

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit)	CUP2014-0011
Application for)	
<i>Dynamic Sign Company</i>)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to replace and relocate a 280 square foot off-premise advertising sign at the northeast corner of the Guide Meridian and Kelly Roads.

Decision: The request of Dynamic Sign Company for a Zoning Conditional Use Permit to allow the placement of an off-premise advertising sign at the northwest corner of Guide Meridian and Kelly Roads is denied on the grounds that it is inconsistent with the applicable zoning regulations and, therefore, with the criteria which must be met in order to obtain a Zoning Conditional Use Permit.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Dynamic Sign Company

Site Location/Address: 4900 Block of NE Guide Meridian and Kelly Road
Bellingham, Washington

Legal Description: A portion of Section 31, Township 39 North, Range 3 East, W.M.
Whatcom County, Washington

Assessor's Parcel Number(s): 390331 014032

Zoning: Light Impact Industrial (LII)

Comprehensive Plan: City of Bellingham Urban Growth Area

Subarea: Urban Fringe

Total Acreage: 1.45 acres

Fire Protection: Whatcom County Fire District No. 4

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District

Topography: Location of proposed development is generally level.

Vegetation: Vegetation includes mown lawn, shrubs, with a few scattered trees

Adjacent Land Uses:
North: Single-family residential
East: Single-family residential
South: Industrial / Single-family residential
West: Single-family residential

Easements: None

Authorizing Codes, Policies, Plans, and Programs

Revised Code of Washington (RCW) Chapter 36.70A, Growth Management

Whatcom County Comprehensive Plan

Whatcom County Code, Title 2, Chapter 2.33 – Permit Review Procedures

Whatcom County Code, Title 20, Official Whatcom County Zoning Ordinance

Whatcom County Code, Title 14, Use of Natural Resources

Whatcom County Code Chapter 12.08, Development Standards

Whatcom County Code Chapter 15, Building Code/Fire Code

State Environmental Policy Act (SEPA); Washington Administrative Code Chapter 197-11,

Whatcom County Environmental Policy Administration Chapter 16.08

Whatcom County Code Chapter 16.16, Critical Areas

Whatcom County Code Title 24, Health Regulations

Legal Notices:
Legal Notice of Application, November 12, 2014
Certificate of Mailing – Notice of Application, November 12, 2014
Legal Notice of Public Hearing, February 5, 2015
Certificate of Mailing, Notice of Public Hearing, January 30, 2015

Hearing Date: April 1, 2015

Parties of Record

Dynamic Sign Company
Attn. Jerry Johnson
evergreenjj@yahoo.com

Dannon Traxler
Langabeer & Traxler
2011 Young Street, Suite 200 / PO Box 1678
Bellingham, WA 98227

Larry Stoner
Land Development Consultants
541 West Bakerview
Bellingham, WA 98226

Lee Carter
Division of Engineering

Amy Keenan and Nick Smith
Planning and Development Services

Royce Buckingham
Civil Deputy Prosecutor

Exhibits

- 1 Land Use Application with attachments
 - 1-1 Memorandum, dated July 9, 1992 re: Billboards
 - 1-2 Compatibility with WCC 20.84.220
 - 1-3 Agent Authorization
 - 1-4 Fee Responsibility
 - 1-5 Determination of Completeness, dated October 29, 2014
 - 1-6 PDS Tech Committee form memo, Dec 9, 2014
 - 1-7 PDS Notice of Application, form letter, November 12, 2014
 - 1-8 Preliminary Traffic & Concurrency Information
 - 1-9 Original and Current Deed
 - 1-10 Customer Receipt
 - 1-11 PDS Checklists, dated Feb 2, 2014 [sic] and January 6, 2014[sic]
- 2 Staff Report dated February 2, 2014 [sic]

