildings, and 20 percent of the
38 property can be used for non-agriculture related uses.
39

40 Fleetwood stated that including a little bit of language would preclude any
41 abuses of the permit. Starkenburg-Kroontje stated that is why they limit the uses
42 to buildings built before 1990.
43

44 Caskey-Schreiber asked if item two would only occur in the agricultural zone.
45 Olason stated it would.
46

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1 Caskey-Schreiber stated one of her reservations is that some of the farms
2 are now in neighborhoods, and she is leery of putting a commercial use in a
3 neighborhood. Olason stated this only applies to agricultural areas. Staff's
4 reluctance to get into this issue was because it would take more time than they had
5 to spend on it. Someone might want to go into a more intensive use, and there is
6 no limit to that.

7
8 Starkenburg-Krootje stated that the Hearing Examiner would have to decide
9 if it is compatible with the goals and policies of the Comprehensive Plan for
10 agriculture and is not detrimental to the neighborhood.

11
12 Caskey-Schreiber stated the staff report says this is in conflict with the
13 planning goals of the Growth Management Act. Starkenburg-Kroontje stated it is if
14 it allows for additional conversion of agricultural property.

15
16 Olason stated the review staff that would look at the conditional use permit
17 was about how broad they want this to be in the agricultural zone. A farmer might
18 make more money renting out the building for storage than renting it to the farmer
19 next door. The inventory is gone if there is an option for someone else who might
20 have used it for an agricultural purpose.

21
22 Crawford asked how renting the building is a conversion. He asked why the
23 County cares if it doesn't do anything to the land.

24
25 Caskey-Schreiber stated it potentially hurts farming if a neighboring farmer
26 can't rent the building and can't afford to build one.

27
28 Starkenburg-Kroontje stated the farmer who owns the building may also be
29 a farmer who can't make the bank payment because he's not getting any money
30 out of his empty building. It also assists the farming community.

31
32 Crawford asked why this is not an outright permitted use. It doesn't impact
33 anything. He knows lots of people who rent out their barns.

34
35 Caskey-Schreiber stated there are also a lot of agricultural buildings leased
36 out by neighboring farms.

37
38 Crawford stated they are not changing the agricultural land by doing this.
39 The argument about agricultural preservation is about sacrificing land today that
40 couldn't be reclaimed for agriculture some day. This has no impact on the land.

41
42 Starkenburg-Kroontje stated some farmers might only be using the building
43 for part of the year to store a crop. The rest of the year it sits empty. A farmer
44 can lease the building during the off-season. However, the farmer is not allowed to
45 do that. The examples of how this prohibition is detrimental to the farmer are
46 more prevalent than the examples of this being detrimental to the farmer if it is

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1 allowed. This is another way for a farmer to use the building and make it profitable
2 to stay in the agricultural zone.

3
4 Brenner stated there is not a lot of money for farmers to rent out their
5 buildings. They need to make sure they are not making things so incredibly narrow
6 for farmers so it is hard for them to stay on their land.

7
8 Caskey-Schreiber stated one concern is that a farmer will build a building to
9 meet farming needs because the building they have is rented out.

10
11 McShane stated the land issue is critical. If a farmer wants to maximize
12 profit, he would ideally sell the land to the highest bidder and the county would lose
13 agricultural land. The reality is that there are buildings being used for storage on
14 farms. A condition could be that if a farmer chooses to do this, the farmer doesn't
15 get to build additional farm buildings.

16
17 Caskey-Schreiber agreed.

18
19 Olason stated he is thinking about the guidance this language provides to
20 the Hearing Examiner. A major facility might have a five- to eight-acre structure,
21 and a five-acre manure pond, and it is noisy. It is a pretty industrial use. He
22 asked who would be affected by something that could be much more than a farmer
23 with a few boats in the barn. The issue is with the limit to what this is allowing.
24 The big operations with lots of money are the issue. This language doesn't have
25 good guidance to the Hearing Examiner or staff about where they cross the line.

26
27 Additionally, they found that it often costs quite a bit to meet the fire code.
28 People will be reluctant to get their permits anyway. If the code is vague about the
29 bigger developments, it could happen. There is not a basis on saying no to those
30 places. There is no size limit on the building.

