

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0023
Application for)
)
Land O' Lakes Purina Feed L.L.C.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a 1,600-square foot building for storage of materials, equipment and processed feed materials.

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: Land O' Lakes Purina Feed, L.L.C.

Property Address: 5996 Lawrence Road
Everson, WA 98247

Legal Description: within the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec21, T39N, R4E, W.M.
Assessor's Parcel No. 390421 370441

Zoning: Agriculture (AG)

Comprehensive Plan: Agriculture (AG)

Subarea: Lynden-Nooksack Valley

SEPA Review: SEPA Exempt

Authorizing Ordinances:

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 – March 25, 2010
 Mailed – March 17, 2010
 Published – March 15, 2010

Hearing Date: April 7, 2010

Parties of Record:

Land O' Lakes Purina Feed L.L.C.
P.O. Box 64101 MS 4015
St. Paul, MN 55164

Huizenga Bros. Construction
873 Hinotes Court #5
Lynden, WA 98264

Ali Taysi
900 Dupont Street
Bellingham, WA 98225

Tyler Schroeder
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 Agent Authorization
 - 1-3 Project Narrative
 - 1-4 Receipt
 - 1-5 Letter of Completeness, dated January 6, 2010
 - 1-6 Form Letter to Property Owners
 - 1-7 Form Memo to Tech Committee
 - 1-8 Mailing Labels

- 1-9 Quit Claim Deed
 - 1-10 Traffic and Concurrency Information
 - 1-11 Preliminary Stormwater Proposal
 - 1-12 County Application Forms
 - 1-13 Revocable Encroachment Permit Application
 - 1-14 Application Checklist
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- 2 Staff Report, dated April 6, 2010, with Agency Comments attached
 - 3 Aerial Photo
 - 4 Vicinity Map
 - 5 Zoning Map
 - 6 Site Plan and Fire Protection Map
 - 7 Anchor Bolt Plan
 - 8 Legal Notice of Application, dated January 29, 2010
 - 9 Certificate of Mailing of Public Hearing, dated March 17, 2010
 - 10 Certificate of Posting of Public Hearing, dated March 25, 2010
 - 11 Legal Notice of Public Hearing, Affidavit dated March 25, 2010

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 April 6, 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 construction of a storage building for equipment, materials, and products produced onsite 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 Land O' Lakes Purina Feed, L.L.C. for the construction of a 1,600-square foot building for storage of materials, equipment, and processed feed materials to be located on Assessor's Parcel No.3904241 370441, 5996 Lawrence Road, Everson, 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 all of the conditions of the Whatcom County Chief Plans Examiner, memorandum dated February 12, 2010, unless modified by the Whatcom County Plans Examiner or appealed to the appropriate agency.
3. The Applicant shall comply with all of the conditions of the Whatcom County Division of Engineering, memorandum, dated February 16, 2010, unless modified by the Division of Engineering or appealed to the appropriate agency.
4. The Applicant shall comply with all of the conditions of the Whatcom County Health Department, Environmental Health Division, memorandum dated March 16, 2010, unless modified by the Whatcom County Health Department or appealed to the appropriate agency.
5. The Applicant shall complete construction and 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 and 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 and 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 9th day of April 2010.

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive,
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



David Stalheim
Director

J.E. "Sam" Ryan
Assistant Director

April 6, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Land O Lakes Purina Feed L.L.C. for a <u>Zoning Conditional Use Permit</u>		CUP2009-00023 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting a Zoning Conditional Use Permit to construct a 1,600 square foot building for storage of materials, equipment and processed feed materials.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Owner: Land O' Lakes Purina Feed LLC.
P.O. Box 64101 MS 4015
St. Paul, MN 55164

Applicant: Huizenga Bros. Construction
873 Hinotes Court #5
Lynden, WA 98264

Agent: Ali Taysi
900 Dupont Street
Bellingham, WA 98225

Property Address: 5996 Lawrence Road
Everson, WA 98247

Legal Description: Located within the SE ¼ of the NW ¼ of Section 21,
Township 39 North, Range 4 East
Assessor's Parcel No. 370441 370441

Zoning: Agriculture (AG)

Comprehensive Plan: Agriculture (AG)

Subarea: Lynden-Nooksack Valley

SEPA Review: SEPA Exempt

Authorizing Ordinances:

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 AND CONCLUSIONS

In order for the Conditional Use permit to be approved, the proposal must satisfy the criteria of WCC 20.84.200 (.200) 1 through 8. In summary, these criteria state that the proposal must: be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and Zoning Regulations, 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.