- 3 Agency Comments
 - Critical Areas, December 10, 2014
 - Plans Examiner, July 16, 2014
 - Senior Engineering Technician, January 6, 2015
 - Fire Inspector, January 13, 2015
 - Environmental Health Specialist, December 22, 2014
 - WSDOT Mt. Baker HQ, Burlington, WA, December 10, 2014, with attached email from Applicant's Representative dated January 8, 2015 re: DOT wetland delineation
- 4 Public Comment from Richard Blake, dated November 17, 2014
- 5 Email from Dannon Traxler, February 9, 2015, Notice of appearing on behalf of Applicant
- 6 Site Plan with attached USDA Web Soil Survey Map of site and Proposed Location of Sign illustration using Google Earth Aerial
- 7 Packet of Maps, including Vicinity Maps; Property Lines/ownership numbers; zoning map; City Limits Map; USGS Topo Map; Survey Sketch Map for site; Stormwater Treatment Area Map
- 8 Large Title 20 Zoning Designation Maps showing site
- 9 Certificate of Mailing Notice of Application, November 12, 2014
- 10 Legal Notice of Application and Optional SEPA DNS, with attached Tear-Sheet, dated November 12, 2014
- 11 Certificate of Mailing Notice of Public Hearing, January 30, 2015
- 12 Legal Notice of Public Hearing, February 5, 2015
- 13 Posting Notice of Public Hearing, February 5, 2015
- 14 Applicant's Statement, prepared by Dannon Traxler, March 30, 2015
- 15 Memorandum dated March 30, 2015, from Joshua Fleischmann to Amy Keenan re: Critical Areas Conditions of Approval
- 16 Staff Email with Applicant's Attorney regarding scheduling hearing date, February 13-17, 2015
- 17 The Entire 1985 CUP File
- 18 Wetland Delineation
- 19 Email dated April 10, 2015 from Dannon Traxler to Michael Bobbink re: Dynamic Sign attached documents
 - a. Memo dated July 20, 1992, from Planner Jeff Griffin to Marilyn Bentley
 - b. DNS, Adoption of off-premise sign regulations by the county council, 04/23/1990

- 20 Email string, starting April 10, 2015 from Dannon Traxler to Hearing Examiner, with reply from Royce Buckingham, April 14, 2015, and response from Dannon Traxler, April 14, 2015
- 21 Whatcom County Council Regular Meeting, May 8, 1990 Minutes
- 22 Whatcom County Council Planning and Development Committee, May 22, 1990 Minutes
- 23 Memo to Don Hansey, Chairman County Council, Council Members from Dan Taylor, Director Land Use & Economic Planning, June 12, 1990, re: Sign Regulations
- 24 Whatcom County Council, June 12, 1990 Minutes
- 25 Whatcom County Council, June 26, 1990 Minutes
- 26 Whatcom County Council, July 10, 1990 Minutes
- 27 Whatcom County Council Agenda Bill No. 1990-164, with attached Ordinance No. 90-66 [To Allow Public Agency Directional Signs and To Eliminate Off-Premise Advertising Signs, dated July 10, 1990 with County Executive Veto, July 24, 1990
- 28 Memo to Donald Hansey, Council Chair from Shirley Van Zanten, County Executive, July 24, 1990 re: Ordinance 90-66 Veto
- 29 Whatcom County Council, August 7, 1990 Minutes
- 30 Whatcom County Council Agenda Bill No. 90-164-A, with attached Ordinance 90-85 "To Include Additional Restrictions On Off-Premise Advertising Signs, Approved August 8, 1990

II.

The Dynamic Sign Company is seeking Zoning Conditional Use Permit Approval to locate a 280 foot off-premise advertising sign at the northeast corner of Guide Meridian and Kelly Roads, in the 4900 block of Guide Meridian.

The proposed sign would be located in the Light Impact Industrial Zoning District. Off-premise signs are allowed in this zoning district subject to obtaining Zoning Conditional Use Permit Approval.

The location for the proposed sign is approximately 200 feet from the nearest residence. It is also less than 500 feet from the nearest residential zones.

III.

The Applicant has a Zoning Conditional Use Permit for an off-premise sign. This Zoning Conditional Use Permit was granted in 1985. The location of this off-premise sign is in the 8000 block of Guide Meridian.

The Applicant's proposal would eliminate the existing sign approved in 1985 and locate it on a new site.

The record is unclear as to the distance of the current sign from the nearest residence and/or residentially zoned district. It appears that the existing sign is less than 500 feet from the nearest residence.

IV.

The Technical Review Committee has recommended that the Hearing Examiner deny the requested Zoning Conditional Use Permit because it does not comply with the 500 foot setback requirement from the nearest residences and/or the nearest residentially zoned district, as required by WCC 20.80.215.

The Applicants argue that they are not required to meet the 500 foot setback due to a proviso in WCC 20.80.410(3).

The 500 foot setback does not apply to the Applicant since the Applicant is entitled to the requested Zoning Conditional Use Permit.

