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WHATCOM COUNTY COUNCIL
Planning and Development Committee

February 22, 2005

Committee Chair Seth Fleetwood called the meeting to order at 3:12 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner
Dan McShane

Absent:

None

Also Present:

Sam Crawford

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

2. ORDINANCE AMENDING TEXT OF THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, SPECIFICALLY THE ADDITION OF CHAPTER 20.15 – MUSHROOM SUBSTRATE PRODUCTION FACILITIES SITING REQUIREMENTS, ESTABLISHING LOCATIONAL CRITERIA AND ZONING DISTRICTS IN WHICH SUCH FACILITIES WILL BE ALLOWED (AB2005-105)

Crawford stated it has been brought to his attention that the neighborhood folks have an attorney who developed legal rationale for the Council reaching a different conclusion from the staff recommendation. He asked for assurance that this be delayed for two weeks. He would like to hear the arguments.

Fleetwood stated staff made it clear that time is not an issue.

Kraig Olason, Senior Planner, stated it's fine to delay the issue.

Matt Aamot, Senior Planner, stated the committee should consider how long it will take to get these through committee.

Fleetwood stated the Council is not meeting again until March 15. On that day, the committee will try to wrap up the Comprehensive Plan elements. The committee may not get to this until March 29.

Crawford stated he's not as concerned about the zoning aspects as he is about the legal aspects of whether they can include certain zoning criteria. It's almost a legal argument. One option is to have a Committee of the Whole session at 6:00 p.m. to hear both sides of the legal argument.

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1 Brenner stated the proponent's attorney proposed language. It costs the
2 proponent money for the attorney to come in. The attorney is Bob Carmichael.
3 The Council should be able to take their word that he proposed this language rather
4 than having come in. This ordinance needs to be worked out during a Planning
5 Committee meeting. It probably won't be decided today anyway.

6
7 Fleetwood stated the committee won't get around to final action today,
8 anyway.

9
10 *(Clerk's Note: Discussion continued below.)*

11 12 **COMMITTEE DISCUSSION**

13 **1. RESOLUTION INITIATING COMPREHENSIVE PLAN AND ZONING** 14 **AMENDMENTS FOR 2005 (AB2005-084)**

15 Docket #2005-F: Cherry Point UGA Expansion

16
17
18 Matt Aamot, Senior Planner, showed a map of the location. The proposal
19 adds 20 acres to the Cherry Point urban growth area (UGA) and rezone it from
20 rural, one unit per five acres (R5A) to light impact industrial (LII). There are fields,
21 trees, and scattered residences to the north and east. The Conoco Philips Refinery
22 is to the west and the Tenaska cogeneration facility is to the south west. Tenaska
23 owns a wooded area to the south.

24
25
26
27 Fleetwood stated the Council constantly and incrementally expands and re-
28 designates areas that were once rural, a little at a time. He asked if Lake Terrell
29 Road is a natural border between industry and areas that are not industry.
30 Everything industrial is to the west of Lake Terrell Road and everything rural is to
31 the east of Lake Terrell Road.

32
33 Aamot stated there are aquifer recharge areas on the site. There are no
34 mapped wetlands or streams. The Terasen pipeline bisects the site and terminates
35 near the western edge of the site. There are lines off from that that are owned by
36 Conoco and British-Petroleum (BP). A Cascade Natural Gas line goes up Lake
37 Terrell Road on the western boundary of the site. The Olympic pipeline is to the
38 south. There are no mapped steep slopes. There are no wellhead protection areas
39 on the site.

40
41 Fleetwood asked why it is needed for expansion. Aamot stated Terasen
42 Pipelines put in an application. They may make improvements on the site over
43 time, including metering, a containment tank, and office building.

44
45 Dick Gilda, Jensen Road, Bellingham, stated Patrick Davis, Supervisor of the
46 Laurel Station and Bob Love, Canada Lands Manager, is present. In the 1950's, the

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1 Laurel area was surrounded by Northwest Road, Noon, Road, Pole Road, and Kelly
2 Road. Now, it's changed.

3
4 Patrick Davis, Terasen Pipelines, presented information on what is on the
5 existing property right now (*on file*). It's basically a scrapper trap site for the end
6 of the pipeline before it goes into the refinery. The information includes a proposed
7 building, approximately the same size and height as the existing Laurel Station.
8 They've contacted and talked to individuals on surrounding properties about the
9 rezone.

