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WHATCOM COUNTY COUNCIL
Planning and Development Committee

February 9, 2010

CALL TO ORDER

Committee Chair Bill Knutzen called the meeting to order at 2:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Ken Mann, Bill Knutzen and Barbara Brenner.

Absent: None.

Also Present: Kathy Kershner, Carl Weimer and Sam Crawford.

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. ORDINANCE AMENDING THE WHATCOM COUNTY CODE, TITLE 20, TO CLARIFY AND REVISE THE DEFINITION AND STANDARDS OF HOME OCCUPATIONS (AB2010-047)

Wain Harrison, Planning and Development Services Department, gave a staff report and handed out a substitute ordinance (*on file*) and stated there have been three versions of the ordinance. The first version is the Planning Commission version in the binder. The second is the modification in the January 22, 2010 memo to Council. The third he just handed out. He described the changes in the third version of the ordinance. The purpose for this ordinance is to provide more clarity in the administration of home occupation. A more detailed code provides more consistent review and interpretation. Ultimately, this ordinance is less restrictive. He described the changes from the current code.

Brenner stated she likes the comparison of home occupation with cottage industry. However, include the cost of getting a cottage industry permit. A home occupation is outright permitted. Harrison stated the cost is approximately \$1,400 for administrative approval. The cost for a conditional use is \$3,000.

Brenner suggested they allow a limit for home occupation, unless approved by the administrator. That was not a cottage industry. A cottage industry is an industry. That was a mom-and-pop operation. There is a clear difference between home occupations and cottage industries. Harrison stated the tiers are partially confusing. The first tier is called a home occupation. The second two tiers are called cottage industry. They are just labels. They are really looking at three different tiers for operating a business in the home, with different permitting and review requirements.

Brenner stated allow a home occupation, even if a bigger size, if staff can see there are no significant impacts. Harrison stated that still requires a review process.

The following people spoke:

- Tyler Schroeder, Planning and Development Services Department, answered questions.

- 1 • Steve Moore, Moore Industrial Company, stated the regulation is confusing.
2 In the real world, few people are aware that they have to get a building
3 license for a home occupation. He suggested that this be delayed and that
4 the Council put together a task force of people in the commercial industrial
5 business to develop something to satisfy everyone's needs.
6 • Roger Almskaar, Consultant, stated he is concerned with subsection .150(14).
7 A structure that isn't a residence shouldn't be required a certificate of
8 occupancy. Get legal analysis on that subject.
9 • Bob Wiesen, 3314 Douglas Road, Ferndale, stated the occupancy permit,
10 based on how the County staff have been willing to work with people, is a
11 problem. The general public doesn't have a good feeling about Whatcom
12 County Buildings and Codes. There should be a list of problems with existing
13 businesses, and determine if this proposal will solve those problems. Create
14 a fourth category for in-home occupations that don't hire anyone. It's the
15 homeowner's liability, not the County's liability. Use a criterion of whether or
16 not they are better off with or without the regulation. Outreach to the people
17 involved to develop this ordinance.
18 • Suzanne Bosman, Planning and Development Services Department, answered
19 questions.

20
21 Discussion included the differences between home occupations and cottage
22 industries; the certificate of occupancy requirement; the square footage thresholds for
23 home occupations; whether home occupations require a permit or are allowed as an
24 accessory use if meeting requirements; when it's required to meet life safety requirements;
25 whether typical county residents with a home occupation currently know they have to meet
26 building requirements; whether the County is required to adopt the International Building
27 Code (IBC); a commercial certificate of occupancy (C of O) versus a residential final
28 inspection; the different occupancy types in the IBC; liability associated with not following
29 the IBC; a discussion of the building code being a different discussion from this ordinance;
30 how to modify the building code, and; gross vehicle weights of different types of heavy
31 equipment.

32
33 Mann stated figure out how to clarify the C of O requirements in section
34 20.84.150(14).
35

36 Crawford stated he doesn't like this section. It's too restrictive. He understands
37 they need reasonable controls. However, it's overreaching to have to meet business
38 occupancy requirements just because someone walks through his door and makes a
39 financial transaction. Harrison stated there is a liability there.
40

41 Harrison stated they can remove subsection (14) and study the issue.
42

43 Knutzen stated he prefers to hold the entire ordinance.
44

45 Weimer stated he and Councilmember Brenner proposed a text amendment two and
46 a half years ago to make the language less restrictive for certain people who want to work
47 in their garage or barn. It has become something more complex. They still need to fix the
48 regulation for people who are in that conundrum.
49

50 Mann asked if the requirement in subsection (14) still applies even if it isn't in the
51 ordinance. Harrison stated it is in the existing code section for building code and life safety
52 requirements. The language in item (14) was changed to include the requirement for

1 certificate of occupancy, which is an additional requirement of the code. One of the building
2 code requirements is the certificate of occupancy.

3
4 Brenner asked for a legal opinion on whether they must have the language in
5 subsection (14).

6
7 Crawford stated the intent of subsection (14) was to clarify, but it doesn't. Remove
8 subsection (14). Put this forward to a hearing and adopt the ordinance. Most of the
9 ordinance is good.

10
11 **Mann moved** to hold in committee the most current version three, and request that
12 staff provide more information about removing items (14) regarding C of O, and items (4)
13 and (7).

14
15 Knutzen stated item (7) should take commercial vehicles into consideration.

16
17 Brenner asked for a legal opinion on item (14). Stalheim stated it is a question
18 about how they implement the building code. They can take it out of the ordinance without
19 a legal opinion.