31
32 Starkenburg-Kroontje stated the language here isn't any more general than
33 other language that the Hearing Examiner has to work with. They could include a
34 building size limit. It would be acceptable to prohibit building a new building if the
35 current building were used through this language.

36
37 Brenner stated they should include a provision that the building being used
38 for storage through the conditional use permit is adequate for the same use that a
39 new building would be built for.

40
41 Olason stated some of these people aren't farmers. Some are just
42 landowners with farm buildings. The landowners are trying to figure out the
43 highest and best use for the property. They want to give farmers more options, but
44 he questions whether some of the landowners are farmers.

45
46 Starkenburg-Kroontje stated that any time a farmer buys or leases a piece of
47 property owned by a non-agricultural landowner, it all translates into the

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1 agricultural zone and agricultural code. One possibility is to work on more specific
2 language. Don't hold up item one because of item two in exhibit one.

3
4 McShane stated he want to spend more time thinking about this. Someday,
5 they have to figure this out. He would like to schedule a public hearing to approve
6 item one, then figure out a way to deal with item two in the future. **He moved** to
7 recommend the ordinance with item one of exhibit one and schedule a public
8 hearing. Continue working on item two.

9
10 Paul Isaacson, Shallow Shore Road, stated he is appalled by this. His family
11 has to conform to all the codes and amenities and pay taxes on his family's mini-
12 storage facility. Someone shouldn't be able to have mini-storage on agricultural
13 ground without having to meet the codes.

14
15 *(Clerk's Note: End of tape one, side A.)*

16
17 Gary Reid, Building Industry Association (BIA), stated barns are part of their
18 heritage, and they should save them.

19
20 Olason stated they could run the ordinance through as it is, and remove item
21 two after the public hearing. Or, he can reintroduce the ordinance with item one
22 only.

23
24 Caskey-Schreiber agreed.

25
26 Fleetwood restated the motion to schedule a public hearing, and introduce
27 the ordinance without item two.

28
29 ***Motion carried unanimously.***

30
31 Crawford suggested amending language to include a list of items that are
32 allowed through the conditional use permit.

33
34
35 **COMMITTEE DISCUSSION**

36
37 **1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING**
38 **ORDINANCE, TITLE 20, CHAPTER 20.71 – WATER RESOURCE**
39 **PROTECTION OVERLAY DISTRICT, CHAPTER 20.80 –**
40 **SUPPLEMENTARY REQUIREMENTS (STORMWATER AND CLEARING),**
41 **CHAPTER 20.85 – PLANNED UNIT DEVELOPMENTS, AND CHAPTER**
42 **20.97 – DEFINITIONS, TO PROVIDE ADDITIONAL REGULATORY**
43 **PROTECTION FOR SENSITIVE WATERSHEDS (AB2002-222B)**
44 **(AMENDED VERSION)**

45
46 Gary Reid, Building Industry Association (BIA) President, stated they all want
47 to retain the quality of water in Lake Whatcom. He regrets that they haven't taken

1 these items into a committee to be discussed in more detail. He has two major
2 concerns.

3
4 The first concern is regarding impervious surfaces. He's met with the State
5 Department of Ecology (DOE) about what to do with rainwater, which is pure water.
6 The DOE's preference is to put it into a leaching trench or underground storage.
7 The DOE is not concerned if they can direct a pipe from a roof to the lake. There
8 are reasons why impervious surfaces don't have much impact on the lake if they go
9 into the ground and let it percolate. The negative effect regarding design is
10 catastrophic if they have the small limits. They will have a difficult time designing a
11 house that anyone wants to live in. As a minimum, they need to increase the limit
12 to 3,000 square feet.

13
14 The other concern is regarding the tree retention requirements. Eighty
15 percent of the watershed is in timber, which can be cut. Here, they are imposing
16 extreme standards on an individual's smaller parcel. The costs are extreme. The
17 canopy might be at the building site and the rest of the land is wetlands. He asked
18 if the County is going to tell individuals where to build their houses because the
19 priority is trees. There is a cost impact. It costs a lot of money to do a tree survey
20 and to negotiate with the County about how to use the property. There could be
21 grasses or other plants that hold the slopes equally or better than trees. The cost
22 to bond for this is costly. It is so complicated and convoluted compared to what
23 they are gaining. The cost could be tens of thousands of dollars, with little or no
24 impact to the lake. He doesn't like the tree retention regulation at all.

