

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit)	CUP2007-0003
Application for)	and Associated Development Agreement
)	
<i>Birch Bay Bible Community Church</i>)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	DECISION ON CUP2007-0003 AND
)	RECOMMENDATION TO THE
)	WHATCOM COUNTY COUNCIL ON
)	DEVELOPMENT AGREEMENT

SUMMARY OF APPLICATION, DECISION, AND RECOMMENDATION

Application: The Applicant is requesting a Zoning Conditional Use Permit and approval of an associated Development Agreement to allow construction of a religious facility in two phases.

Decision: The Whatcom County Hearing Examiner approves CUP2007-0003, subject to conditions.

Recommendation: The Hearing Examiner recommends that the Whatcom County Council approve the associated Development Agreement prepared by Birch Bay Bible Community Church and Whatcom County Planning and Development Services, in consultation with the Washington State Department of Ecology and the U.S. Army Corps of Engineers.

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 Bible Community Church

Property Address: The property is located at the northeast corner of the intersection of Birch Bay Road and Blaine Road.

Legal Description: Located within the SW¼ of the SW ¼ of Sec32, T40N, R1E, W.M.

Assessor's Parcel Number: 400132 033039

Zone: R10A, Rural-1 Unit/10 Acres

Subarea: Birch Bay Blaine

Comprehensive Plan: Rural

SEPA Review: A Determination of Non-significance, issued December 23, 2008
A SEPA Addendum distributed October 7, 2009 pursuant to the procedures set forth in the Department of Ecology SEPA Handbook and WAC 197-11-600(4)(c) and 625.

Fire District: No. 21

School District: Blaine School District No. 503

Water District: Birch Bay Water & Sewer

Sewage Disposal: On Site Sewage System

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
Revised Code of Washington 36.70B.170 through .210

Legal Notices: Posted – December 23, 2008
Mailed – December 18, 2008
Published – January 24, 2007 and December 25, 2008

Hearing Date: January 7 and October 28, 2009

Parties of Record:

Roger Eytzen
Birch Bay Bible Community Church
7039 Jackson Road
Blaine, WA 98230

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PWF Architecture
414 Olive Way, #211
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Craig Dammarell
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Ferndale, WA 98248

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Chmelik Sitkin & Davis
1500 Railroad Avenue
Bellingham, WA 98225

Brenda Wilson, Lyn Morgan-Hill
Planning and Development Services

Copy of Decision sent to:
Jack Kintner, Northern Light
Jared Paben, Bellingham Herald

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 PWF Architecture Supplemental Information
 - 1-3 Letter dated January 29, 2007, from Lyn Morgan Hill to Applicant
 - 1-4 Deed
 - 1-5 Assessor's Parcel Info
 - 1-6 Determination of Completeness, dated January 18, 2007
 - 1-7 Mailing Labels
 - 1-8 Agency Distribution list
 - 1-9 Email correspondence

- 2 Letter dated December 19, 2008, from Phil Serka, representing Applicant
- 3 DNS, dated December 23, 2008
- 4 Staff Report, dated December 29, 2008 for APL2008-0025
- 5 Staff Report, dated December 29, 2008 for CUP2007-0003
- 6 Wetland Mitigation Report, dated August 11, 2008 from ATSI
- 7 Public Water Availability Notification, dated January 10, 2007
- 8 On-site Sewage System Construction Permit
- 9 Letter, dated December 18, 2006 from Birch Bay Water and Sewer District re: Limited Water Service Availability
- 10 Preliminary Traffic Information
- 11 Letter dated January 3, 2007 from Bennett Engineering, re: Preliminary Stormwater Proposal
- 12 Site Survey, dated September 22, 2006
- 13 Site Plans
- 14 Aerial Map
- 15 Zoning Map
- 16 Vicinity Map
- 17 Memo dated September 30, 2008 from Lyn Morgan-Hill with Legal Notice dated October 3, 2008 for Reasonable Use Permit
- 18 Legal Notice, dated January 24, 2007, from CUP Application
- 19 Certificate of Mailing, dated December 18, 2008
- 20 Certificate of Posting, dated December 23, 2008
- 21 Legal Notice, dated December 25, 2008
- 22 Letters requesting notice of hearing

