**WHATCOM COUNTY COUNCIL AGENDA BILL**

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<th>CLEARANCES</th>
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<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
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**FEB 01 2004**

**WHATCOM COUNTY COUNCIL**

**TITLE OF DOCUMENT:** Zon2003-00004, Hearing Examiner Appeals.

**ATTACHMENTS:** Proposed Ordinance, Planning Commission Motion, Staff Report and Planning Commission Minutes.

<table>
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<tr>
<th>SEPA review required?</th>
<th>(x) Yes</th>
<th>( ) No</th>
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<tr>
<td>SEPA review completed?</td>
<td>(x) Yes</td>
<td>( ) No</td>
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

The proposal contains two amendments to the Whatcom County Code: 1 – WCC 16.28.045 – new section, adds an appeal option to the Manure and Agricultural Nutrient Management Ordinance, and 2 – WCC 20.92.210 – Final decision, adds the Critical Area Ordinance to the list of items that the hearing examiner has decision authority over.

**COMMITTEE ACTION:**

2/22/2005: Committee recommended approval

**COUNCIL ACTION:**

2/8/2005: Introduced
2/22/2005: Adopted 7-0, Ord. #2005-029

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:** Ord. #2005-029

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
AMENDING WHATCOM COUNTY CODE BY THE ADDITION OF A NEW SECTION TO WHATCOM COUNTY CODE, TITLE 16, ENVIRONMENT, CHAPTER 16.28 – MANURE AND AGRICULTURAL NUTRIENT MANAGEMENT, SECTION 16.28.045 – APPEALS AND ADDITION OF NEW LANGUAGE TO WHATCOM COUNTY CODE, TITLE 20, ZONING, CHAPTER 20.92 – HEARING EXAMINER, SECTION 20.92.210 – FINAL DECISIONS

WHEREAS, Pursuant to WCC 20.90, proposed zoning text amendments shall be considered; and

WHEREAS, A determination of non-significance was issued under the State Environmental Policy Act (SEPA) on September 30, 2004; and

WHEREAS, Pursuant to RCW 36.70.390, legal notice was published in the Bellingham Herald on, October 21, 2004; and

WHEREAS, The Planning Commission held a public hearing on the proposed amendments on Thursday, November 4, 2004, and considered all testimony; and

WHEREAS, The Planning Commission recommended approval of the proposed text amendment on November 4, 2004.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. A Determination of Non-Significance was issued on September 30, 2004.


3. The Planning Commission held a public hearing to consider the proposed text amendment on November 4, 2004.

4. A recent request for an administrative appeal has revealed that there is no appeal provision in WCC 16.28 – Manure and Agricultural Nutrient Management Chapter. The lack of an appeal option limits landowner
rights for a local appeal option and is inconsistent with other codes including WCC 16.16 – the Critical Area Ordinance and WCC 20 – the Zoning Ordinance.

5. WCC 20.92.210(1) – Final Decisions, Hearing Examiner, failed to include Title 16 of Whatcom County Code in the list authorizing the hearing examiner to make final decisions regarding any “orders, requirements, permits, decisions or determinations made by an administrative official or committee...”. Adding Title 16 to this list provides the authority to the hearing examiner that is now missing and which limits the hearing examiner from addressing appeals etc. from Title 16.

6. WCC 16.16.265(A) – Appeals section of the Critical Area Ordinance states:

“Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit requirement, final permit decision, or final determination made...”

It is clearly the intent of the Critical Area Ordinance that the hearing examiner would be the body to receive appeals.

CONCLUSIONS

1. The incorporation of the proposed text amendments will bring WCC 16.28 into conformity with the other land use regulations as regarding the ability of an aggrieved party to have a local appeal option.

2. The incorporation of the proposed text amendments will correct an omission of Title 16 from the titles granted to the hearing examiner for final decisions.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Official Whatcom County Zoning Ordinance, Title 16 & 20, are hereby amended as shown in Exhibit A.