25
26 Caskey-Schreiber thanked Tom Pratum for a study that says maintaining
27 forest cover is more important than limiting impervious surface area percentages.
28 The retention of the forest cover is the best way to reduce degradation to any
29 watershed.

30
31 Reid stated 80 or 90 percent of the watershed is forested. A very small
32 amount of the entire watershed is impervious surfaced. They are talking about
33 whether they are going to have 50 percent or 70 percent of the very small amount
34 of impervious surface in the watershed.

35
36 Roger Almskaar, land use consultant, stated he urged the Council to put
37 language in the tree survey section that says the information required will not be
38 extremely technical so an ordinary landowner can figure it out. Allow a reasonable
39 compromise between the public interest and the landowner's interest. The
40 language now is okay, as long as that is the understanding.

41
42 McShane stated the language is doable for the ordinary landowner now.

43
44 Almskaar stated the product of seasonal clearing is a compromise. It
45 involves a lot of judgment calls. He urged the Council to adopt it soon and put a
46 sunset clause in it that requires an official review in six months to a year. They can
47 see how it is working. He agreed with Councilmember Brenner's third point in her

1 amendments memo. If they do that, they will not need to deal with the 50 percent
2 rule.

3
4 McShane stated 3,000 square feet would equal the 50 percent rule for a
5 standard 15,000-foot lot. The substandard lots would be affected.

6
7 Paul Isaacson, Shallow Shore Road, stated he's spent thousands of hours on
8 this issue. Within the County's jurisdiction, the County's regulatory district would
9 never have a tree retention loss that exceeds any of those recommended by the
10 studies, due to zoning and the public ownership.

11
12 McShane stated the tree retention amount should be considered drainage by
13 drainage. When they get below 65 percent in a creek drainage, they begin to see
14 impacts that introduces sediments into the lake from that particular creek. That's
15 what those reports are saying.

16
17 Isaacson stated he has never had a meeting with staff or Council regarding
18 language. They always say they are going to talk, but they never actually do.

19
20 Fleetwood stated he disagreed. This committee has held a multitude of
21 meetings on this issue, going back to last summer. This issue has come before this
22 committee six or seven times. The committee has bent over backwards to ensure
23 that it would be immune from this claim that it hasn't allowed public process. This
24 is the fourth meeting in a row people have been able to come forward and talk
25 about this. There have been many opportunities. The committee would work on
26 the version of the ordinance in the packet.

27
28 **McShane moved** to amend Council packet page 175, section
29 20.80.735(2)(d)(1), "...On lots greater than one acre, but less than five acres, no
30 more than 50 percent of the existing tree canopy shall be removed. On lots five
31 acres or greater, clearing trees with a conversion option harvest plan (co-hop) or
32 conversion is allowed as long as 65 percent of the lot is replanted within the
33 following growing season, to the DNR planting specifications."

34
35 **Motion carried unanimously.**

36
37 **McShane moved** to amend section 20.80.735(2)(d) at the very top of
38 Council packet page 175, "...clearing activities on lots less than five nominal acres
39 shall comply with the following provisions:"

40
41 **Motion carried unanimously.**

42
43 Isaacson asked how much can a landowner log if they weren't going to take
44 out the mature timber. The language assumes that the landowner clearcuts
45 everything. There is a value to the trees that they don't cut. If they have a seed
46 block, they might allow harvest. He suggested requiring a minimum of 200 conifers
47 per acre. Someone could argue that they have a local seed block.