- 23 Emails betw Staff and Kathy Berg re: SEPA comment period
- 24 Letter dated January 3, 2009, in support of proposal from neighboring property owners
- 25 Addendum to Staff Report, Email correspondence dated January 7, 2009, from Brenda Wilson
- 26 Letter dated December 22, 2008 from Birch Bay Water and Sewer District re: water availability
- 27 Memorandum in Support, dated January 7, 2009, from Philip Serka
- 28 Mr. Serka Black Binder, containing minutes, notes, Alternative Analysis and Wetland Mitigation Plan from Aqua-Terr Systems, Inc.
28-a List of Documents included in Binder [prepared by Mr. Serka]
- 29 Site Development Restrictions to scale dated December 9, 2008
- 30 Alternative Option F, Site Plan dated December 12, 2008
- 31 Color rendering site plan – Phase 1
- 32 Email, dated May 23, 2008 from Stephen Stanley to Janet Cray
- 33 Memo dated January 31, 2008, from Susan Meyer to Craig Dammarell
- 34 Verbatim phone message from Susan Meyer to Oliver Grah, dated November 12, 2008
- 35 Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property, Rob McKenna, Attorney General, December 2006
- 36 Proposed Mitigation Plan Map to scale, dated December 2008
- 37 Proposed Site Plan, to scale, dated April 2008
- 38 Religious Land Use and Institutionalized Persons Act of 2000, 106 Congress, 2d Session, S.2869, An Act, dated June 2, 2005
- 39 Staff Report, dated October 23, 2009, with attached Agency Comments 39-1
- 40 Critical Areas Memo, dated October 26, 2009, from Lyn Morgan Hill re: Mitigation
- 41 Staff Report, dated October 23, 2009, re: Development Agreement, with attachments
41-1 Agenda Bill No. 2007-112, with Resolution No. 2007-008 Establishing Public Hearing Process for Development Agreements

- 42 Email Correspondence [Staff, the Applicant, Mr. Serka]
- 43 Development Agreement with Attachments
 - 43-1 Vicinity Map
 - 43-2 Legal Description of Site
 - 43-3 Letter dated July 15, 2009 from DOE to Roger Eytzen
 - 43-4 Order #6951 Granting Section 401 Water Quality Certification from DOE
 - 43-5 Letter dated July 27, 2009 from Department of the Army, Corps of Engineers with attached Department of the Army Permit
 - 43-6 Revised Wetland Mitigation Plan, dated October 14, 2009
 - 43-6-1 Vicinity Map
 - 43-6-2 Aerial Photograph
 - 43-6-3 Proposed Wetland Fill
 - 43-6-4 Proposed Site Plan Phase I
 - 43-6-5 Proposed Site Plan Phase II
 - 43-6-6 Proposed Mitigation Map
 - 43-6-7 Wetland Fill, Section A-A'
 - 43-6-8 Wetland Fill, Section B-B'
 - 43-6-9 Wetland Fill, Section C-C'
 - 43-6-10 Wetland Data Summary
 - 43-6-11 Proposed Planting Details
 - 43-7 Wetland Fill: Proposed Site Plan Phase I
 - 43-8 Wetland Fill: Proposed Mitigation
 - 43-9 Wetland Fill: Proposed Site Plan Phase II
- 44 Letter, dated January 14, 2009, from Phil Serka requesting time extension
- 45 Email memo, dated January 16, 2009, from Jon Sitkin re: WCFD #21 / SEPA
- 46 Letter, dated January 26, 2009 from Phil Serka re: Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) / Response to Whatcom County Fire District No. 21, with attached
 - 45-1 Memorandum in Support of Issuance of Permit, dated January 19, 2009
- 47 Memo, dated January 15, 2009, from Kathy Berg to Hearing Examiner
- 48 Memo, dated January 20, 2009 from Tyler Schroeder to Hearing Examiner re: SEPA Determination, WC Fire District 21 Comments
- 49 Letter dated June 11, 2009 from DOE to Jim Wiggins re: Comments on Wetland Mitigation Plan, Corps Reference No. 2008-74-NO.

