

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2010-0006
Application for)
)
Derek and Megan Watt) FINDINGS OF FACT,
“Agate Bay Mobile Estates”) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to expand the nonconforming use of Agate Bay Mobile Estates established under project file number NON2005-00001 in order to construct a 36’ X 45’ building for storage of a water tank bladder, water treatment system and non-hazardous maintenance equipment.

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: Derek and Megan Watt

Property Address: 2516 Northshore Road
Bellingham, WA 98226

Legal Description: Portions of Govt. Lots 1 and 2 in Sections 30 and 25,
Township 38 North, Range 4 East, W.M.

Assessor’s Parcel Number: 380430 060358

Zone: R5A [Rural-1 Unit/5 Acres]

Comprehensive Plan: Rural

SEPA Review: Determination of Non Significance issued on May 6, 2010

Shoreline Designation: N/A

Fire District: No. 4

Water District: Well (Agate Bay Water System)

Sewage Disposal: Lake Whatcom Water and Sewer District

Neighboring Uses: North: R(5)A Rural Residential Use
South: R(5)A Rural Residential Use
East: R(5)A Rural Residential Use
West: R(2)A and Lake Front

AUTHORIZING ORDINANCES AND POLICY:

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
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 – May 25, 2010
Mailed – April 1 and May 24, 2010
Published – June 3, 2010

Hearing Date: June 16, 2010

Parties of Record:

Derek and Megan Watt
PO Box 1462
Bellingham, WA 98227

Doug Scoggins
Pioneer Post Frame, Inc.
PO Box 296
Ferndale, WA 98248

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Customer Receipt
 - 1-3 Agent Authorization
 - 1-4 Hearing Examiner Checklist
 - 1-5 Determination of Completeness, dated March 24, 2010
 - 1-6 Form Memo, Tech Committee, dated April 1, 2010
 - 1-7 Property Owner Comment Form, dated April 1, 2010
 - 1-8 PDS Instructions Form
 - 1-9 Property Owner Addresses
 - 1-10 Land Disturbance Application
 - 1-11 Preliminary Traffic & Concurrency Info
 - 1-12 Preliminary Stormwater Proposal
 - 1-13 Revocable Encroachment Permit Application
 - 1-14 Availability Notification for Public Water
- 2 Staff Report, dated June 4, 2010
- 3 Agency Comments
- 4 Aerial Photo
- 5 Vicinity Map
- 6 Zoning Map
- 7 Site Plan showing Impervious Surfaces Info
- 8 Floor Plan
- 9 DNS, dated May 6, 2010
- 10 Legal Notice of Application, dated April 1, 2010
- 11 Affidavit of Notice of Public Hearing, dated June 3, 2010
- 12 Certificate of Mailing of Notice of Public Hearing, dated May 24, 2010
- 13 Certificate of Posting of Notice of Public Hearing, dated May 25, 2010
- 14 Chicago Title Parcel Info

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 June 4, 2010, a copy of which is attached hereto and incorporated herein by this reference.

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 expansion of a nonconforming use to construct a storage building can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (2 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 Derek and Megan Watt for the proposed construction of a storage building, to be located on Assessor's Parcel No.380430 060358, 2516 Northshore Road, Bellingham, 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. The Applicant shall comply with the conditions of the Division of Engineering, memorandum, dated April 30, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.

3. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum, dated April 16, 2010; unless modified by the Plans Examiner or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the Whatcom County Health Department, memorandum dated May 13, 2010; unless modified by the Health Department or appealed to the appropriate agency.
- 5) The Applicant shall obtain and complete the requirements for a commercial building permit.
- 6) Pursuant to WCC20.80.340, existing vegetation may be used to meet landscape requirements.
- 7) The Applicant shall comply with the conditions of the Whatcom County Natural Resources Division (Watersheds), memorandum, dated April 1, 2010; unless modified by the Natural Resources Division or appealed to the appropriate agency.
- 8) The Applicant shall comply with the condition of the Whatcom County Geologist, Natural Resources Division, memorandum, dated April 8, 2010; unless modified by the Natural Resources Division or appealed to the appropriate agency.
- 9) Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
- 10) 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 16th day of June 2010.