Applicable Policies

Pursuant to WCC 20.40.162, commercial uses that directly provide goods and services to agricultural operators are conditionally permitted in the Agriculture zone.

The Agricultural Products Industry section of the Whatcom County Comprehensive Plan states:

"Agriculture is an essential contributor to the local Whatcom County economy. Agriculture is most productive in large agricultural communities where neighbors support agriculture and where labor, farm supplies and market systems for farm products are available." Page, 8-7, Agricultural Products Industry, Whatcom County Comprehensive Plan.

Goal 8B: Maintain and enhance Whatcom County's agricultural products industry as a long-term and sustainable industry.

Comment: The raising of dairy cattle, sheep, goats, swine and other farm animals requires the production of feed sources located within the agricultural community.

Staff Findings:

History

Western Farmers established a feed company on the site in the 1970's, prior to the adoption of Whatcom County zoning. That company has continued to operate for over 30 years providing feed to local Whatcom County farmers under the names, Western Farmers, Cenex and Land o' Lakes Purina.

The following permitting history outlines development on the subject site since 1978:

- 1978 – Conditional Use Permit (CUP10-78) was granted to Western Farmers Association to expand this use by addition of an 8,000-gallon liquid storage tank.
- 1979 – Conditional Use Permit (CUP36-79) was granted to Western Farmers Association for the addition of a 100-ton grain storage tank.
- 1983 – Conditional Use Permit (CUP32-83) was granted under the new name of Cenex Ag. Inc. This permit was to accommodate the following changes:
 - 1) Addition of four, 25-ton load-out bins.
 - 2) Addition of a 1225-sq foot office building.
 - 3) Addition of two, 500-ton grain storage tanks.
 - 4) Addition of an elevator for unloading trucks and railroad cars.
 - 5) Relocation of the truck scale.
 - 6) Remodel existing load-out bins and enclose the structure.
- 1990 – Conditional Use Permit (CUP30-90) was granted to Land O'Lakes Inc. for the addition of a round 10,000-cubic foot upright metal storage tank and four 12-ton rectangular truck-loading bins.
- 2006 – Conditional Use Permit (CUP2006-00023) was granted to Land O' Lakes Inc. to replace an existing 9-foot diameter by 20-foot tall Tallow Tank and construct a 266 sq-foot containment unit around the tank at their existing animal feed processing facility. The Conditional Use Permit also includes the construction of an 800 sq-foot unloading shed over an existing concrete pad.

Site Description

The subject site triangularly shaped, 6.36-acre parcel for which the project is proposed, is located on the north side of Lawrence Road (Highway #9). The

applicant also owns an adjacent .30-acre parcel to the southeast, which abuts Siper Road. The Northern Pacific Rail Road (N.P.R.R) line forms the northeastern boundary of the site. The property has approximately 1200-sq feet of frontage on Lawrence Road, and 760-feet of frontage on the Northern Pacific Rail Road line.

The property is currently developed with the existing animal feed processing facility including an 8,000-gallon liquid storage tank, a 100-ton grain storage tank, four, 25-ton load-out bins, a 1225-sq foot office building, two, 500-ton grain storage tanks, an elevator for unloading trucks and railroad cars, and a truck scale..

Surrounding properties on all four sides are also zoned agriculture and consist of open fields for pasture and crops, and scattered single-family residences and associated agricultural buildings.

Zoning Review

Lawrence Road is classified as a State Highway (Highway 9). Building setbacks, in the Agriculture zone are 50-feet to the front (Lawrence Road) property line and 20-feet to all other property lines, per WCC 20.80.210. A review of the applicant's proposal indicates compliance with the above requirements. There are no height or lot coverage restrictions in the Agriculture zone.

No new employees, or increase in traffic and parking requirements are anticipated as a result of this proposal.

Since the facility is an agricultural use in an agriculture zone, adjacent to open fields, and has existed compatibly with the surrounding agricultural neighborhood for over 30 years, it can be considered part of the existing character of the area and this proposal is not expected to change that character in any way. Therefore, due to the location, length of time on the site, and distance to differing uses, staff does not recommend requiring any landscaping or buffering for this proposal.

