

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2009-0017  
Application for )  
)  
*Whatcom County* ) FINDINGS OF FACT,  
*Water District No. 7* ) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct a 30-foot in diameter, and 20-foot high water storage tank with an associated 12-foot wide, 450-foot long gravel access road and parking.

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: Whatcom County Water District #7

Applicant's Representative: Dave Olson, Manager

Property Address: 1824 Swamp Creek Lane  
Bellingham, Washington

Legal Description: SW ¼ of Section 11, Township 38, Range 3E, W.M.

Assessor's Parcel Number: 380311 230016

Zone: RR (2)

Comprehensive Plan: Suburban Enclaves

SEPA Review: Determination of Nonsignificance, issued December 23, 2009

Shoreline Designation: N/A

Fire District: No. 4

Water District: Water District No. 7

Sewage Disposal: N/A

Neighboring Uses: North: Residential - RR(2)  
South: Residential – RR(2)  
East: Residential – RR(2)  
West: Residential – RR(2)

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 – November 16 and December 28, 2009  
Mailed – November 10 and December 23, 2009  
Published – August 25, November 19, 2009, and January 7, 2010

Hearing Date: January 20, 2010

Parties of Record:

Whatcom County Water District No. 7  
PO Box 28700  
Bellingham, WA 98228

Dave Olson  
1615 Bayon Road  
Bellingham, WA 98225

Brenda Wilson  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Determination of Completeness, dated August 20, 2009
  - 1-3 Form Memo to Tech Committee, dated August 25, 2009
  - 1-4 Mailing Labels
  - 1-5 Instructions for Obtaining Addresses
  - 1-6 Agent Authorization
  - 1-7 Application Questionnaire
  - 1-8 Project Description
  - 1-9 Receipt
  - 1-10 Deed
- 2 Site Location Map
- 3 Plat Map
- 4 Site Plan
- 5 Preliminary Traffic Concurrency Info
- 6 Preliminary Stormwater Proposal
- 7 Aerial Map
- 8 Small scale Plat Map
- 9 Vicinity Map
- 10 Zoning Map
- 11 SEPA DNS, dated December 23, 2009, and Checklist
- 12 Legal Notice, dated August 25, 2009
- 13 Certificate of Mailing, dated November 10, 2009
- 14 Certificate of Posting, dated November 16, 2009
- 15 Legal Notice, dated November 19, 2009
- 16 Comment Letters of Concern

- 17 Email correspondence between Dave Olson, Brenda Wilson, and Carole Magner
- 18 Legal Notice for SEPA, dated December 23, 2009
- 19 Certificate of Mailing, dated December 23, 2009
- 20 Certificate of Posting, dated December 28, 2009
- 21 Legal Notice, dated January 7, 2010
- 22 Agency Comments
- 23 Staff Report, dated January 14, 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 #23, dated January 14, 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 requested a modification to the Conditions of Approval requested by Staff in order to revise the site plan allowing access using an easement from the neighboring property entering the site from the south and northeast. Staff supported this request and the Hearing Examiner agreed to add a Condition of Approval granting the change in access subject to Engineering's review and approval.

There was no public comment on this matter at the public hearing. Two letters of concern were received by Staff. Staff indicated at the public hearing that these concerns were adequately addressed in the Staff Report, dated January 14, 2010. The Hearing Examiner concurs.

**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 water storage tank and an associated access road and parking area can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.200 (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 Whatcom County Water District No. 7 for the proposed construction of a 30-foot in diameter, 20-foot high water storage tank and associated gravel access road and parking area to be located on Assessor's Parcel No.380311 230016, 1824 Swamp Creek Lane, 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 September 3, 2009; 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 September 2, 2009; 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 January 14, 2010; unless modified by the Health Department or appealed to the appropriate agency.
5. The Applicant shall comply with the condition of the Whatcom County Geologist, dated as a comment on January 15, 2010, and described on page 6 in the attached Staff Report. This condition includes the provision of a professional geotechnical assessment to be provided to Whatcom County when an application is submitted for a building permit.
6. The Applicant shall obtain and complete the requirements for a commercial building permit.
7. The Applicant shall provide a landscape plan pursuant to WCC20.80.300 at the time a building permit application is submitted.
8. The Applicant shall submit a revised site plan to the Division of Engineering, for review and approval, allowing access using a neighboring easement entering from the south and northeast of the subject property.
9. 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 29<sup>th</sup> day of January 2010.