- 50 Email memo from Jon Sitkin, dated October 28, 2009, with Fire District No. 21 SEPA comment letter, dated January 5, 2009, attached
- 51 Letter dated September 2, 2009 from Army Corps of Engineers with signed copy of Certificate of Compliance with Department of the Army Permit No. NWS-2008-74 attached
- 52 Email correspondence [Wilson, Magner, Serka] re: Development Agreement/County Council, dated Oct 30, 2009

II.

The Applicant is requesting a Zoning Conditional Use Permit and Whatcom County Council approval of a Development Agreement, allowing the proposed construction of a new religious facility. The proposed construction will be in two phases. The proposed phasing and square footages are summarized as follows:

- Phase I: A 22,000 square foot structure which includes a new sanctuary, classrooms, office space, foyer, kitchen, restrooms and storage, with parking for 128 vehicles. Uses will include Sunday worship services and related Sunday school classes; weekday uses may include a daycare/preschool program. Other church activities and community gatherings may occur during the week but are much less intense than the proposed Sunday uses. Occasional outdoor activities may occur in support of functions accommodated within the building. Phase I also includes a Sports Ministry Field for church and community use.
- Phase II: Conversion of the original sanctuary to a fellowship hall/gymnasium space; construction of a 588-seat sanctuary, an expanded foyer, additional classrooms, restrooms and storage and parking for 98 additional vehicles for a total of 226 parking spaces. Phase II consists of 19,360 square feet of new construction for a final total of 41,360 square feet of total floor area.

Phase I is scheduled to commence in March 2010 with completion scheduled for March 2011. Phase II is anticipated to be completed within eight years of the CUP approval date.

A Development Agreement has been entered into by and between Whatcom County and Birch Bay Bible Community Church pursuant to the authority granted by RCW 36.70B.170 through .210 and WCC 16.16.260E. The open record public hearing for the Development Agreement was conducted concurrently with the CUP application hearing. The Agreement sets forth the design standards and mitigation for the development of a new church facility in two phases.

III.

This matter originally came before the Hearing Examiner on the request of the Birch Bay Bible Community Church for approval of CUP2007-0003 and on the Church's Appeal of the Technical Administrator's Denial of their Reasonable Use Permit Application.

During the public hearings on this matter, it became evident that a possible solution to the critical areas issues raised by the Wetland Study and the Reasonable Use Permit Application could be resolved through the adoption of a Development Agreement pursuant to RCW 36.70B.170 through .210 and WCC 16.16.260E.

The initial public hearing was continued to allow the Applicant to work with Whatcom County Planning and Development Services, Washington State Department of Ecology, and the U.S. Army Corps of Engineers. These consultations resulted in a Development Agreement between the Birch Bay Bible Community Church and Whatcom County Planning and Development Services. The work toward obtaining this agreement included consultations with the Washington State Department of Ecology and the U.S. Army Corps of Engineers. The Development Agreement includes conditions required by the Whatcom County Critical Areas Technical Administrator, the Washington State Department of Ecology, and the U.S. Army Corps of Engineers. The Development Agreement, Exhibit No. 43 in the Hearing Examiner's file, is agreed between all the Parties. There was no public comment in opposition to the proposed Development Agreement. The Whatcom County Hearing Examiner has reviewed the proposed agreement. The proposed agreement requires the approval of the Whatcom County Council, after a public hearing before the Hearing Examiner and a recommendation from the Hearing Examiner.

IV.

The proposed church construction also requires a Zoning Conditional Use Permit. Whatcom County Planning and Development Services has recommended Conditional Use Permit Approval as well as approval of the Development Agreement.

The Findings of Fact, Conclusions of Law, and Recommendation of Whatcom County Planning and Development Services are set forth in Exhibit No. 39, a copy of which is attached hereto and incorporated herein by this reference. The Findings of Fact reached by Whatcom County Planning and Development Services are supported by the record as a whole and are hereby adopted by the Hearing Examiner through this reference, as Findings of Fact herein.

V.

Whatcom County Planning and Development Services has prepared a Staff Report for the Hearing Examiner in reference to the Development Agreement. This Staff Report is Exhibit No. 41 in the Hearing Examiner's file. All local, State, and Federal agencies, and the Applicant have requested the Hearing Examiner recommend to the Whatcom County Council approval of the Development Agreement. The Findings of Fact set forth in the Staff Report in reference to the

Development Agreement are supported by the record as a whole and are hereby adopted by the Hearing Examiner through this reference. A copy of the Staff Report on the Development Agreement is attached hereto and incorporated herein by this reference.