10
11 The purpose of the rezone is to upgrade the existing facility to a metering
12 transfer facility, to benefit health, safety, and environment. This is the last site
13 they need to upgrade in their 60 miles of pipeline. All other locations have been
14 upgraded to have covering and containment for all above-ground piping. They've
15 vaulted all the mainline valves and check valves. The only thing left in the ground
16 after they do this is pipe. Everything else is above ground on containment with
17 covering. If there is any leak, it's detected immediately and goes to the control
18 center.

19
20 It's a more effective way to account for crude oil deliveries. At the Lake
21 Terrell Road site, the road was widened and brought closer to the existing facilities
22 and crude oil vapors during maintenance. The County purchased a couple of acres
23 for a retention pond when it widened the road. There are about 18 acres left. Two
24 acres would be left in a wetland area for wildlife habitat. The project will cover only
25 about two acres.

26
27 The rezone will bring into compliance from R5A to LII, which will help create
28 the needed transition buffer, as mentioned in the Comprehensive Plan and Growth
29 Management Act (GMA). The area is zoned heavy industrial on one side and R5A
30 on the other side. This property has always had a pipeline on it. The site would be
31 used as light industrial.

32
33 They've opened up communication with neighbors within one-quarter mile of
34 this property. All those contacted have been receptive to this rezoning plan and
35 appreciate being included in the process. He plans to continue working with
36 neighbors and the County Planning Department to create needed buffers, if the
37 proposal is docketed. Project timing is parallel with this proposal.

38
39 The meter upgrade project will allow them to continue to provide crude oil to
40 the Cherry Point refinery in a safe, efficient, and environmentally friendly way. The
41 rezone will bring them into compliance with the GMA and Comprehensive Plan. It
42 will keep up with ever-changing new and better technology. His company is trying
43 to make the system better. This site is the last with buried valves. He wants to
44 bring them above ground for maintenance purposes.

45
46 Brenner asked if they are feeding fuel to Conoco. Davis stated they provide
47 crude oil from Edmonton, Alberta to Conoco and BP.

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1
2 Brenner asked if they are allowed to set up that same kind of thing on their
3 property. Davis stated he hasn't asked them. His company has owned this
4 property for a long time. The thought was to just get set up where it is now.
5

6 Brenner stated zoning is supposed to have clean lines as much as possible.
7 This is a little appendage away from the line. She asked why it couldn't be on the
8 other side. Davis stated they are doing their business. He's doing his business.
9 There is not the facilities to do it without moving out of the current location where
10 the pipe is because of the tank's proximity. He indicated the location on the map.
11

12 Brenner asked if the joints of the pipeline are already there. Davis stated
13 they are.
14

15 Fleetwood asked about rezoning the area to bring it into compliance. He
16 asked if it is not in compliance now. Davis stated Ferndale is growing. There is no
17 light industrial next to the heavy industrial zone.
18

19 Gilda stated according to GMA and the Comprehensive Plan, there should be
20 a buffer between land zoned heavy industrial and land zoned residential. For some
21 reason, this area has been overlooked for some time. Only the LII zone makes
22 sense.
23

24 Brenner asked if LII should go all the way around the heavy impact industrial
25 (HII) zone. Gilda stated that if they were to go by the letter of the law, that's the
26 way it should be. They didn't solicit all the neighbors to see if they want to go in.
27 He and Mr. Davis talked to the neighbors to find out if they had objections. A
28 number of the neighbors thought that area was already industrial land.
29

30 McShane stated one line is used to fill the tanks. A spur line goes to the old
31 Arco refinery. Davis stated that is BP's lines. The company discontinued using his
32 company until now, when heavy crude oils are coming down. They're just
33 transporting only, not selling. Heavy Canadian crude oils are coming now. Before,
34 interested in the light crude oil.
35

36 McShane asked if the line would need to go through this scraper trap. Davis
37 stated a scraper trap is a tool to run through the pipeline before it goes into the
38 tank. They would also add a metering facility. Buried valves that he'd like to bring
39 up for ease of maintenance are currently in the ground. There would be full
40 containment, and leaks would be detected and wouldn't go into the ground. His
41 company built one at Anacortes. The picture of the Laurel facility is what that
42 building would look like.
43

44 ***Brenner moved*** to recommend docketing this item to the full Council.
45

46 Fleetwood asked staff's recommendation. Aamot stated staff has no
47 objection.

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1
2 McShane asked if the current use is nonconforming and no exception could
3 be made under the rural zone for this upgrade. Aamot stated the company would
4 have to get a conditional use permit for expansion of a nonconforming use.
5

6 Fleetwood stated if this use could be permitted if it was across the road.
7 Aamot stated a zoning amendment would make that explicit. It would be permitted
8 outright on LII land.
9