Section 2. . Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ 22 _____ day of February____, 2005

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY,
WASHINGTON

Laurie Caskey-Schreiber, Chair

( ) Approved ( ) Denied

Pete Kremen, Executive

Date: 2-24-05
WHATCOM COUNTY PLANNING COMMISSION
FINDINGS OF FACT, REASONS FOR ACTION & RECOMMENDATIONS

AMENDING WHATCOM COUNTY CODE BY THE ADDITION OF A NEW SECTION TO
WHATCOM COUNTY CODE, TITLE 16, ENVIRONMENT, CHAPTER 16.28 – MANURE
AND AGRICULTURAL NUTRIENT MANAGEMENT, SECTION 16.28.045 – APPEALS AND
ADDITION OF NEW LANGUAGE TO WHATCOM COUNTY CODE, TITLE 20, ZONING,
CHAPTER 20.92 – HEARING EXAMINER, SECTION 20.92.210 – FINAL DECISIONS

WHEREAS, Pursuant to WCC 20.90, proposed zoning text amendments shall be considered
; and

WHEREAS, A determination of non-significance was issued under the State Environmental
Policy Act (SEPA) on September 30, 2004; and

WHEREAS, Pursuant to RCW 36.70.390, legal notice was published in the Bellingham
Herald on, October 21, 2004; and

WHEREAS, The Planning Commission held a public hearing on the proposed amendments
on Thursday, November 4, 2004, and considered all testimony; and

WHEREAS, The Planning Commission recommended approval of the proposed text

NOW THEREFORE BE IT RESOLVED:

THE PLANNING COMMISSION ENTERS THE FOLLOWING FINDINGS OF FACT,
REASONS FOR ACTION AND RECOMMENDATION:

FINDINGS OF FACT AND REASONS FOR ACTION

1. A Determination of Non-Significance was issued on September 30, 2004.

2. Notice of the hearing was published in the Bellingham Herald on October 21,
   2004.

3. The Planning Commission held a public hearing to consider the proposed text

4. A recent request for an administrative appeal has revealed that there is no
   appeal provision in WCC 16.28 – Manure and Agricultural Nutrient Management
   Chapter. The lack of an appeal option limits landowner rights for a local appeal
   option and is inconsistent with other codes including WCC 16.16 – the Critical
   Area Ordinance and WCC 20 – the Zoning Ordinance.

5. WCC 20.92.210(1) – Final Decisions, Hearing Examiner, failed to include Title
16 of Whatcom County Code in the list authorizing the hearing examiner to make final decisions regarding any "orders, requirements, permits, decisions or determinations made by an administrative official or committee...". Adding Title 16 to this list provides the authority to the hearing examiner that is now missing and which limits the hearing examiner from addressing appeals etc. from Title 16.

6. WCC 16.16.265(A) – Appeals section of the Critical Area Ordinance states:

“Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit requirement, final permit decision, or final determination made...”

It is clearly the intent of the Critical Area Ordinance that the hearing examiner would be the body to receive appeals.

CONCLUSIONS

1. The incorporation of the proposed text amendments will bring WCC 16.28 into conformity with the other land use regulations as regarding the ability of an aggrieved party to have a local appeal option.

2. The incorporation of the proposed text amendments will correct an omission of Title 16 from the titles granted to the hearing examiner for final decisions.

RECOMMENDATION

Based upon the above proposed findings and conclusions, the Planning Commission recommends that the County Council approve both Item #1 and #2 of the proposed amendment.

WHATCOM COUNTY PLANNING COMMISSION

Dave Pros, Chairperson

Hal H. Hart, Secretary

Date 11/8/07

Date 11/8/07
Vote taken November 4, 2004, at a regularly scheduled Planning Commission meeting.

Commissioners voting:

JOHN BELISLE, RABEL BURGE, DAVID HUNTER, GEOFF MENZIES, RON ROOSMA, JOHN STEENSMA, ROBERT WIESEN.

Ayes: 7, Nays: 0, Motion carried to adopt the above Findings of Fact and Reasons for Action and Recommendations.

ABSENT MEMBERS: DAVE PROS AND KEN MANN

EXHIBIT 1

Amendment # 1 – Proposed text change

Amend Whatcom County Code Chapter 16.28 by adding a new section as follows:

16.28.045 Appeals.
Appeals shall be made and administered pursuant to WCC 16.16.265, Critical Areas.

Amendment # 2 – Proposed text change

Amend Whatcom County Code 20.92.210(1) as follows:

20.92.210 Final decisions.
The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:
(1) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title, WCC Title 16, WCC Title 24, Health Regulations or WCC Title 21, Land Division Regulations.
Public Hearing


Kraig Olason presented the staff report.

This is basically code scrub. We have some additions we needed to Chapter 16.28 to provide an appeal option. It provides an aggrieved party to have a hearing if they have a problem with the administrative decision.

The other amendment is to the Hearing Examiner section in Title 20.92.210. There was an oversight in the inclusion of Title 16 in the list of appeals the Hearing Examiner can address.

We recommend approval of these changes.