V.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The only issue arising from this request for a Zoning Conditional Use Permit for an off-premise sign relates to an interpretation of WCC 20.80.410(3). This Section reads in full as follows:

20.80.410

(3) Off-premise advertising signs are prohibited in all districts except adjacent to arterial roads or Interstate 5 in General Commercial or Industrial Districts where they require a conditional use permit. Maximum sign size shall be 288 square feet and not more than 25 feet high. Minimum separation between off-premise advertising signs shall be a 500-foot radius. All off-premise advertising signs shall meet the setback requirements found in WCC 20.80.215. Off-premise signs may be back to back only; no V-type signs are allowed. Off-premise signs may display at most two advertisements per side. The number of off-premise advertising signs within the county shall not exceed 18, which is the total of existing off-premise advertising sign structures that as of April 30, 1990 (a) had a county conditional use permit and (b) those facing Interstate 5 within Commercial or Industrial Districts with a valid state permit. Permit holders for the existing 18 signs may replace any sign they remove with a new sign subject to obtaining conditional use approval for the new sign. By no later than April 30, 1996, all conforming off-premise advertising signs which became nonconforming as a result of new regulations adopted the seventh day of August, 1990, shall meet all requirements of said regulations or be abated; provided, that those signs holding valid conditional use permits need not conform to the setback from residence requirement of WCC 20.80.215(4).

The Applicants argue that because of the proviso attached to the last sentence of that section, they are not required to meet the setback distance from residential development requirement, Subsection 20.80.215(4), in order to place a sign at the new location.

The Technical Review Committee has taken the position that because the sign will be relocated to a new parcel, it is required to meet all of the zoning regulations, including

the setback distance from residences found in Section 20.80.215.

II.

The Off- Premise Sign Controls set forth in WCC 20.80.410(3) were adopted as part of Ordinance 90–85, on August 7, 1990. This followed a veto of a Sign Ordinance relating to off-premise signs, Ordinance 90-66, by the Whatcom County Executive on July 24, 1990. The Ordinance that was vetoed would have eliminated all off-premise signs by December 31, 1999. The veto statement by the County Executive regarding the veto was based on a legal opinion that the Ordinance, passed, had a serious potential to be in violation of United States Constitution and could lead to potentially expensive litigation and liability for Whatcom County.

As a result of the veto, the Whatcom County Council revisited the Sign Control Ordinance and modified in some detail the Section regarding off-premise signs. This resulted in the adoption of the current language in WCC 20.80.410(3). The newly adopted Ordinance allowed up to eighteen off-premise signs. There were eighteen legally established off-premise signs in Whatcom County at the time that Ordinance 90–85 was passed in August 1990, and no additional off-premise advertising signs were to be allowed in Whatcom County. The maximum was set at eighteen and remains at eighteen today.

WCC 20.80.410(3) allows up to eighteen off-premise advertising signs in Whatcom County adjacent to arterial roads or Interstate 5 in General Commercial or Industrial Zoning Districts, subject to a Zoning Conditional Use Permit. That Section goes on to limit the maximum sign size and to require a minimum of 500 feet between off-premise advertising signs.

It then goes on to state, "All off premise advertising signs shall meet the setback requirements found in Section 20.80.215."

This sentence is clear and unambiguous. The way this Section is written, it is not

subject to any limitations.

However, the Applicant argues that the proviso attached to the last sentence of WCC 20.80.410(3) exempts them from having to comply with the 500 foot setback from a residence or residential zoning pursuant to WCC 20.80.215(4). These sentences read in full as follows:

20.80.410(3)

..... By no later than April 30, 1996, all conforming off-premise advertising signs which became nonconforming as a result of new regulations adopted the seventh day of August, 1990, shall meet all requirements of said regulations or be abated; provided, that those signs holding valid conditional use permits need not conform to the setback from residence requirement of WCC 20.80.215(4).

20.80.215

(4) No off-premise advertising sign shall be within 500 feet of any residence or residential zoning or within 1,000 feet of any church, school, cemetery, park, open space designation or historical landmark.