All outside lighting shall be shielded or directed away from neighboring streets and properties.

No signs were proposed as part of this application.

Traffic and Engineering Review

The Whatcom County Division of Engineering submitted a memo dated February 16, 2010 with the following conditions of approval for this proposal:

- 1) Temporary Erosion and Sedimentation Control Plan shall be submitted and approved prior to any clearing or grading on site.
- 2) All The proposed development is exempt from Concurrency Evaluation (WCC 20.78.030) because it will generate 9 or less new p.m. peak hr. trips in one direction, based on submitted Preliminary Traffic & Concurrency Information.
- 3) The applicant shall contact Washington State Department of Transportation for any requirements that WSDOT may have regarding

access permit for this development. Copy of the letter or requirements from WSDOT shall be included in the building permit application packet. Contact person is John Tellesbo at (360)757-5964 or tellesj@wsdot.wa.gov.

The applicant shall comply with all of the above conditions, of the Whatcom County Division of Engineering's memo of February 16, 2010, unless modified by the Whatcom County Engineering Department or appealed to the appropriate agency.

Police and Fire Safety Review

The Whatcom County Sheriff's Office and Fire District 1 provide police and fire protection for the site.

The Whatcom County Deputy Fire Marshal's Office submitted a correspondence dated January 29, 2010 indicating that the Fire Marshal's Office has con conditions for the proposal.

Utilities Review

The applicant has indicated that water for the site is supplied by a well and sewage disposal is provided by an on-site septic system.

The Whatcom County Health Department submitted a memo dated March 16, 2010 with the following comments for this proposal:

Water:

If any employees or the public have access to water then public water is required.

Sewage:

If water is to be run to any new building, then an approved on-site sewage permit will be required. The expansion of any existing building will trigger Health Department review of the on-site septic system.

The applicant shall comply with all of the above conditions, of the Whatcom County Division of Health Department memo dated March 16, 2010, unless modified by the Whatcom County Health Department or appealed to the appropriate agency.

Building Services Comments

The Whatcom County Chief Plans Examiner submitted a memo dated February 12, 2010 with the following conditions of approval for this proposal:

1. A commercial building permit is required for this proposal. It will be reviewed under the 2006 International Building Code (IBC) and comply with all other applicable codes and ordinances adopted by Whatcom County.

2. A pre-application *screening* is required prior to building permit submittal. Contact the Building Services division to schedule and for submittal requirements.
3. A WA State Professional Engineer shall engineer the proposed building.
4. The following requirements/findings are from the 2006 IBC.
 - a. Preliminary occupancy classifications:
Storage Group S-1 – Moderate-hazard storage
 - b. Exits shall meet the requirements of Chapter 10.
5. Storage building - storage of flammable or combustible materials and/or high-pile storage items shall comply with the International Fire Code (IFC).
6. All signage (free-standing and building-mounted) requires a separate permit.

The applicant shall comply with all of the above conditions, of the Whatcom County Chief Plans Examiner's memo of February 12, 2010 unless modified by the Whatcom County Plans Examiner or appealed to the appropriate agency.

Public Comments

No public comments were received regarding this proposal.

Critical Areas and Environmental Review

Following a review of the proposal, the Whatcom County Critical Areas Administrator submitted a memo dated January 29, 2010 which states. "Based on previous critical areas reviews as well as site inspections for those proposals, there will be no wetland or habitat conservation area impacts as a result of this construction."

IV. CONCLUSIONS AND RECOMMENDATIONS

As a result of the above analysis and technical review, staff recommends approval of the Zoning Conditional Use Permit, subject to the following conditions:

V. 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 Hearing Examiner.
- 2) The applicant shall comply with all of the above conditions, of the Whatcom County Chief Plans Examiner's memo of February 12, 2010 unless modified by the Whatcom County Plans Examiner or appealed to the appropriate agency.
- 3) The applicant shall comply with all of the attached conditions of the Whatcom County Division of Engineering's memo of October 4, 2006, unless modified by the Division of Engineering or appealed to the appropriate agency.
- 4) The applicant shall comply with all of the above conditions, of the

Whatcom County Division of Health Department memo dated February 16, 2010 unless modified by the Whatcom County Health Department or appealed to the appropriate agency.

Report prepared by:
Tyler R. Schroeder
Current Planning Supervisor