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WHATCOM COUNTY COUNCIL
Planning and Development Committee

May 6, 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
L. Ward Nelson

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL

1. ORDINANCE TO AMEND THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, TITLE 20, BY CLARIFYING EXISTING CODE LANGUAGE, ELIMINATING CONFLICT AND DUPLICATION IN THE CODE LANGUAGE (AB2003-173)

Sylvia Goodwin, Planning Division Manager, stated this is just to clean up language, remove duplication, or change references to things that no longer exist. The only change to the intent of the code is to correct a scrivener's error regarding sections 20.42.105 and 20.42.109. It is supposed to be an administrative approval. The Planning Division wants to do a code scrub once or twice per year.

Caskey-Schreiber moved to recommend approval to the full Council.

Motion carried unanimously.

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) (AMENDED VERSION)

Caskey-Schreiber stated she wants to spend some time at this meeting on the point system.

1
2 **McShane moved** to amend section 20.80.735 to remove Drayton Harbor.
3 They were looking for water quality protection from a lake scenario. Drayton
4 Harbor is not necessarily subject to phosphorus. It is a compromise. Also,
5 managing all these rules is a big task. It will help focus the attention onto Lake
6 Whatcom.

7
8 Kurt Baumgarten, Planner I, stated it does not affect the stormwater special
9 district standards for Drayton Harbor. He agreed with the amendment.

10
11 **Motion carried unanimously.**

12
13 Baumgarten asked if the motion included removing Drayton Harbor from the
14 water resource special management area, not just the tree retention section.

15
16 McShane stated that is correct.

17
18 **McShane moved** to amend page 17, section 20.80.735(2)(d), "...clearing
19 activities on **any** lots less than 5 nominal acres shall comply with the following
20 provisions: 1. ~~On lots 1 acre or less, existing tree canopy areas (as defined by the~~
21 ~~dripline of the tree(s)) may be removed for the purpose of a building site,~~
22 ~~driveways, parking areas, and areas to be landscaped...shall be removed.~~
23 **tree canopy areas, as defined by the drip line of the trees, may be removed for the**
24 **purpose of a building site, driveways, parking areas, and areas to be landscaped,**
25 **but such areas shall not exceed 5,000 square feet or 35 percent of the existing tree**
26 **canopy area, whichever is greater."**

27
28 **Motion carried unanimously.**

29
30 McShane stated he looked at language regarding lots larger than five acres
31 in terms of co-hops and conversions. If anyone wants to make that change, he
32 would ask that person to add language that he would recommend.

33
34 Brenner asked if there is an exception for someone with a hardship that
35 allows that person to apply for a variance.

36
37 McShane stated they went through that once already. Someone applied for
38 a variance.

39
40 Brenner suggested a motion to amend section 20.71.302(4) so that the
41 square footage is returned to 3,000 square feet, "... shall be allowed, **excluding**
42 **Sudden Valley. In Sudden Valley, for any lot consolidation, the 3,000 square foot**
43 **impervious surface shall apply."** Encourage people to consolidate lots and reduce
44 the amount of buildable lots, even if those two lots don't create a standard lot.
45 This would help reduce buildable lots. Sudden Valley's allowed square footage
46 would remain at 2,500 square feet unless lots are consolidated.

1 Caskey-Schreiber asked the result of increasing the allowed square footage
2 to 3,000 square feet.

3
4 Tom Pratum, citizen, stated there are a lot of parcels in Sudden Valley.
5 Thousands could be built on.

6
7 Caskey-Schreiber asked how much more impervious surface would be
8 created. Goodwin stated she would have to do a calculation. It would be
9 complicated to figure out.

10
11 **Caskey-Schreiber moved** to amend section 20.71.302(4), "...square feet of
12 impervious surface shall be allowed. In the event they engage in lot consolidation,
13 they can increase their square footage to 3,000 square feet of impervious surface."
14 Goodwin stated certain Geneva lots are consolidated because they are too small.
15 She asked if they would get 3,000 square feet.

16
17 Brenner stated they would.

18
19 McShane stated some of those lots are really small. This number has been
20 discussed and changed a lot. Twenty-five hundred square feet is reasonable. His
21 concern is the impact on the smaller lots. The Sudden Valley Community
22 Association indicated that it wouldn't be a problem.

23
24 Caskey-Schreiber stated that if they want to reduce impervious surface in
25 the watershed by removing buildable lots, they are doing that. Consolidating lots
26 to build at 3,000 square feet removes 2,000 square feet of impervious surfaces
27 from the watershed.

28
29 **Motion carried 2-1 with McShane opposed.**

30
31 Brenner suggested an amendment to section 20.71.351(3) to eliminate the
32 maximum number of lots. She doesn't remember the reason they chose a
33 maximum. Goodwin stated the Western Washington Growth Management Hearings
34 Board invalidated Whatcom County's cluster ordinance because there was no cap
35 for the amount of clusters. The board was concerned that would create mini-
36 villages or urban pockets in the county. The biggest piece of property likely divided
37 into five acres is an 80-acre parcel, resulting in 16 lots.