Michael Bobbink, Hearing Examiner

June 4, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Derek and Megan Watt For a Zoning Conditional Use Permit	CUP2010-00006 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
---	--

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting a zoning conditional use permit to expand the nonconforming use of Agate Bay Mobile Estates established under project file number NON2005-00001 in order to construct a 36' X 45' building for storage of a water tank bladder, water treatment system and non-hazardous maintenance equipment.

Recommendation: Staff recommends approval of the request, subject to the attached conditions.

II. PRELIMINARY INFORMATION

Applicant: Pioneer Post Frame, Inc.

Applicant's Representative: Pioneer Post Frame, Inc., Doug Scoggins and Alia Hill

Property Address: 2516 Northshore Rd. Bellingham, WA. 98226

Legal Description: Portions of Govt. Lots 1 and 2 in Sections 30 and 25, Township 38 North, Range 4 East, W.M.

Assessor's Parcel Number: 380430060358

Zone: R(5) Rural-1 Unit/5 Acres

Comprehensive Plan: Rural

SEPA Review: Determination of Non Significance issued on May 6, 2010

Shoreline Designation: N/A

Fire District: #4

Water District: Well (Agate Bay Water System)

Sewage Disposal: Lake Whatcom Water and Sewer District

Neighboring uses: North: R(5) Rural Residential Use
 South: R(5) Rural Residential Use
 East: R(5) Rural Residential Use
 West: R(2) and Lake Front

AUTHORIZING ORDINANCES AND POLICY:

1. Whatcom County Comprehensive Land Use Plan
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

III. FINDINGS

Pursuant to WCC20.83.020(2): The expansion of a nonconforming use shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC [20.84.220](#)(2) to (8). In summary, these criteria state that the proposal must: 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, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

If applicable, conditions are established in order to ensure the criteria are satisfied and potential impacts are mitigated. These conditions are set forth in the Conditions of Approval Section of this report.

Zoning Review:

Building Setbacks: Pursuant to WCC20.80.210, the required front yard setback is 30 feet (Water Resource Protection Overlay) and the side and rear yard setbacks are 5 feet. A review of the site plan indicates the setback requirements are met.

Lot Coverage: Pursuant to WCC20.36.450, the maximum lot coverage is 35%. A review of the site plan indicates the proposed 1,620 sq. ft. building together with the existing structures will not exceed the 35% maximum lot coverage provision.

Landscaping: Pursuant to WCC20.80.340, Existing vegetation.

(1) Applicants shall be encouraged to retain existing vegetation as appropriate.

(2) Existing vegetation may be used to meet all or part of the landscaping requirements of this chapter.

A review of an aerial photograph indicates the site is forested and the vegetation is mature. Therefore, the applicant may use the existing vegetation provision to meet the landscaping requirements.

Parking: In view of the fact the proposed building is to be used for the storage of apparatus and equipment necessary for the water system that services Agate Bay Mobile Estates and will not require employees, one parking space shall be provided for the parking of a maintenance vehicle.

Signage: New signage was not part of this application.

Conditional Use Criteria (WCC 20.84.220):

Before approving an application for a conditional use permit for the expansion of a nonconforming use, the hearing examiner shall ensure that it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC20.84.220(2) to (8) and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(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

Discussion:

Design and construction: The proposed storage building will be designed and constructed in a manner that is harmonious and appropriate in appearance with the existing and intended character of the general vicinity because the new construction will be similar in appearance with the existing development. The proposed building is a pole building and is proposed to be located near the north property line and close to the eastern portion of the

subject parcel. The property to the north has existing agricultural uses and the proposed pole building will be appropriate in appearance with the existing character of the vicinity.

Operation and maintenance: The owner will provide normal maintenance of the facility and will be operated in a manner consistent with the use of a storage building for the apparatus necessary for a water treatment system.

Essential character: The proposed storage building will be appropriate in appearance with the existing character of the general vicinity because there is similar types of construction in the area.

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

Discussion:

The proposed use is not hazardous and is an appurtenance to the existing use.

(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services?

Discussion:

The site is serviced adequately by necessary public facilities. Engineering Services has required the owner to obtain a Revocable Encroachment Permit to verify an existing access. Fire protection is provided by Fire District #4. Refuse disposal is provided by the private sector. Potable water is provided by the Agate Bay Trailer Park Water System and the site is served by the Lake Whatcom Water and Sewer District.

(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community?

