

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2012-0018
Application for)
)
Birch Bay Water and Sewer District) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: Birch Bay Water and Sewer District is requesting a Zoning Conditional Use Permit to remove the existing headworks facility and appurtenances and replace with an approximately 1,700 square foot replacement headworks building for the existing wastewater treatment building.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

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: Birch Bay Water and Sewer District

Property Address: 7096 Point Whitehorn Road
Blaine, Washington

Legal Description: N ½ of the NW ¼ of the SW ¼ Sec1, T39N, R1W, except Terrell Road and except County Road No 743

Assessor's Parcel No. 395101 066235

Zoning Rural (R5A)

Comprehensive Plan Rural

Subarea Birch Bay

SEPA Review Determination of Nonsignificance issued June 20, 2012

Authorizing Codes, Policies, Plans, and Programs

Whatcom County Comprehensive Plan
Whatcom County Code Chapter 15, Building 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 20, Official Whatcom County Zoning Ordinance
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, January 24, 2013
 Mailed – Notice of Application, December 21, 2012
 Notice of Public Hearing, January 15, 2013
 Published – Notice of Application, December 24, 2012
 Notice of Public Hearing, January 24, 2013

Hearing Date: February 6, 2013

Parties of Record:

Dan Eisses
Birch Bay Water and Sewer District
7096 Point Whitehorn Road
Blaine, WA 98230

Amy Keenan
Planning and Development Services

Exhibits:

- 1 Land Use Application, with attachments
 - 1-1 Fee Responsibility
 - 1-2 Mailing Addresses
 - 1-3 Address Labels
 - 1-4 Easement for Underground Electric System
 - 1-5 Determination of Completeness, December 18, 2012
 - 1-6 Pre-Application Routing Memo, Tech Committee, Dec 18, 2012
 - 1-7 PDS Comment/Letter Form: Notice of Application
 - 1-8 Customer Receipt, CUP2012-0018, 12/17/2012
 - 1-9 Health Dept Availability Notice of Public Water
 - 1-10 PDS Land Disturbance and Clearing Application Info/Submittal Info
 - 1-11 Preliminary Stormwater Proposal

- 1-12 Preliminary Traffic and Concurrency Info
 - 1-13 Staff Email re: scheduling hearing
 - 1-14 PDS Hearing Examiner Checklists, Dec 18, 2012 and January 16, 2013
- 2 Staff Report, dated February 6, 2013
 - 3 Agency Comments
 Watersheds Office, January 3, 2013
 Engineering Division, Dec 20, 2012, attached Exemption from Concurrency Evaluation
 Plans Examiner, Jan 4, 2013
 Fire Marshal, Jan 2, 2013
 Critical Areas, Dec 19, 2012
 Environmental Health, Jan 10, 2013
 - 4 SEPA DNS, June 20, 2012, with attached Environmental Checklist
 - 5 Future WWTP Upgrades Site Plan, Jan 10, 2013
 - 6 Large copies of Site Plan, Dec 17, 2012
 - 7 Headworks Building Pre-Design Process Plan, Mar 31, 2012
 - 8 Certificate of Mailing: Notice of Application, Dec 21, 2012
 - 9 Legal Notice of Application, Tear-Sheet, Dec 24, 2012
 - 10 Certificate of Mailing, Notice of Public Hearing, Jan 15, 2013
 - 11 Legal Notice of Public Hearing, Jan 24, 2013
 - 12 Certificate of Posting, Jan 24, 2013

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated February 6, 2013, which is adopted as though fully set forth and incorporated herein by this reference.

With one correction noted to the Staff Report, the Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

III.

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 proposed replacement of the existing headworks facility and appurtenances for the existing wastewater treatment building can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II.

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

A Zoning Conditional Use Permit is hereby granted to Birch Bay Water and Sewer District for the proposed replacement of the existing headworks facility and appurtenances for the wastewater treatment building located on Assessor's Parcel No.395101 066235, 7096 Point Whitehorn Road, Blaine, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. Pursuant to WCC, Title 14, the owners of the property upon which this conditional use permit approval is granted shall sign a statement of acknowledgment containing a disclosure that pertains to the use of natural resources in Whatcom County. This disclosure shall be made on forms provided by Whatcom County, which shall then be recorded in the Whatcom County Auditor's Office.
3. Pursuant to WCC 20.84.210, Conditional Use Permits shall be nontransferable unless said transfer is further approved by the Hearing Examiner.

Whatcom County Health Department

4. **SEWAGE:** The proposed project must be approved by the Washington State Department of Ecology (DOE). The Applicant must verify that it has been approved by DOE prior to building permit issuance.

Whatcom County Building

5. A commercial building permit is required for this proposal. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.
6. A pre-application screening is required prior to building permit application to determine submittal requirements. Contact the Building Services division to schedule the screening.
7. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The Applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

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 26th day of February 2013.



Michael Bobbink, Hearing Examiner