38
39 Brenner suggested at least 24 or 30 lots as a cap. It will not create anything
40 that looks like a small town. If they can consolidate more and leave a more open
41 area, then they should do that as much as possible.

42
43 McShane stated they should be consistent in rural districts. That language is
44 from the rural areas. That number should be argued in a different venue than just
45 the Lake Whatcom and Lake Samish area.

46

1 Brenner stated that if it works better in those areas, it doesn't persuade her
2 to keep it consistent.

3
4 *(Clerk's Note: End of tape one, side A.)*

5
6 Brenner asked how a building lot would be compatible with critical areas
7 when there is language about disturbance of critical areas. She asked what kind of
8 additional design extras they are asking for. Goodwin stated they wouldn't put an
9 entire cluster in the wetland, and the wetland would be put in the reserve tract.

10
11 Brenner stated it looks like there are more location and design criteria to
12 avoid critical areas.

13
14 McShane stated they might not want stormwater to be compatible with
15 wetlands.

16
17 Brenner suggested an amendment to section 20.71.402 regarding setbacks.
18 She asked why they have different roofline allowances. Goodwin stated it is to
19 accommodate front porches.

20
21 Amy Pederson, Planner I, stated the other overhanging architectural features
22 could mean the front porches. It is about encroaching into the setbacks. There is a
23 safety concern about how far they want the structure to encroach into the side yard
24 setback.

25
26 Brenner suggested an amendment to remove "recreation" and "education"
27 from sections 20.80.634(1)(f)(ii) and (vi).

28
29 Fleetwood stated they are examples, not mandatory.

30
31 Brenner asked if section 20.80.733(2) is a class three activity.

32
33 Paul Isaacson, citizen, stated it is. It could be class one, two, and four, also.
34 The language is the best as it is.

35
36 Brenner asked if section 20.80.733(3) includes road building for forest
37 practices. Pederson stated she believed that logging roads are included in the
38 forest practice activity definition in Title 20. She will look it up to make sure.

39
40 Brenner referenced section 20.80.735(2)(a). She asked if it is already
41 required. Baumgarten stated this language would make sure it is covered if it is
42 just a clearing permit being applied for.

43
44 Brenner stated section 20.80.735(2)(b) should be "may" instead of "shall."
45 That's what they said before.

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1 Fleetwood stated it is qualified later in the section, "if determined to be
2 appropriate." It's not mandatory, even though it appears to be.

3
4 Baumgarten stated staff was okay with the two suggested amendments to
5 sections 20.80.736(2) and 20.80.738(2)(b)(v) from Brenner's list of amendments.

6
7 Brenner referenced section 20.80.741 regarding assurance of performance.
8 They need to be more specific about the kind of financial assurance the County
9 requires. Goodwin stated there was discussion to not require bond or insurance. It
10 would need to be defined. The Building Industry Association wanted the language
11 more vague so they weren't locked into posting a bond.

12
13 Brenner stated the people at the Building Industry Association told her that
14 they wanted it to be more specific. Goodwin stated every builder has a different
15 idea. She will try to clarify it.

16
17 Caskey-Schreiber asked to look at comparable counties to come up with
18 something. Goodwin stated staff will come up with something more specific for the
19 next meeting.

20
21 Brenner asked if conditional uses are permitted outright in Planned Unit
22 Developments (PUD). Pederson stated conditional uses are not, but because the
23 PUD process goes through the public hearing process and the Hearing Examiner,
24 it's incorporated.

25
26 Brenner suggested an amendment to section 20.97.187 and to add a
27 definition for another level of surfaces that is between impervious and pervious,
28 called "low grade pervious." Give gravel some credit for having perviousness.

29
30 Caskey-Schreiber asked if that would be difficult to enforce.

31
32 Brenner stated the person has to show proof of what he or she has, which is
33 no more onerous than what they already have to do. The size of the pervious
34 gravel is 1 ¼-inch or greater clear gravel, without fines.

35
36 Baumgarten stated it has to have some structural integrity beneath it. He
37 asked what would go under it.

38
39 Isaacson stated it is a base rock. It is clear and also structural. For the
40 public, it is more expensive to use. It is used in ditches at the lake. If gravel was
41 impervious, the ditches out there would be considered impervious because they use
42 2- to 4- inch clear ballast rock for soil stabilization. If someone puts pit-run under
43 it, it would invalidate the perviousness.

44
45 Brenner stated add another section and assign a percentage of 20 or 30
46 percent of the credit given to pervious surfaces.

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1 McShane stated that sometimes a paved road might be better for water
2 quality than a gravel road. Most roads are fairly impervious. There is an issue with
3 some soil types that are impervious. The stormwater rules will be easier where
4 there are pervious soils. Asphalt and gravel, for the engineering purpose of
5 stormwater runoff, are the same. Water runs off them both at the same amount.
6 It will vary if it is a paved driveway with pervious soil. That doesn't have an impact
7 on the ecological regime of the local stream.

