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WHATCOM COUNTY COUNCIL
Natural Resources Committee

December 5, 2006

Committee Chair Dan McShane called the meeting to order at 9:30 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Carl Weimer
Seth Fleetwood

Absent:

None

Also Present:

L. Ward Nelson
Sam Crawford

COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL, COMPREHENSIVE PLAN

1. ORDINANCE ADOPTING A MINERAL RESOURCE LANDS COMPREHENSIVE PLAN AND ZONING DESIGNATION ON BRECKENRIDGE ROAD (AB2006-422)

McShane stated the Council received a follow-up letter today from the attorney representing Concrete Nor'West regarding access across the State right-of-way located to the east. Basically, the letter says they are not real keen on crossing that way.

Matt Aamot, Planning and Development Services, stated he received another email that morning from the Washington State Department of Transportation (*on file*).

McShane moved to adopt the ordinance. The fundamental part of the issue pertains to Section 2 of the recommendations, item d. He read that section. He is concerned about problems with Madison Street in providing some assurances that the safety issues would truly be addressed.

Nelson stated it's not just about the safety issues. The concerns are also impacts to the City's road systems.

McShane moved to amend the ordinance to add language at the bottom of Section

2.

"d. ...with this condition. If the current entrance to Breckenridge Road continues to be utilized, any permits for mining within this MRL will require:

- A) that the entrance at Breckenridge Road be improved such that truck traffic will not cross the center lane of Breckenridge Road when turning west; and
- B) Madison Road will be upgraded to accommodate all weather heavy truck traffic; and
- C) Madison Road will be upgraded at Highway 9 intersection such that trucks turning on to Madison Road from Highway 9 or from Highway 9 on to Madison Road will not cross the center line of Madison Road or Highway 9."

1 He borrowed the language that came from the study that was put forth by the
2 applicant on this. The issue seems to be the safety issue and whether or not Madison Road
3 will be worn by truck traffic.
4

5 Crawford asked if Councilmember McShane's amendment is any different than what
6 is already required on pages seven and eight of the ordinance.
7

8 Aamot stated the Hearing Examiner's ruling was that this is a non-project action, and
9 that the actual impacts would be assessed better at the permitting stage.
10

11 Crawford asked if the mine was operating and using that route first, and then the
12 school came in. He asked if it is the school that is concerned about the trucks crossing into
13 the other lane. The trucks were already doing that before the school bought that piece of
14 property. Aamot stated they received letters from the school, the City of Nooksack, and the
15 Chief of Police. There has been a mine there since the 1970's. The mineral resource land
16 (MRL) was designated in the early 1990's as an interim MRL. In 1997, it was designated
17 through the Comprehensive Plan as a permanent MRL. The concern now is the expansion of
18 the MRL for this 25 acres. The school did develop after the operation was there. It built a
19 six-foot wide path along the south side of Breckinridge Road.
20

21 Nelson stated they talked about this in the 1990's and the impacts there were on
22 communities with MRL's. Expanding an MRL is a change in condition. They need to look at
23 the impacts those changes will have on the community. If there is a current MRL in place,
24 people in the community should know that a permitted mine could happen. However, when
25 they extend an MRL or designate new land as MRL, it's a change in condition.
26

27 McShane stated policy allows some sort of conditions, which is reflected in the staff
28 report.
29

30 Nelson asked about the permitting process.
31

32 Doug Goldthorp, Planning and Development Services, explained the permit process.
33 When applicants or owners are ready to apply, they submit an application. There is a
34 variety of supplemental materials that they have to include with their applications, such as a
35 traffic study and ground water analysis, among a few other things. Once they know
36 specifically the extent and the scale of the operation, and take that into account with the
37 comment received from the neighborhood, they would then formulate mitigating conditions
38 to address those potential impacts with the advise of consultants, geologist, traffic
39 engineers, and others. Then the permit would be issued with a long list of conditions that
40 the applicants would have to satisfy before they could begin mining operations.
41

42 Nelson asked if there is a process for denial or for appeal. Goldthorp stated there is.
43 Approval is not automatic. The public has the opportunity to appeal the State
44 Environmental Policy Act (SEPA) determination, which is a subset of the actual
45 administrative determination. They can appeal the actual administrative determination.
46 The surrounding neighbors within 1,000 feet of the proposed operation are notified of the
47 application and decision.
48