10 McShane asked if it is possible to approve the use on rural land that already
11 has a pipeline on it. Aamot stated the nonconforming provisions allow expansion of
12 a nonconforming use. They may be able to apply in that process.
13

14 McShane stated he's concerned about this large a parcel being rezoned into
15 light impact industrial. It seems R5A or agriculture would be a better buffer around
16 heavy industrial zones. The request is to rezone 20 acres for some use that has a
17 fairly small footprint. He would rather approve a conditional use permit expansion
18 than a rezone. That is a lot of acreage that is currently being farmed.
19

20 Brenner stated the Comprehensive Plan says that the buffer between HII and
21 residential zones is LII. This proposal fits with that provision.
22

23 ***Motion failed 1-2 with Brenner in favor.***

24
25 Docket #2005-S: Appendix G, Transportation Impact Fee Background Info.
26

27 Aamot stated the County Council adopted two ordinances in 2003 to begin
28 the process of developing a transportation impact fee ordinance. The Council
29 incorporated impact fee background information in Appendix G of the
30 Comprehensive Plan, which is required by the State before an impact fee ordinance
31 can be adopted. This year, they may have updated traffic amounts and projections
32 from the Council of Governments (COG). Staff wants to update Appendix G to
33 make sure it continues to provide a firm foundation for the transportation impact
34 fee ordinance when it's brought forward.
35

36 Brenner stated there is no background information in the packet. Aamot
37 stated staff and the Council will get more information on traffic counts, model
38 results, and other information later in the year.
39

40 ***Fleetwood moved*** to recommend to the full Council docketing this item.
41

42 ***Motion carried unanimously.***
43
44

45 **COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL**
46

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1 **1. ORDINANCE AMENDING WHATCOM COUNTY CODE BY THE ADDITION**
2 **OF A NEW SECTION TO WHATCOM COUNTY CODE, TITLE 16,**
3 **ENVIRONMENT, CHAPTER 16.28 – MANURE AND AGRICULTURAL**
4 **NUTRIENT MANAGEMENT, SECTION 16.28.045 – APPEALS AND**
5 **ADDITION OF NEW LANGUAGE TO WHATCOM COUNTY CODE, TITLE**
6 **20, ZONING, CHAPTER 20.92 – HEARING EXAMINER, SECTION**
7 **20.92.210 – FINAL DECISIONS (AB2005-104)**
8

9 Kraig Olason, Senior Planner, stated a scrivener’s error has been discovered.
10 One has to do with the manure management ordinance. There wasn’t originally an
11 opportunity to file an appeal of an administrative decision. This ordinance adds
12 that opportunity to the County code.
13

14 The second change adds Title 16 to the Hearing Examiner’s list of final
15 decisions. It was inadvertently left out.
16

17 ***Brenner moved*** to recommend approval to the full Council.
18

19 ***Motion carried unanimously.***
20

21 **3. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING**
22 **ORDINANCE, TITLE 20, CHAPTER 20.80 TO DESIGNATE THE BIRCH**
23 **BAY WATERSHED AS A STORMWATER SPECIAL DISTRICT AND A**
24 **WATER RESOURCE SPECIAL MANAGEMENT AREA (AB2005-106)**
25

26 Amy Pederson, Planner II, stated this proposed ordinance implements a
27 permanent text amendment to add Birch Bay as a stormwater special district and a
28 special management area with the exception of the provisions for tree retention and
29 seasonal land clearing.
30

31 ***McShane moved*** to recommend approval to the full Council.
32

33 ***Motion carried unanimously.***
34

35 **2. ORDINANCE AMENDING TEXT OF THE OFFICIAL WHATCOM COUNTY**
36 **ZONING ORDINANCE, SPECIFICALLY THE ADDITION OF CHAPTER**
37 **20.15 – MUSHROOM SUBSTRATE PRODUCTION FACILITIES SITING**
38 **REQUIREMENTS, ESTABLISHING LOCATIONAL CRITERIA AND**
39 **ZONING DISTRICTS IN WHICH SUCH FACILITIES WILL BE ALLOWED**
40 **(AB2005-105)**
41

42 Kraig Olason, Senior Planner, gave a staff report and stated they tried to fill
43 in the blanks between the Health Department ordinance to regulate the facility and
44 a Planning Department ordinance on siting. The key features to the ordinance
45 include definitions for where the facility is located on a site and what a mushroom
46 substrate production facility is. They’ve distinguished the difference between on-
47 farm and commercial facilities.