Hunter: Has this issue never come up before and the reason you are adding it is because it has come up now?

Olason: For the first amendment that is true.

The hearing was opened to the public.

There was no public testimony.

The hearing was closed to the public.

Work Session

Menzies moved to accept the staff’s recommendations. Roosma seconded.

Roll Call Vote: Ayes – Belisle, Burdge, Hunter, Menzies, Roosma, Steensma, Wiesen; Nays – 0; Abstain – 0; Absent – Mann, Pros. Motion carried.

Work Session
WHATCOM COUNTY
PLANNING & DEVELOPMENT SERVICES
STAFF REPORT

I. BACKGROUND INFORMATION

File # ZON2003-00004

File Name: Hearing Examiner Appeals

Applicant: Whatcom County Planning & Development Services

Summary of Request: The proposal contains two amendments to the Whatcom County Code, which were recommended by the Land Use Services Staff of the Planning and Development Services Department.

Amendment # 1 – WCC Chapter 16.28.040 currently provides no clear authorization for appeals of the administrator’s decision by an aggrieved party. A new section - 16.28.045 Appeals is proposed to provide and appeal option. This new section refers appeals to the process as currently required in the Critical Area Ordinance (WCC 16.16).

Amendment # 2 – WCC 20.92.210 - Final Decision, under the Hearing Examiner chapter, does not currently list Title 16 among the Titles of Whatcom County Code that the hearing examiner is authorized to address. As a consequence all chapters under Title 16 are outside of the hearing examiner’s authority.

Background
The proposed text amendments are house keeping and of a procedural nature. The proposed additions seek to correct what are omissions in current county code.

Title 16 includes the Critical Area Ordinance (WCC 16.16) and the Manure and Agricultural Nutrient Management Ordinance (WCC 16.28). Both chapters have provisions that require administrative determinations.

Text amendment #1 is to WCC 16.28 – Manure and Agricultural Nutrient Management, references the appeal process now provided by WCC 16.16 – Critical Area Ordinance under a new section 16.28.045 Appeals. This addition provides for consistency with the other titles of Whatcom County Code regarding appeal rights.

Text amendment #2 provides the hearing examiner the authority to conduct appeal hearings on administrative decisions made by staff under Title 16 of Whatcom County’s
Code and brings Title 16 in line with Title 20 – Zoning, Title 21 Subdivisions and Title 24 – Health Regulations. Whereby the Hearing examiner, under WCC 20.92.210(1), is authorized to

"conduct open record hearings and prepare a record thereof, and make a final desicions upon the following matters ..

(1)Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title (20), WCC Title 16 (proposed), WCC Title 24, Health Regulations or WCC Title 21, Land Division Regulations."

Both text amendments are included in Exhibit A of this report.

III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. A Determination of Non-Significance was issued on September 30, 2004.


3. The Planning Commission held a public hearing to consider the proposed text amendment on November 4, 2004.

4. A recent request for an administrative appeal has revealed that there is no appeal provision in WCC 16.28 – Manure and Agricultural Nutrient Management Chapter. The lack of an appeal option limits landowner rights for a local appeal option and is inconsistent with other codes including WCC 16.16 – the Critical Area Ordinance and WCC 20 – the Zoning Ordinance.

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“Any person may appeal to the hearing examiner a final administrative order, final requirement, final permit requirement, final permit decision, or final determination made…”

It is clearly the intent of the Critical Area Ordinance that the hearing examiner would be the body to receive appeals.

IV. PROPOSED CONCLUSIONS

1. The incorporation of the proposed text amendments will bring WCC 16.28 into conformity with the other land use regulations as regarding the ability of an aggrieved party to have a local appeal option.

2. The incorporation of the proposed text amendments will correct an omission of Title 16 from the titles granted to the hearing examiner for final decisions.

V. RECOMMENDATION

Based upon the above findings and conclusions, staff recommends that the Planning Commission approve the proposed amendments as included in Exhibit 1.

Exhibit 1

Amendment # 1 – Proposed text change

Amend Whatcom County Code Chapter 16.28 by adding a new section as follows:

16.28.045 Appeals.
Appeals shall be made and administered pursuant to WCC 16.16.265, Critical Areas.

Amendment # 2 – Proposed text change

Amend Whatcom County Code 20.92.210(1) as follows:

20.92.210 Final decisions.
The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:
(1) Appeals from any orders, requirements, permits, decisions or determinations made by an administrative official or committee in the administration of this title, WCC Title 16, WCC Title 24, Health Regulations or WCC Title 21, Land Division Regulations.