Discussion:

The proposed improvements will not create excessive additional requirements at public cost. The proposed project is an addition to existing private sector investment and will be a benefit to the economic welfare of the community due to the construction jobs generated in the community.

(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors?

Discussion:

The activities associated with the 36' x 45' storage building will involve normal long term uses however will not be detrimental to persons, property, or the general welfare due to the conditions placed on the construction, and operation of the building which will serve to mitigate potential impacts. No fumes or odors are anticipated as a result of this proposal.

(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets?

Discussion:

The Engineering Services Section of the Whatcom County Public Works Department has required the owner to obtain a Revocable Encroachment Permit to verify existing access. The access to the Agate Bay Mobile Home Estates has been used since the early 1970's.

The requirements that must be met in order for the access permit to be issued address the design criteria that must be satisfied in order to mitigate interference with traffic on surrounding public streets

(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance?

Discussion:

The proposed project will not result in the destruction, loss or damage of natural, scenic or historic feature of major importance.

IV. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on April 1, 2010. Notice was also mailed to property owners within 1000 feet of the site.

- Public Input: During the public comment period for the Notice of Application, the County did not receive any public comment.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication.

V. STATE ENVIRONMENTAL POLICY ACT (SEPA)

A SEPA Determination of Non Significance was issued on May 6, 2010.

VI. AGENCY COMMENTS

Traffic, Drainage, and other Engineering Comments

Sanja Barasic of Whatcom County Public Works Department, Engineering Services provided comment on April 30, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Safety and Fire Comments

Police and fire protection for the site is provided by the Whatcom County Sheriff's Office and Fire District #4. No comments or concerns regarding this proposal were received from either agency.

Bill Hewett, Fire Inspector of the Whatcom County Fire Marshal's Office provided an email dated April 1, 2010 which stated: "The Fire Marshal's Office has no comments or conditions for the CUP for the Agate Bay Mobile Estates storage building." See attached email for entry into the Hearing Examiner File as an exhibit.

Health Department Comments

Charles Sullivan, Environmental Health Specialist for the Whatcom County Health Department provided comment on May 13, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Building Services Comments

Larry Kwiatkowski, Whatcom County Plans Examiner provided comment on April 16, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Critical Areas

Lyn Morgan Hill, Senior Planner, Natural Resources provided comment on April 2, 2010 which stated: "Based on our review of the submitted information as well as Whatcom County critical area information and aerial photos, there will be no wetland or habitat conservation area impacts as a result of the proposal."

Geologist Comments

Doug Goldthorp, Senior Planner, Geologist provided comment on April 8, 2010 which stated: "Approved, however the subsequent building permit may require professional geotechnical assessment for water storage loads." See attached comment for entry into the Hearing Examiner File and condition of approval.

Watershed Review

Stacie Pratschner, Planner II, Natural Resources Division provided comment on April 1, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

VII. RECOMMENDATION

Planning and Development Services recommends approval of the Zoning Conditional Use Permit application subject to the following conditions:

Conditions are established to mitigate potential impacts and provide compatibility with existing, surrounding land uses in order to promote harmony and accordance with the general and specific objectives and requirements of zoning regulations.

VIII. CONDITIONS OF APPROVAL

- 1) The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
- 2) The applicant shall comply with the attached conditions of the Division of Engineering's memo dated April 30, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.
- 3) The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner's memo dated April 16, 2010; unless modified by the Plans Examiner or appealed to the appropriate agency.
- 4) The applicant shall comply with the attached conditions of the Whatcom County Health Department memo dated May 13, 2010; unless modified by the Health Department or appealed to the appropriate agency.
- 5) The applicant shall obtain and complete the requirements for a commercial building permit.
- 6) Pursuant to WCC20.80.340, existing vegetation may be used to meet landscape requirements.
- 7) The applicant shall comply with the attached conditions of the Whatcom County Natural Resources Division (Watersheds) Planner II memo dated April 1, 2010; unless modified by the Natural Resources Division or appealed to the appropriate agency.
- 8) The applicant shall comply with the attached condition of the Whatcom County Geologist, Natural Resources Division memo dated April 8, 2010; unless modified by the Natural Resources Division or appealed to the appropriate agency.
- 9) Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi

Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Report prepared in coordination with the Technical Review Committee by:

Brenda Wilson
Senior Planner