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Michael Bobbink, Hearing Examiner

January 14, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of	]	<b>CUP2009-00017</b>
Whatcom County Water District #7	]	FINDINGS, CONCLUSIONS
<u>For a Zoning Conditional Use Permit</u>	]	<u>AND RECOMMENDATIONS</u>

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Application: The applicant is requesting a zoning conditional use approval to construct a 30-foot in diameter, and 20-foot high water storage tank with an associated 12' wide, 450' long gravel access road and parking.

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

**II. PRELIMINARY INFORMATION**

Applicant: Whatcom County Water District #7

Applicant's Representative: Dave Olson, Manager

Property Address: 1824 Swamp Creek Lane  
Bellingham, WA.

Legal Description: SW¼ of Section 11 Township 38, Range 3E., W.M.

Assessor's Parcel Number: 380311230016

Zone: RR (2)

Comprehensive Plan: Suburban Enclaves

SEPA Review: Determination of Nonsignificance issued on December 23, 2009

Shoreline Designation: N/A

Fire District: #4

Water District: Water District #7

Sewage Disposal: N/A

Neighboring uses: North: Residential - RR(2)  
South: Residential – RR(2)  
East: Residential – RR(2)  
West: Residential – RR(2)

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**

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 goals and policies 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 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, 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 Codes and Policies:**

Water storage reservoirs with volumes exceeding 50,000-gallons or those with a height in excess of 12-feet above ground level measured within 20-feet in all directions of the tank require conditional use approval in all zones, per WCC 20.82.030 (5).

The Whatcom County Comprehensive plan states the following goals and policies related to utility services of this kind:

**GOAL 5D: Minimize the time required for processing utilities permits.**

**Policy 5D-1: Streamline and simplify permitting processes relating to installation of utility facilities designed to serve existing or approved development.**

**GOAL 5R: Ensure that potable water supplies required to serve development are available at the time the development is available for occupancy and use.**

**Policy 5R-2: Work with purveyors to assist them in modifying their system as required to support the land use element of the comprehensive plan.**

Therefore, Staff concludes that the proposal is harmonious and in accordance with the general and specific goals and policies of Whatcom County's Comprehensive Plan and zoning regulations, and is generally consistent with the Utility Section of the Comprehensive plan and the County Coordinated water Supply Plan.

WCC20.84.220(2) through (8) sets forth the criteria that must be satisfied in order for the request for a conditional use permit is granted.

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 25 feet 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 WCC20.32.450, the maximum lot coverage for a parcel this size is 35%. Although the water tank is 20' tall the "footprint" equals 706.5 square feet. The parcel size is 35,283.6 square feet and the "footprint" of the water tank will not exceed 12,349.26 square feet (35%) of the total parcel.

Building Height: Maximum building height in the RR zone is 35-feet per WCC20.32.400. The proposed tank height is 20 feet.

Landscaping and Parking: The applicant did not provide a landscaping or a parking plan with the application. It is difficult to provide complete screening (buffering) for a reservoir. However, since the proposed reservoir is only 20-feet in height, with proper screening it should be harmonious and appropriate in appearance with the residential/rural character of the area and should not change the essential character of the area. The site plan depicts the existing trees and vegetation to remain along all property lines and depicts three new trees to be planted along the south property line within the proposed cleared area.

A landscape/buffering plan designed in accordance with WCC 20.80.300 and WCC 20.80.340 (Existing Vegetation) shall be submitted with the building permit application and all required buffering shall be installed per the approved plan or bonded to 125% of the labor and materials cost to install the approved landscaping and irrigation prior to the issuance of Certificate of Occupancy/Completeness.

A parking plan is not required. The site plan depicts a parking area for the minimal amount of service truck visits to the site.

## **IV AGENCY COMMENTS**

### **Building Services Construction Comments**

Larry Kwiatkowski, Whatcom County Plans Examiner submitted a memo dated September 2, 2009 with the following conditions of approval for this proposal:

The following initial conditions are required for this permit. They are subject to change and additional conditions will be included when more detailed plans are submitted.

These findings are based on review of the applicant's 8.13.09 *Master Land Use Application* and *Supplemental Conditional Use Application*. A Site Plan was also included.