1
2 Buffers to various adjacent zoning districts and setbacks from specific
3 properties are identified. A commercial facility is to be located in the heavy impact
4 industrial zone.

5
6 Staff talked about whether substrate production facilities belong in the
7 agricultural zone. They decided to require anyone in the agricultural zone to grow
8 mushrooms onsite to have a substrate facility. Anyone can grow mushrooms
9 without producing substrate, and wouldn't be subject to this ordinance.

10
11 There was discussion on whether substrate production is considered farming.
12 There is case law that says substrate production is a commercial operation and that
13 the activity is a manufacturing activity. When production is being done onsite, it's
14 similar to a nursery business that mixes its own potting soil and grows its own
15 plants. The problem with odor comes from mushroom substrate production, not
16 growing mushrooms or the final product.

17
18 He showed examples of buffer and setback requirements.

19
20 Brenner stated the buffer is different for rural zones and rural forestry zones.
21 However, the people in these zones are all being impacted. She would rather have
22 the buffers the same in both zones. Olason stated the rationale for the difference is
23 because the purpose for the rural zone is divided between agriculture, forestry, and
24 residential use. The rural forestry zone is a designated resource land. They
25 intentionally tend to be more supportive of resource use. The others are primarily
26 residential in nature.

27
28 Brenner stated the people who have greatly impacted by this use all seem to
29 live in rural and rural forestry zones. She assumes many of them live over 1,000
30 feet away from the facility. She asked the problem with having one buffer instead
31 of two. Olason stated that is a policy decision. He tried to use intended uses as a
32 basis for deciding whether or not it is primarily residential. He interprets the code
33 to be more of a resource activity area than strictly residential.

34
35 Brenner stated the odor has a public health impact. She asked if 1,000 feet
36 will make it better. Olason stated that if the facility really stinks, the distance won't
37 make a difference. Another feature of this ordinance is that they're requiring indoor
38 production. If indoor production doesn't work, then 1,000 feet is probably not
39 enough. Everyone seems to think indoor production works. Another feature is
40 limiting the amount of allowed yardage. There are a number of safeguards that
41 weren't thought about when those first proposals came forward. They're trying to
42 use buffering to a point. They're relying on a lot more than ever on oversight from
43 the Health Department to track and monitor the facility.

44
45 Brenner stated indoor sites still produce a problem, even though it's not as
46 bad. Since those are the zones where the complaints came from, she would like to
47 have one buffer.

1
2 Fleetwood stated there was a request to defer this discussion until later.
3 People who want to speak today are welcome to.
4

5 Olason stated this ordinance exempts the existing production facility from the
6 setbacks. They will never meet those setbacks, even if they went indoors.
7

8 McShane stated it would be worthwhile to see the slideshow. He hesitates
9 moving forward because of the new information that Mr. Olason has not even seen.
10 It looks like Bob Carmichael suggested changes in a redline/strikeout version of the
11 ordinance (*on file*).
12

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

15 Olason stated staff needs to see if there are legal issues or just ideas in the
16 new information from Mr. Carmichael. He doesn't know if the proposal is a legal
17 issue. The County legal counsel reviewed it.
18

19 Fleetwood stated he suspects Councilmember Crawford mentioned legal
20 issues simply because the new information was brought forward by a lawyer. He
21 doesn't think anyone is claiming that the proposal is not legal.
22

23 McShane stated he would like to hear the presentation that staff put
24 together. At this point, he's not ready to act because none of them have read this.
25

26 Brenner stated she would like to work on it a little today. Get the staff
27 presentation and listen to the citizens. They already made it clear the committee
28 would not act on it today.
29

30 Unidentified speaker stated the citizens are fine with postponing the item.
31 They want to address the committee when it has time to understand some of the
32 complexities of the issues.
33

34 McShane stated he would like to know the rationale behind the new
35 information.
36

37 Greg Barlean, Hopewell Neighborhood Association, stated the neighbors are
38 afraid that those in this industry are intent on beating the regulations. Any
39 regulations need to be very sound and defensible. One way to beat regulations is
40 through a challenge to them. He doesn't believe that any of the producers want to
41 only do a minor expansion. They want to do whatever they want, which is 16,000
42 yards of quality open-air substrate. The citizens are very concerned.
43

44 Fleetwood stated there is an enormous number of suggested modifications.
45 He asked for a summary of the top recommendations.
46

1 Cheri McKay, 6714 Ocean Road, stated one issue is the parcel size needed to
2 accommodate an average-sized substrate facility. A 3,000 cubic yard per month
3 facility itself will take up a half acre with setbacks of 660 feet if it's on a 50-acre lot.
4 One big change is from a production-based cap to impervious surface. The idea is
5 that the producers can manufacture as much as they want, but can only cap 25,000
6 square feet, which accommodates 3,000 cubic yards of material. Do not allow any
7 type of shipping off-site for emergencies.