20
21 The motion carried by the following vote:

22 **Ayes:** Mann, Knutzen and Brenner (3)

23 **Nays:** None (0)

24
25 **2. ORDINANCE CLARIFYING AND REVISING THE DEFINITION AND STANDARDS**
26 **OF ACCESSORY APARTMENTS AND SECOND COOKING FACILITIES WITHIN**
27 **WHATCOM COUNTY'S ZONING CODE, TITLE 20 (AB2010-048)**

28
29 Wain Harrison, Planning and Development Services Department, gave a staff report
30 and handed out an updated version of the ordinance (*on file*).

31
32 The following people spoke:

- 33
34 • Gary Honcoop, 770 E. Wiser Lake Road, stated the substitute version is better
35 than the original draft ordinance. His family is impacted by this ordinance.
36 As written, the ordinance excludes a future detached accessory dwelling unit
37 (ADU) if the original unit has a second kitchen. The part about accessory
38 apartments is a huge improvement. Regarding accessory apartments, include
39 the language "or attached garage." Minimum lot size should be around 1.8
40 acres. Most people do not understand that they have to have this permitted.
41 It's important that families be able to take care of their aging family
42 members.

43 Discussion included changing language about a second kitchen; the enforcement
44 issue of people converting portions of their residence or accessory building into an illegal
45 apartment or an illegal accessory dwelling; a substantial number of building permit
46 applications that include portions of the proposal obviously intended to be converted into an
47 apartment after the building inspector leaves; how this discussion with residents has been a
48 consistent problem and drain on staff time; whether it matters if the owner occupies the
49 residence; whether the covenant makes a difference to how an owner will use a residence;
50 reducing the five-acre minimum up to ten percent; not using lot size to determine whether
51 an accessory unit can be allowed; how to interpret the code as written in the case of older
52 homes with unattached garages; limits for breezeways; the reason for lot size limitation on
53 accessory dwelling units; the appropriate process to lower the lot size limit;

1
2 **Mann moved** to recommend that the Council adopt the substitute ordinance with
3 one amendment to 20.97.003, "...It is substantially contained within the contiguous
4 structure or attached garage...is internal access between the units, provided, however that a
5 detached garage whose foundation is 10' or less from the single family residence is
6 permitted as an accessory apartment. A covered or enclosed breezeway does not constitute
7 an approved access."
8

9 Stalheim stated the intent is to not have to connect the garage as long as it is within
10 ten feet of the single family residence. It is an accessory dwelling unit on smaller lots,
11 which seems to be the committee's intention.
12

13 The motion carried by the following vote:

14 **Ayes:** Mann, Knutzen and Brenner (3)

15 **Nays:** None (0)
16

17 **3. ORDINANCE CLARIFYING THE APPLICABILITY OF AGRICULTURAL**
18 **PROTECTION OVERLAY (APO) BY INCLUDING THE AREA OF ADJOINING**
19 **ROAD RIGHTS-OF-WAY IN THE CALCULATIONS OF PARCEL ACREAGE FOR**
20 **APO ZONE (AB2010-049)**
21

22 Tyler Schroeder, Planning and Development Services Department, gave a staff
23 report.
24

25 Brenner stated leave it as it is until they clean up the agricultural protection overlay
26 (APO) zoning. Also, she would like an answer to the issue of parcels smaller than 20 acres
27 that are being actively farmed or are conducive to farming. There are over 100,000 acres if
28 they include farms with smaller acreage. Niche farmers are just as important as bigger
29 farms.
30

31 The following people spoke:

- 32 • Theresa Sygitowicz, citizen, stated there is a history of dairy farms in
33 Whatcom County that were on 20 acres.
- 34 • Brian Jones, Jones Engineers, stated U.S. Census data will cover what is
35 happening on the land.
36

37 Discussion included the APO language making them consistent with the Growth
38 Management Act; whether someone could have a viable dairy farm on five acres; the reason
39 for choosing 40 years as the appropriate parcel history, and; how they prove whether a
40 parcel was or was not farmed in history.
41

42 Crawford stated add language to 20.38.040(1) so it says, "Parcel acreage shall
43 include the area of adjoining road rights-of-way, unless it can be demonstrated by the
44 applicant that agricultural practices have not been conducted on a given parcel within the
45 past 40 years, in which case the parcel size shall be calculated without including the
46 adjoining road right-of-way. For properties within the jurisdiction of the Shoreline
47 Management..." He agrees they shouldn't pursue clustering, except in the case when there
48 is a history of non-farming.
49

50 **Mann moved** to amend add language to 20.38.040(1), "Parcel acreage shall include
51 the area of adjoining road rights-of-way, unless it can be demonstrated by the applicant
52 that agricultural practices have not been conducted on a given parcel since January 1, 1975,"

1 in which case the parcel size shall be calculated without including the adjoining road right-
2 of-way. For properties within the jurisdiction of the Shoreline Management”
3

4 The motion to recommend approval with amendment carried by the following vote:

5 **Ayes:** Mann, Knutzen and Brenner (3)

6 **Nays:** None (0)
7
8

9 **OTHER BUSINESS**

10
11 The committee discussed the agenda for the next few meetings.
12
13

14 **ADJOURN**

15
16 The meeting adjourned at 4:37 p.m.
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18

19
20 Please contact the Council Office to obtain an
21 official, signed copy:
22 360-676-6690 or council@co.whatcom.wa.us
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28 _____
29 Dana Brown-Davis, Council Clerk

Bill Knutzen, Committee Chair