The only signs which could have become nonconforming upon the adoption of Ordinance 90-85 were the eighteen currently existing and legally established signs which comprise the maximum number of off-premise advertising signs allowed in Whatcom County. No additional off-premise signs were allowed. However WCC 20.80.410(3) would allow the existing permit holders to "replace any sign they removed with a new sign subject to obtaining Conditional Use Permit Approval for the new sign." Otherwise all eighteen existing legally established nonconforming advertising signs could remain if they came into conformance with the new statute, except for the residential setback requirements of Section 20.80.215(4).

This last sentence, including the proviso, following "provided that," is not ambiguous and therefore cannot be subject to statutory interpretation. This sentence only applies to the existing signs, holding valid Zoning Conditional Use Permits, as of August 7, 1990. It requires them to come into compliance with all of the new regulations, except for the

setback from residence requirements of WCC 20.80.215(4). The language following, 'provided that,' only makes an exception to the language in the immediately preceding phrase. Since the immediately preceding phrase only applies to "existing signs holding valid conditional use permits" that became nonconforming immediately upon the adoption of Ordinance 90-85 on August 7, 1990, it does not apply to the Zoning Conditional Use Permit the Applicants are now requesting for a new off-premise sign at a new location.

In order to obtain a Zoning Conditional Use Permit, the Applicant must show that the proposed development is consistent with the Zoning Conditional Use Criteria found in WCC 20.84.220 (1-9).

The Technical Review Committee concluded that this proposal for a new sign at a new location did not meet Zoning Conditional Use Criteria 1, 2, or 3. The Hearing Examiner concurs in this conclusion.

20.84.220(1), reads as follows:

- (1) Will be harmonious and in accordance with the general and specific objectives and Whatcom County's Comprehensive Plan and Zoning Regulations.

WCC 20.80.410(3) requires, as noted above, that off-premise signs require a Conditional Use Permit and "shall meet the setback requirements found in Section 20.80.215." The Applicants proposal does not conform with the setback requirement that it be more than 500 feet from the nearest residence and 500 feet from the nearest residentially zoned district. Therefore the application is not consistent with the applicable zoning regulations and does not meet the requirements of Zoning Conditional Use Criteria No.1.

20.84.220(2), reads as follows:

- (2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area.

20.84.220(3), reads as follows:

- (3) Will not be hazardous or disturbing to existing or future neighboring uses.

The Technical Review Committee concluded that since the legislative body had determined that off-premise signs should be located at least 500 feet from the nearest residence, and 500 feet from the nearest residential district, that the inability to meet these requirements was not harmonious with the intended character of the general vicinity and was disturbing to existing neighboring uses. The Hearing Examiner concurs.

III.

To rule as requested by the Applicants would result in making the setback requirements, Section 20.80.215(4), superfluous. It is a standard rule of statutory construction that meaning must be given to all language within an Ordinance or Statute. If the arguments of the Applicant were adopted, the residence setback requirements would not be applicable. Therefore they would be superfluous and meaningless.

In the same vein, the sentence in WCC 20.80.410(3) requiring that all off-premise advertising signs meet the setback requirements of WCC 20.80.215 would also become superfluous and meaningless, again violating a cardinal rule of statutory construction.

The Applicant raised issues, also discussed by Staff briefly, regarding what would happen should the Applicant wish to replace the existing sign in its current location. The Applicant is not proposing to replace the existing sign in its current location and the issue of how that would be handled is not before the Hearing Examiner and is not relevant to this proposal for a new sign at a new location.

The Hearing Examiner concludes that the proposed sign location does not meet all the zoning regulations applicable to it and therefore does not meet the criteria to be granted a Zoning Conditional Use Permit. The permit should be denied for the reasons set forth

above.

IV.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

The request of Dynamic Sign Company for a Zoning Conditional Use Permit to allow the placement of an off-premise advertising sign at the northwest corner of Guide Meridian and Kelly Roads is denied on the grounds that it is inconsistent with the applicable zoning regulations and, therefore, with the criteria which must be met in order to obtain a Zoning Conditional Use Permit.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final. The following review procedure is available from this Decision and may be taken by the Applicant, any Party of Record, or any County Department.

Appeal to County Council. Within ten business days of the date of the Decision a written Notice of Appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The Appeal Notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the Decision is clearly erroneous on the entire record.

More detailed information about Appeal Procedures is contained in the Official Zoning Ordinance at Section 20.92.600 - .830. A copy of this document is available for review at the County Council Office. After an Appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the Parties will be notified of the time and date to file written arguments.

DATED this 27th day of April 2015.



Michael Bobbink, Hearing Examiner