8
9 Brenner stated she doesn't understand the emergency shipping thing.
10 Olason stated it came up when a producer has more than one farm. If one farm
11 contracts a disease, it wants to haul material to the other farm to still meet
12 production quota. The producers didn't like this language either because they felt it
13 was too restrictive. If they were to prove they were doing that for years, they
14 could come in as a nonconforming use. This provision gets at preventing a
15 producer from doing this all the time because it's convenient. There must be some
16 purpose behind it. It is a judgment call, but it's not to constitute a regular part of
17 the operation.

18
19 Brenner stated emergencies are part of doing business. People not involved
20 with their business should not bear the burden of their emergency. If there is an
21 emergency, a facility should shut down until it's fixed. Olason stated they're not
22 allowed to produce any more than they would otherwise. They don't get to double
23 their production. One concern is how to track that. The County has to have staff at
24 the facilities to verify volumes by the truckload, which is tough to do. It is cleaner
25 to say that moving material off-site is prohibited, but it may not be as workable for
26 these people. That is a decision on whether the odor is bad enough to restrict the
27 activity totally and if there are enough safeguards to make it reasonable.

28
29 McKay stated the fourth issue is zoning, as Councilmember Brenner
30 mentioned.

31
32 Olason presented a Power Point information showing different examples of
33 parcel layout, showing buffers and setbacks. The definition of a facility is the active
34 area of substrate production. The Planning Commission didn't want the use in
35 forestry zones. They are talking about allowing the use in agricultural and
36 industrial areas. There are not many parcels available for a facility once they
37 remove the cities, urban reserve areas, LII zones, commercial zones, rural zones,
38 rural forestry zones, recreational open space areas, water resource protection
39 overlay districts, stormwater districts, wellhead protection areas, and floodplains.
40 If in the industrial zone, a parcel owner can petition for a reduction in the setback.
41 In addition, the parcels would have to be big. In addition, there are critical area
42 overlays that would not allow the use. What's left is only one area in the county
43 that really is the best place for such facilities. Wherever they go, there is potential
44 for conflicts. Therefore, indoor facilities will have to work to avoid complaints. The
45 real fix to this problem will come from technology.
46

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1 Brenner asked the size of an indoor facility. Barlean stated the proposed
2 Ostrum concrete slab was about 1.5 acres.
3

4 Olason continued the presentation showing areas where a facility could occur
5 on-farm. There is really no place where a facility could be located and not have a
6 neighborhood group up in arms, including the heavy industry areas near Sandy
7 Point.
8

9 Brenner stated her job is not to make it easy to site an industry that highly
10 pollutes. Her job is to see the people are protected, even if only one site in the
11 county would accommodate a facility.
12

13 Olason concluded the presentation showing the location of the Ostrum facility
14 and neighborhood development patterns.
15

16 Fleetwood asked if the practical effect of this ordinance will be to stop
17 mushroom substrate production in Whatcom County. Olason stated the practical
18 effect is that anyone who wants to do mushroom substrate production in Whatcom
19 County will have to realize that Whatcom County has a series of requirements not
20 found in other places. It will be expensive to locate here when they consider the
21 indoor requirements of a site. It may or may not deter additional facilities.
22

23 Brenner asked if this is what the Canadians did. Olason stated Whatcom
24 County's buffers are bigger by quite a bit. Ultimately, they're all indoors. They
25 have an outdoor option, based on the Frasier Valley airshed. They look at total
26 emissions and emissions of each facility, until the airshed is full.
27

28 McShane stated the Frasier Valley has problems with ammonia pollution in
29 addition to the odor problem. Olason stated Canada has it's own laws regarding air
30 pollution. That is a different kind of regulation from how they regulate air in
31 Whatcom County. Washington State agencies are not clear on an opinion about
32 this issue. Whatcom County is far ahead on this issue. The proposal addresses
33 most concerns if going indoors actually works.
34

35 Fleetwood stated the committee will take this issue up again at a later
36 meeting.
37

38 McKay stated the original proposal for the Ostrum expansion would have
39 used 1.2 million gallons of water per month drawn and stored for production.
40
41

42 **OTHER BUSINESS**

43
44 There was no other business.
45
46

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1 **ADJOURN**

2
3 The meeting adjourned at 4:27 p.m.
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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