The Hearing Examiner has concluded that approval of the Development Agreement will allow the Applicants a reasonable use of this site for their intended purposes and will result in mitigation and wetland restoration which will fully mitigate the impacts to the critical areas on the development site. The Hearing Examiner concludes that the Development Agreement will result in positive mutual benefits to both the church and the public.

VI.

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.

Religious facilities are a conditional use in the Rural zone. Subject to Conditions of Approval attached to this decision, and full implementation of the proposed Development Agreement, the proposed development will be consistent with the Conditional Use Permit Criteria and the Permit should be approved by the Hearing Examiner.

II.

RCW 36.70B.170 through .210 allows a local government to enter into a Development Agreement, subject to the requirements of RCW 36.70B.170 through .210.

Whatcom County Planning and Development Services, in consultation with the Washington State Department of Ecology and the U.S. Army Corps of Engineers, has entered into the proposed Development Agreement with Birch Bay Bible Community Church.

The Hearing Examiner concludes that the Development Agreement is consistent with the requirements of RCW 36.70B.170 through .210 and with the applicable development regulations of Whatcom County adopted pursuant to RCW 36.70A.

The Hearing Examiner also concludes that the development is consistent WCC 16.16.260E and with other applicable zoning regulations, including the Critical Areas Ordinance.

The Hearing Examiner concludes that the proposed wetland mitigation should result in a public benefit and will more than offset the wetland impacts of the development. The Hearing Examiner should recommend to the Whatcom County Council approval of the Development Agreement, Exhibit No. 33 of the Hearing Examiner's file.

III.

As a result of the proposed Development Agreement, the Birch Bay Bible Community Church has withdrawn their Reasonable Use Application and their Appeal, APL2008-00025. APL2008-00025 should be dismissed upon approval and signing of the proposed Development Agreement by Whatcom County.

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 Whatcom County Hearing Examiner hereby approves the Birch Bay Bible Community Church Zoning Conditional Use Permit application allowing construction of a church and accessory uses on Assessor's Parcel No. 400132 033039, subject to the conditions set forth below.

RECOMMENDATION

The Whatcom County Hearing Examiner recommends that the Whatcom County Council approve the proposed Development Agreement, prepared by Birch Bay Bible Community Church and Whatcom County Planning and Development Services, in consultation with the Washington State Department of Ecology and the U. S. Army Corps of Engineers.

1. The use and location on the site as approved by this permit shall not be amended or changed without further approval of the Hearing Examiner and/or the Whatcom County Council.
2. Any signs installed on the site for the proposed use, shall comply with the sign requirements of WCC 20.80.210 and WCC 20.80.450 (attached), and a building permit shall be obtained for the installation of any such sign.
3. The Applicant shall comply with the conditions of the Division of Engineering, memorandum, dated February 8, 2007, unless modified by the Division of Engineering or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum, dated December 31, 2008, unless modified by the Plans Examiner or appealed to the appropriate agency.
5. Outdoor lighting shall be shielded or directed away from neighboring streets and properties.
6. The Applicant shall obtain and complete the requirements for a commercial building permit.

7. A landscaping/buffering plan designed in accordance with WCC 20.80.300 shall be submitted to Planning and Development Services with the building permit application. No building permit shall be issued prior to approval of the landscape/buffering plan by Whatcom County Planning and Development Service.
8. The Applicant shall provide a final parking plan which meets the requirements of WCC20.80.500 at the time of building permit application.
9. All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
10. It shall be the Applicant's responsibility to request a Certificate of Occupancy from Planning and Development Services upon completion of all conditions in order to finalize the Conditional Use Permit.
11. Prior to issuance of a Certificate of Occupancy:
All landscaping/buffering and parking shall be installed per the approved plan, or bonded for 125% of the cost of labor and materials for installation and irrigation.