49 Aamot stated there are representatives from the Public Works Department if the
50 committee has any questions for them.
51

1 Weimer stated he supports Councilmember McShane's proposed amendment. They
2 address what the City was talking about. It would be interesting to hear from the road
3 engineers whether or not the wear on the road is from the gravel trucks.
4

5 Lesa Starkenburg-Kroontje, 313 Fourth Street, Lynden, stated she represents
6 Concrete Nor' West. She would like language clarification about item C in the motion.
7 Because that intersection is governed by the State. It may be appropriate to indicate that
8 the access be constructed according the State Department of Transportation standards. As
9 those standards change, or as things move, that's the standard that's being achieved, not
10 something separate and apart from that.
11

12 On the second point, that Madison be upgraded to all weather, perhaps make a
13 reference back to the traffic study. If the City of Nooksack continues to permit trucking
14 facilities on Madison Road, then the question is whether the County's saying that this 24
15 acres bears the burden of that all-weather upgrade, or is it an upgrade in proportion to their
16 impact and use. Say that an upgrade would be in proportion to pit's impact and use. If
17 other traffic studies come along with other projects in the next years, everyone is
18 participating. That would be consistent with how the permitting process would typically
19 work.
20

21 Regarding Councilmember Crawford's point about the school, the applicant has
22 already been seeking to improve that current pit entrance onto Breckenridge Road, had
23 applied for encroachment permits, and worked with the traffic engineer to try to improve
24 that access for its current site. The applicants felt it was a good idea to do so, even though
25 they are not obligated.
26

27 McShane stated the biggest concern is on Madison Street. He has some concerns
28 about whether or not to go with State Department of Transportation standards. A question
29 is whether there will be trucking facilities located on Madison Street in the future, based on
30 zoning.
31

32 Rollin Harper, Sehome Planning and City of Nooksack City Planner, stated there is a
33 trucking facility located there now, near Highway 9, but off Madison Street. It is at the west
34 end of East Madison Street. The suggestions from Ms. Starkenburg-Kroontje made sense to
35 him. Proportionality always makes sense. It is fair. Using State Department of
36 Transportation standards makes sense as well.
37

38 Traffic on roads cause roads to deteriorate. The question is the degree. Another
39 question was whether or not the existing increase in activity on Madison Street has
40 impacted the street. The City of Nooksack hasn't studied it. The applicant's traffic engineer
41 hasn't studied it either. These are observations.
42

43 The Public Works Director for the City of Nooksack is not an engineer. He is
44 someone who has lived in the community for over 50 years and observed the comings and
45 goings of roads and impacts. He appreciates the conditions that were added to specificity.
46 It gives the City of Nooksack a little bit more assurance. Part of the reason why they
47 appealed the SEPA determination was because the conditions were not specific enough.
48 This helps make them more specific. There are more opportunities when permitting
49 happens for more specificity.
50

51 The City of Nooksack, the school, and the Police Department reached the conclusion
52 about what is going to be the best thing for the city and the school. The best thing is to not
53 have the truck go by the school and not go through the city. He submitted a simple finding

1 and sample condition that would restrict the access and the haul route to not go through
2 Nooksack or the school (*on file*). The issue about the Sorenson Road may be a moot point.
3 If the access point at Breckenridge Road is not suitable, having the trucks go out to the east
4 may be could be a requirement that would be appropriate. He indicated the location on the
5 map in the handout.
6

7 McShane moved to amend to add, "to be consistent with Washington State
8 Department of Transportation (WSDOT) standards" and "in proportion to input and use."
9

10 Nelson asked if WSDOT standards allow trucks to cross the centerlines.
11

12 Brett Barton, Concrete Norwest, Mount Vernon stated that according to the criteria
13 they have to meet per the traffic engineer and per the WSDOT standards, they will
14 determine the appropriate radiuses for the trucks, the pocket lanes, and acceleration lanes
15 depending on the intersection construction. It doesn't go as far as crossing the centerline,
16 but more into the lane widths and the proper turning radiuses to allow the traffic, whether
17 it's a truck or a car, to access their highway, whether its north or south depending on its
18 construction.
19