#### **Project description:**

- **30' dia. x 20' ht. water tower.**
- **390' long access driveway.**

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 Washington State registered architect and/or engineer will be required to prepare the construction documents and act as the design professional in responsible charge (Section 106.3.4).
4. A WA State Professional Engineer shall engineer the proposed building.
5. Preliminary occupancy classification: Utility Group U.
6. Exterior lighting shall comply with the WA State Nonresidential Energy Code (NREC).
7. Demolition permit is required for the removal of any existing buildings, structures or other site improvements.

8. All signage (free-standing and building-mounted) requires a separate permit.

As a result of the above review staff has determined that the proposal 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

### **Traffic, Drainage, and other Engineering Comments**

Mary White, Whatcom County Engineering Services submitted a memo, dated September 3, 2009 with the following condition of approval:

The Engineering Division has the following requirements for the proposed project:

**\*\* All development shall comply with Whatcom County Development Standards.**

1. The applicant shall submit an engineered permanent erosion and sedimentation control plan with the building permit/land disturbance permit due of the steep slope of the property.

**\*\*All other permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal regulations or permits that may apply to this project.**

Staff has no reason to believe that this proposal will result in excessive production of traffic, noise, smoke, fumes, glare or odors. Subject to compliance with Division of Engineering conditions the proposal will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

### **Safety and Fire Comments**

Police and fire protection for the subject site is supplied by the Whatcom County Sheriff's Office and Fire District # 4.

No concerns regarding this proposal were received from either agency or from the Whatcom County Deputy Fire Marshal's Office.

### **Utilities and Health Department Comments**

Charles Sullivan, Environmental Health Specialist for the Whatcom County Health Department provided a memo dated January 14, 2010 with the following condition:

At the time of building permit submittal the applicant must provide proof of plan approval from the Washington State Department of Health.

Therefore, it appears that the proposal will be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, and water and sewers, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services. In addition, there is nothing in the record to indicate that the proposal will create excessive additional requirements at public cost for public facilities and services, or that it will be detrimental to the economic welfare of the community,

### **Critical Areas and Environmental Comments**

Lyn Morgan-Hill, Senior Planner, Critical Areas provided a memo dated August 28, 2009 in which she stated the following:

An application for the above Conditional Use Permit for a water storage tank has been routed to Critical Areas staff in conformance with WCC16.16, Critical Areas Ordinance.

After reviewing the submitted materials and making a site inspection, Critical Areas staff determined that there will be no wetland or habitat area impacts as a result of this proposal

Therefore, staff has determined that the subject proposal will not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

### **Geologist Comments**

Doug Goldthorpe, Geologist/Senior Planner for Whatcom County Natural Resources provided the following comment on January 15, 2010:

The slope gradients, the neighbors comments, and my recollection of the area, are cause for me to determine that the site is a potential landslide hazard area. Considering the enormous loads a water tank will impose on a potential landslide hazard area, a professional geotechnical assessment is necessary to determine inherent slope stability, soil and groundwater conditions, and appropriate recommended design mitigation. The professional assessment can be provided when an application is submitted for the subsequent building permit.

## **V. 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 August 25, 2009. 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 received two public comments. They are summarized as follows:

- 1) Geo Hazard/mud slide concern: Doug Goldthorpe, Geologist/Senior Planner has required a professional geotechnical assessment to determine inherent slope stability, soil and groundwater conditions and appropriate recommended design mitigation.
- 2) Questions regarding the need for the tank and the source of the water: Staff responded via email in an effort to answer these questions.

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.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The SEPA official issued a Determination of Nonsignificance on December 23, 2009.

## **VII. RECOMMENDATION**

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

## **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 September 3, 2009; 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 September 2, 2009; 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 January 14, 2010; unless modified by the Health Department or appealed to the appropriate agency.
- 5) The applicant shall comply with the attached conditions of the Whatcom County Geologist dated January 15, 2010.
- 6) The applicant shall obtain and complete the requirements for a commercial building permit .

- 7) The applicant shall provide a landscaping plan pursuant to WCC20.80.300 at the time of building permit application.
- 8) The applicant shall provide a professional geotechnical assessment at the time of building permit application.

Report prepared in coordination with the Technical Review Committee by:

Brenda Wilson  
Senior Planner