In addition, a landscape maintenance bond for 10% of the cost of labor and materials for installation shall be submitted to Planning and Development Services. This bond shall be released in two years after completion of the landscaping if the Landscaping has been maintained in a healthy growing condition and any dead or dying plants have been replaced.
12. The Applicant shall obtain all Federal and State related permits including but not limited to permits from the Army Corps of Engineers and the Department of Ecology. These permits shall be obtained prior to issuance of any building or development related permits issued by Whatcom County.
13. The Applicant shall record the Development Agreement with the Whatcom County Auditor's Office pursuant to RCW 36.70B.190. The Conditional Use Permit Approval is conditioned specifically upon the approval and signing of the proposed Development Agreement. All development on site and/or wetland restoration on or off site shall comply with the Development Agreement. A violation of the terms of the Development Agreement is also a violation of the conditions attached to the Zoning Conditional Use Permit Approval.
14. The Applicant shall record the Conservation Easement referenced in the Development Agreement as number 10 of the Agreement.

15. The Applicant shall implement all aspects of the Final Compensatory Mitigation Plan.
16. The Applicant shall complete construction of Phase I within 24 (twenty-four) months of the date of the issuance of this decision and Phase II shall be completed within ten years 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 November 2009.

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

October 23, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of
Birch Bay Bible Community Church
For a Zoning Conditional Use
Permit for a new Religious Facility

CUP2007-00003
FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application:

The applicant is requesting a zoning conditional use permit for the phased construction of a religious facility comprising 41,360 square feet of new construction. The proposal also includes parking and a Sports Ministry Field.

The proposed phasing and square footages are summarized as follows:

Phase I: A 22,000 square foot structure which includes a new sanctuary, classrooms, office space, foyer, kitchen, restrooms and storage, with parking for 128 vehicles. Uses will include Sunday worship services and related Sunday school classes; weekday uses may include a daycare/preschool program. Other church activities and community gatherings may occur during the week but are much less intense than the proposed Sunday uses. Occasional outdoor activities may occur in support of functions accommodated within the building. Phase I also includes a Sports Ministry Field for church and community use.

Phase II: Conversion of the original sanctuary to a fellowship hall/gymnasium space; construction of a 588-seat sanctuary, an expanded foyer, additional classrooms, restrooms and storage and parking for 98 additional vehicles for a total of 226 parking spaces. Phase II consists of 19,360 square feet of new construction for a final total of 41,360 square feet of total floor area.

Anticipated Timing: The anticipated construction of Phase I is scheduled to commence in March of 2010 with completion scheduled for March 2011. Phase II is anticipated to be completed within eight years of the CUP approval date.

Development Agreement: A Development Agreement has been entered into by and between Whatcom County and Birch Bay Bible Community Church pursuant to the authority granted by RCW 36.70B.170 through .210 and WCC 16.16.260E. The open record public hearing for the Development Agreement is being conducted concurrently with this CUP application.

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

II. PRELIMINARY INFORMATION

Applicant: Birch Bay Bible Community Church

Property Address: The property is located at the northeast corner of the Bay Road and Blaine Road intersection.

Legal Description: Located within the SW¼ of the SW ¼ of Section 32, Township 40N, Range 1E, W.M.
Assessor's Parcel No: 400132033039

Zone: Rural Ten Acre - R10A

Subarea: Birch Bay Blaine

Comprehensive Plan: Rural

SEPA Review: A Determination of Non-Significance was issued December 23, 2008. A SEPA Addendum was distributed on October 7, 2009 pursuant to the procedures set forth in the Department of Ecology SEPA Handbook and WAC 197-11-600(4)(c) and 625.

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

I. 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 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 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 And Codes:

Churches, educational, and religious training institutions, summer camps and cemeteries are conditionally permitted in the Rural zone pursuant to WCC20.36.153.

The Whatcom County Comprehensive Plan makes no reference to religious facilities.

Site Description

The subject, undeveloped, square shaped, 8.96-acre site is located at the northeast corner of the Bay Road and Blaine Road intersection. The site has approximately 650 feet of frontage along Blaine Road and approximately 537' of frontage along Bay Road.

The site is essentially level and existing vegetation is primarily a hay field.

Access to the site will be from Bay Road.

Surrounding Properties on all sides are zoned Rural 10 Acre and developed with single family residences and outbuildings.