20 Nelson asked if the trucks would have to have the proper turning radius if this
21 language is included in the ordinance at the time of permitting. Barton stated it would have
22 to meet their standard, which includes certain turning radiuses for those trucks.
23

24 Nelson added if the truck would be coming onto the road and not crossing the
25 centerline if the turning radius is correct. Barton stated he can't say that. When his
26 consultant, who is a traffic engineer, does his intersection criteria, he considers the length
27 of the trucks and the radiuses it takes to turn those trucks. That design is given to the
28 State of Washington. It has to meet the State's set criteria. With trucks, an additional turn
29 radius and turn lane length are determined. It meets quite a bit of scrutiny. Mitigation,
30 required by the traffic analysis, will dictate the design of those intersections, which may or
31 may not include road wear and will include adding acceleration lanes, turn lanes, and
32 widening roads. All that gets put into the State's mitigation plan. That's how they approve
33 the design that is submitted.
34

35 Weimer asked Mr. Barton about the proposed condition from the City of Nooksack
36 about exiting to the east using the 'T' stem. Barton stated the easy answer is no. They
37 have an existing access. They have good access to the west at Breckenridge Road and
38 Madison Street where it ties to Highway 9. It's the shortest route. The road infrastructure
39 is there. To the east adds more time to the haulers, more impacts to the residents, and
40 puts the trucks on substandard roads.
41

42 Weimer stated this condition doesn't remove the existing route. It's a condition in
43 case the existing route no longer works. It's for the possible future use of that "T" stem.
44 Barton stated that if they can't meet the criteria in the traffic study, they have to look for an
45 alternate route. He's confident that they meet the criteria. With correct mitigation, they
46 should be able to use the existing access.
47

48 Fleetwood asked how much additional time it would take to go around the east per
49 trip. Barton stated he estimates it would take a half hour per round, if not more, providing
50 the roads can support the additional traffic from large trucks. In today's world, the hourly
51 rental on truck is running about \$115.00 per hour, which equates back as a cost that needs
52 to be passed along.
53

1 **McShane amended and restated the motion** to amend to add language to
2 section 2,

3 "d. ...with this condition. If the current entrance to Breckenridge Road
4 continues to be utilized, any permits for mining within this MRL will require:

- 5 A) that the entrance at Breckenridge Road to be improved such that
6 truck traffic will not cross the center lane of Breckenridge Road
7 when turning west; and
8 B) Madison Street will be upgraded to accommodate all weather
9 heavy truck traffic in proportion to the impact and uses of trucks
10 from the MRL; and
11 C) Madison Road will be upgraded at Highway 9 intersection such
12 that trucks turning on to Madison Street from Highway 9 or from
13 Highway 9 on to Madison Street will be consistent with WSDOT
14 standards."

15
16 Fleetwood asked if this amendment addressed Mr. Harper's issue.

17
18 McShane state it does not. It is to make clear about adding specificity to the
19 concerns about 2.d already.

20
21 Fleetwood asked if that proposal makes the condition proposed by Mr. Harper moot.

22
23 McShane stated it does not. Mr. Harper raises a different issue. This does not
24 address the issue of requiring haulers to head east. He is not comfortable with requiring the
25 MRL applicant to head east for several reasons. It is inconsistent with resource access to
26 the community. This resource will be heading west. Any development in Everson or
27 Nooksack will likely use resource from this pit. He's not comfortable with a requirement,
28 when the Council is being very specific about getting the issues on Madison Avenue
29 addressed. If those issues are addressed, the safety issues around the school will be taken
30 care of. People may not be happy with trucks driving by the school, but it won't be a major
31 safety problem. It will be taken care of during the permitting process.

32
33 ***Motion to amend carried unanimously.***

34
35 Weimer stated he has concerns about the urban growth area (UGA) being so close to
36 the MRL. According to the Comprehensive Plan, that doesn't matter until the urban growth
37 area is developed, even though a UGA is a promise of dense development. If the Council
38 approves the MRL, especially if the applicant goes west out of the site, it will direct more
39 traffic through a potential UGA. He doesn't know if Nooksack is considering redefining its
40 UGA. He doesn't know how to get around his concern because of the way the
41 Comprehensive Plan is written.