8
9 Nelson stated he disagreed. The impact is oil emissions that are getting
10 filtered. If he had asphalt, it's another organic material on top of the watershed.
11 During the summer, byproducts will accumulate. During the first storm event of
12 the summer, it will drain into the streambeds. During the year, it would have had a
13 chance for bio-filtration without a one-time deluge.

14
15 Brenner asked how critical areas are different from environmentally critical
16 areas.

17
18 Caskey-Schreiber stated it is just clarification. She would like to discuss the
19 point system.

20
21 McShane stated the idea is to avoid getting sediment in flowing water that
22 would transfer that sediment to the lake. In the "proximity" section, change the
23 points for water in a ditch from ten points to 20 points.

24
25 Caskey-Schreiber stated she wanted to keep the system, but make it simpler
26 for the Planning Department. Baumgarten stated it is an administrative document
27 that can be reviewed after a time. He ran some example sites through the
28 proposed point system. These were sites that were challenging for the contractor
29 to keep the sediment onsite. If they bump up the number for proximity to a ditch,
30 all numbers will go up.

31
32 Caskey-Schreiber suggested that a point score of 40 or above would not be
33 allowed. Don't allow the higher point activities. Baumgarten stated that a
34 threshold of 40 points would disallow most proposals. He would have to run some
35 more model sites. A cut off point would be clearer. The point system is
36 administrative, so staff can review and change it later. The Council just has to
37 decide if it wants to use a point system.

38
39 Pederson stated the Council has to decide if it wants a two- or three-tiered
40 point system.

41
42 **Caskey-Schreiber moved** to change the points of proximity to a wetland
43 water body to 20 points for each item.

44
45 **Motion carried unanimously.**
46

1 **Caskey-Schreiber moved** to adopt a two-tiered point system, so that
2 anything under a certain point would be approved, and anything over a certain
3 amount would have to wait. The point level is to be determined administratively.
4 Eliminate sections 20.80.735(2)(f)(1)(b)(iii).

5
6 *(Clerk's Note: End of tape one, side B.)*
7

8 Baumgarten stated there would have to be language about a winter erosion
9 control plan, if there was going to be a threshold. The language in section (ii) must
10 be consistent throughout.

11
12 McShane stated he is comfortable letting it go as it is written. They've
13 always said they are not going to go to an engineered design solution. There is
14 enough flexibility to adapt the point levels as they learn more.

15
16 Caskey-Schreiber asked how much this increases the workload.

17
18 McShane stated that is a good question. Drayton Harbor has been removed,
19 so it might not be so bad.

20
21 Baumgarten stated that currently, every site plan has to have something
22 related to soil coverage and other basic stuff.

23
24 Caskey-Schreiber stated there is no enforcement on these plans. A two-
25 tiered system would get away from that.

26
27 Goodwin stated that once the regulations are adopted and staff is trained,
28 they'd like better cooperation from the building department to make sure that all
29 the erosion controls are installed and inspected before the footings are poured. The
30 building department has been resistant to doing that because the rules are always
31 changing. It has been a logistical problem. Once adopted, counter staff can be
32 better trained and there will be more people who can do this.

33
34 Baumgarten stated that building inspectors show up onsite. There are three
35 opportunities for a contractor to be aware that he or she must call him for an
36 erosion control inspection. He can't follow up on everyone who doesn't call. He's
37 been working with the building inspectors to get them to not approve the footings
38 until they call for the erosion control inspection. That's not happening. He would
39 be more confident about the three-tiered system if that were happening. He's not
40 sure how to get that going. Having something that is more straightforward and
41 drops out more people would make it easier to administer.

42
43 Goodwin stated it would happen once the rules are finally adopted and they
44 can give everyone training about the rules.

45
46 Roy asked if it is easier for Mr. Baumgarten if the regulation was more "black
47 or white," such as a two-tiered system. Baumgarten stated that to have a

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1 threshold to allow a site that is obviously not a hazard would not be much different
2 than what he is doing now. If there is a middle category for marginal sites, it
3 requires staff time and follow-up.
4

5 ***Motion failed 1-2 with Caskey-Schreiber in favor.***

6
7 ***McShane moved*** to approve the seasonal clearing section, as is.

8
9 ***Motion carried 2-1 with Caskey-Schreiber opposed.***

10
11 Pederson stated the County Planning Division and Engineering Division
12 recommend additional amendments, described in her memo to the County Council
13 dated May 6, 2003. She read her memo into the record.
14

15 ***Fleetwood moved*** to adopt the proposals in the Pederson memo dated May
16 6, 2003.
17

18 ***Motion carried unanimously.***

19
20 ***McShane moved*** to recommend adoption as amended to the full Council.

21
22 ***Motion carried 2-1 with Caskey-Schreiber opposed.***
23
24

25 **OTHER BUSINESS**

26
27 There was no other business.
28

29 **ADJOURN**

30
31 The meeting adjourned at 4:50 p.m.
32
33
34

35 _____
36 Jill Nixon, Minutes Transcription
37

38 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

39
40
41
42
43 _____
44 Dana Brown-Davis, Council Clerk

Seth Fleetwood, Committee Chair
45