1
2 Fleetwood asked what the standard of 200 per acre is based on. Isaacson
3 stated it is based on the State Department of Natural Resources (DNR) standard for
4 a conifer stand.
5

6 Roland Middleton, Land Use Division Manager, stated that if the committee
7 wants the land to be replanted, it needs to state the replant amount. If it wants to
8 use DNR specifications, they will see a lot of seed blocks and no trees.
9

10 **McShane moved** to amend Council packet page 175, section
11 20.80.735(2)(d)(1), "...On lots greater than one acre, but no more than five acres,
12 no more than 50 percent of the existing tree canopy shall be removed. On lots five
13 acres or greater, clearing trees with a conversion option harvest plan (co-hop) or
14 conversion is allowed as long as, after the conversion or co-hop, 65 percent of the
15 tree canopy is retained or, if harvested, is replanted at 200 conifers per acres
16 within the following growing season."
17

18 *(Clerk's Note: End of tape one, side B.)*
19

20 Kurt Baumgarten, Planning Technician, asked if the motion is for 65 percent
21 of the existing trees or the tree canopy.
22

23 **McShane amended his motion** to amend Council packet page 175, section
24 20.80.735(2)(d)(1), "...On lots greater than one acre, but no more than five acres,
25 no more than 50 percent of the existing tree canopy shall be removed. On lots five
26 acres or greater, clearing trees with a conversion option harvest plan (co-hop) or
27 conversion is allowed as long as, after the conversion or co-hop, 65 percent of the
28 parcel will have a tree canopy, either by retention or replanting." If a parcel has
29 hardly anything growing on it, he wants to make the owner replant it.
30

31 Middleton asked if a ten-acre parcel with a six-acre clearing would not be
32 allowed to clear the remaining property. The property does not have 65 percent in
33 tree canopy to begin with. He asked if he could allow the property owner to clear
34 trees to build a home in the tree canopy.
35

36 McShane stated his intention is that the property owner should build in the
37 cleared portion of the lot. If the property owner wants to put the home in the treed
38 areas, the owner is going to have to plant trees to make up for it, and cover that
39 cleared portion of the lot with trees.
40

41 Middleton asked if the property owner would need to replant 10,000 square
42 feet of trees or 65 percent of the parcel if the owner cuts 10,000 square feet of
43 trees.
44

45 McShane stated the owner would have to replant to 65 percent of the parcel.
46

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1 Fleetwood asked if the motion is clear or will create an ambiguity. Isaacson
2 stated it is not clear.

3
4 Fleetwood stated the next committee meeting would be a work session just
5 for councilmembers. He closed the public comment for this issue. They will hold
6 this over in committee.

7
8 *(Clerk's Note: The motion was not voted on.)*
9

10
11 **OTHER BUSINESS**
12

13 Roland Middleton, Land Use Division Manager, stated he was present to
14 discuss enforcement and compliance issues.

15
16 Caskey-Schreiber stated she had made a comment to Hal Hart about all the
17 complaints she's heard about the County's lack of enforcement. She understood
18 that the division was short one staff person, but that position has been filled. She
19 asked if enforcement would get better. She asked if the division is able to keep up
20 with complaints and enforcement. Middleton stated they are not able to keep up
21 with it. He doesn't know how they can.

22
23 Caskey-Schreiber stated it has become clear that the County is not meeting
24 the demands as the county grows.

25
26 Middleton stated the old building and code department was established to
27 look at people who wanted to build the right way. The department was never set
28 up to enforce all the different regulations that have come up. They are becoming
29 more of a police force than they envisioned. The Columbia Valley is an example of
30 an area that will never be cleaned up the way Point Roberts was cleaned up. The
31 real issue is that, as the regulations become more complex and as the county
32 becomes more urbanized, they have to prioritize the enforcement efforts. There is
33 no way that they will get to the hundreds and hundreds of minor complaints.

34
35 Caskey-Schreiber stated the State Department of Ecology just put the
36 enforcement capabilities for manure into the Department of Agriculture. That
37 means the County Planning Department is going to have to start enforcing the
38 manure ordinance. That will be a nightmare. Middleton stated it is already a
39 nightmare for the agricultural nutrient ordinance. As the Council is adopting the
40 ordinances, don't have the illusion that the County has enough staff to chase down
41 every violation. They do have to prioritize. Until there is a significant increase in
42 staff, which won't happen anytime soon, they will still prioritize the complaints.
43 Compliance has the fastest turnaround of any position in the County. Things such
44 as noise ordinances can't be enforced.
45
46

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1 **ADJOURN**

2
3 The meeting adjourned at approximately 5:00 p.m.
4
5

6
7 _____
8 Jill Nixon, Minutes Transcription
9

10 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

11
12
13
14
15
16 _____
17 Dana Brown-Davis, Council Clerk

Seth Fleetwood, Committee Chair