42
43 McShane stated this is what MRL's are all about. Preserving gravel resources for
44 future use is important. Given the shortage of gravel, according to the study, it won't
45 preclude an expansion of the MRL in the future, once the area is mined out. It's easy to
46 build on good gravel resources because of the great drainage.

47
48 Weimer stated he hasn't heard much concern from the City of Nooksack or Planning
49 Department about the UGA proximity issue. If the experts don't have much concern, he
50 probably shouldn't be concerned either. The UGA was there before the proposed MRL.

51
52 Nelson stated this is a classic argument. Nothing happens until development occurs.
53 The MRL designation should protect as much resource as they can, without an adverse

1 affect to the community. The question is which gets done first. That question will have to
2 be worked out during the permitting process. A discussion of berms and sound controls will
3 be important during the permitting process. However, there has to first be an MRL before
4 they can identify the discussion points.

5
6 ***Motion to recommend approval to the full Council carried unanimously.***

7
8
9 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

10
11 **1. ORDINANCE AMENDING WHATCOM COUNTY CODE, TITLE 23 – SHORELINE**
12 **MANAGEMENT PROGRAM; THE OFFICIAL SHORELINE MAP; AND**
13 **ASSOCIATED PROVISIONS OF WCC, CHAPTER 16.16 – CRITICAL AREAS AND**
14 **WCC, TITLE 20 – ZONING ORDINANCE TO UPDATE THE WHATCOM COUNTY**
15 **SHORELINE MANAGEMENT PROGRAM IN ACCORDANCE WITH THE**
16 **REQUIREMENTS OF THE WASHINGTON STATE SHORELINE GUIDELINES**
17 **(WAC 173-26) AND OTHER APPLICABLE LOCAL, STATE AND FEDERAL**
18 **ENVIRONMENTAL REGULATIONS (AB2006-442)**

19
20 Jeff Chalfant, Planning and Development Services Department, gave a staff report.

21
22 *(Clerk's Note: End of tape one, side A.)*

23
24 Chalfant continued to give a staff report.

25
26 McShane stated Whatcom County is an early-adopter, which brought financial
27 advantages from the State. Chalfant stated the County received about \$625,000 from the
28 State Department of Ecology (Ecology), followed by supplemental funding, for a total of
29 approximately \$656,075.

30
31 McShane stated he thanks the councilmembers who supported that effort, to be an
32 early-adopted plan, which was done quite some time ago.

33
34 Chalfant continued to give a staff report. Counties have to address three main new
35 items in the updates. The requirements include achieving no net loss of ecological functions
36 of shoreline resources; addressing cumulative effects of the program, the program's
37 implementation, and individual actions along the shoreline, and; a new restoration
38 objective. There are provisions in the Shoreline Management Act that provide for
39 restoration of shoreline ecological functions and resources over time.

40
41 There is an inventory and characterization requirement that is quite hefty. Local
42 governments must inventory their shorelines on two scales. First, inventory the shorelines
43 for shoreline jurisdictions. Second, do a watershed-scale analysis, which requires a
44 countywide landscape characterization of resources and ecological processes, to understand
45 how activities outside of the shoreline may impact the management of aquatic resources
46 within the shorelines. Those inventory characterizations and other information is included in
47 the Council file (*on file*). The Planning Department staff has worked with the community on
48 this process.

49
50 Today, address a change made by the Planning Commission to the document, related
51 to management of septic systems. The two issues addressed most were issues of public
52 access and signage in shorelines. They've effectively addressed most of the concerns.

1 The one change from the Planning Commission was to section 23.90.04.B.4. This
2 amendment is to provide for maintenance and operations plans to be developed by private
3 property owners. The Health Department has been doing a significant update to its onsite
4 septic system (OSS) health code. It may be better to defer to the health code.
5

6 Jeff Hegedus, Health Department, stated the language included as an amendment
7 would require homeowners to hire someone to develop an operations and maintenance plan
8 to ensure that their septic system was inspected every one year if it's an alternative system
9 and every three years if it is a conventional gravity system. The Health Department
10 recommends that this amended language be deleted. The newly adopted OSS code already
11 makes provisions for inspections. The Health Department is currently hiring staff and
12 putting together the infrastructure needed to accomplish this goal. This is redundant
13 language. When they have a programmatic requirement like this, they must be able to
14 monitor, track, enforce, and educate around it. Instead, refer to Whatcom County Code
15 24.05.190, which covers the inspection requirements.
16

17 Fleetwood asked if the redundancy causes administrative burdens. Hegedus stated it
18 does. It creates confusion when the planning code regulates a topic that is typically
19 regulated by the health code. Also, the Planning Department would have to put a program
20 together to track and enforce the requirement. He's not sure how the staff would do that.
21

22 Weimer stated reference the health code in that location. Hegedus stated that would
23 be acceptable. He suggested language that the owner be in compliance with the health
24 code. However, if the owners are not, both the Health Department and Planning
25 Department would be doing enforcement. They would have to give the Planning
26 Department extra enforcement authority.
27

28 ***Fleetwood moved*** to amend to reference WCC 24.05.160 in 23.90.04.B.4, "To
29 avoid water quality degradation...and health standards, ~~provided that an operation and~~
30 ~~maintenance plan is developed and implemented by the property owner to ensure that such~~
31 ~~systems are examined every one (1) to three (3) years, depending on the system design, to~~
32 ~~ensure that such systems are functioning properly.~~ The owner must be in compliance with
33 Title 24.05.160, operations and maintenance requirements."
34

35 Weimer asked if the Planning Department staff has concerns about having to do
36 additional enforcement. Chalfant stated staff would call the Health Department. The
37 language may provide for additional backup. They may also give enforcement authority to
38 the State. This is a joint program with the State.
39

40 ***Motion to amend carried unanimously.***
41

42 Crawford referenced section 23.90.04.B.5. He asked if this section was in the
43 original Shoreline Management Plan. Chalfant stated the bulk of this document was already
44 in the Shoreline Management Program.
45

46 Crawford asked how the piling industry deals with it when doing docks. He asked
47 what the industry uses to avoid leaching with splash. Chalfant stated they are using treated
48 steel or a concrete pile. Few folks are using wood treated pilings. The State Department of
49 Fish and Wildlife has been aggressive about not allowing people to use treated wood, even
50 in the marine environment. This is the direction they are headed, and is their
51 recommendation.
52

1 Chalfant asked if this was mostly in place since 1998. Chalfant stated it was. There
2 was already a prohibition in place for the use of treated materials in fresh water. In the
3 marine environment, they could still use treated materials, but only those approved by
4 other agencies.

5
6 McShane stated the committee could go through the side-by-side comparison of the
7 old and new programs.

8
9 Nelson asked the types of concerns expressed by the public. Chalfant described
10 concerns brought up by the public regarding access and signage.

11
12 Nelson asked if there was discussion about a property owner's potential liability if
13 something happened to someone who used the public access. Chalfant stated there was
14 discussion about that issue. There are Revised Code of Washington (RCW) regulations that
15 hold harmless the property owner.

16
17 Nelson asked how that is conveyed to the general public. Chalfant stated the RCW's
18 may not protect against negligence on the part of the property owner in allowing people to
19 access the shoreline in an unsafe way. Development conditions that require safe access will
20 be covered.

21
22 Crawford asked if access issues are triggered by some kind of development, and if
23 the passage of this program means that there is access along all shorelines. He asked if
24 they would consider historical use. Chalfant stated they would consider historical public
25 access. They can get into answering that question in depth with legal counsel.

26
27 McShane stated he would like to schedule a work session for this item. This item
28 needs a bigger block of time to work through the issues. He will schedule a work session
29 for January 9.

30
31
32 **OTHER BUSINESS**

33
34 There was no other business.

35
36
37 **ADJOURN**

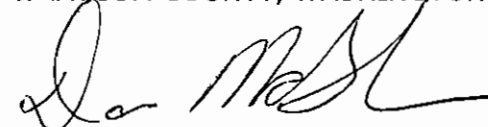
38
39 The meeting adjourned at 11:05 a.m.

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43 Jill Nixon, Minutes Transcription

44
45
46 ATTEST

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51
52 Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Dan McShane, Committee Chair