Zoning Comments

Bay Road is a rural major collector and Blaine Road is a State Highway. Therefore, within the Rural Zone District, building setbacks are 45-feet from the front property lines along Bay Road and Blaine Road and 5 feet along the north and east property lines. A review of the applicant's site plan verifies compliance with the above setback restrictions.

Maximum lot coverage allowed in the Rural Zone District is 35% of the overall lot size, per WCC 20.36.450. The proposed phased construction with a final total of 43,100 square feet is well below 35% (136,604.16 sq. ft.) of this 8.96-acre (390,297.60-square foot) site.

Maximum building height in the Rural Zone District is limited to 35-feet per WCC 20.36.400. The applicant has indicated that the building will be 30' 9" in height per the northeast elevation drawing depicted on the set of preliminary drawings received by Whatcom County on January 11, 2007. This height is measured in accordance with the definition of *Building Height* set forth in WCC 20.97.040.

Churches require one parking space for each 4 seats in the sanctuary, per WCC 20.80.580 (15). In this case the applicant has indicated that the church will be able to seat 588 members. Therefore, 147 parking spaces are the minimum required by code. The applicant's proposal includes 244 total parking spaces. The applicant's Alternatives Analysis – Addendum #3 consists of a Parking Study which yielded statistics demonstrating an average parking ratio of 1:2.08 over a five month period from September to December 7th of 2008. The parking study also indicated that at maximum build-out the estimated parking requirement would be 292 spaces.

A landscaping/buffering plan designed in accordance with WCC 20.80.300 shall be submitted to Planning and Development Services with the building permit application. All landscaping/buffering and parking shall be installed per the approved plan, or bonded for 125% of the cost of labor and materials for installation and irrigation, prior to issuance of a Certificate of Occupancy for the proposed phased building construction per WCC 20.80.375.

In addition, a landscape maintenance bond for 10% of the cost of labor and materials for installation shall be submitted prior to issuance of a Certificate of Occupancy. This bond shall be released in two years after completion of the landscaping if the Landscaping has been maintained in a healthy growing condition and any dead or dying plants have been replaced, per WCC 20.80.375.

The applicant is proposing one identification sign and one directional sign which shall comply with the sign requirements of WCC 20.80.400 and a building permit shall be obtained for the installation of the signs. Any additional signs will require a Conditional

Use Permit Revision.

Outdoor lighting shall be shielded or directed away from neighboring streets and properties, per WCC 30.80.523

All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high, per WCC 20.80.355. The location of the garbage collection area shall be approved by the local service provider to insure that garbage trucks can adequately access the dumpster.

Traffic, Drainage, and other Engineering Comments

Sanja Barisic of Whatcom County Public Works Engineering Services provided comment on February 8, 2007. See attached memo for entry into the Hearing Examiner File as an exhibit and Conditions 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 # 13. 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 comment on January 29, 2007. See attached memo for entry into the Hearing Examiner File as an exhibit and Conditions of Approval.

Utilities and Health Department Comments

The Birch Bay Water & Sewer District #8 will provide water for the site, and a private on-site septic system will provide sewage disposal for the facility

Charles Sullivan of the Whatcom County Health Department provided comment to via an email to Lyn Morgan-Hill dated 12/11/2008. See attached email for entry into the Hearing Examiner File as an exhibit.

Building Services Construction Comments

See attached memo from Larry Kwiatkowski, Whatcom County Plans Examiner for entry into the Hearing Examiner File as an exhibit and Conditions of Approval.

Public Comments

Staff did not receive any public comments in regard to this application

Critical Areas and Environmental Comments

SEPA: The Whatcom County Deputy SEPA Official issued a Determination of Non-significance for this proposal on December 23, 2008. The SEPA official determined that

“with proper compliance with applicable codes, no significant adverse environmental impacts are likely”. A SEPA Addendum, the primary purpose of which was to reference a Development Agreement entered into by and between Whatcom County and Birch Bay Bible Community Church was distributed on October 7, 2009 pursuant to the procedures set forth in the Department of Ecology SEPA Handbook and WAC 197-11-600(4)(c) and 625.

Critical Areas: The Reasonable Use Application was withdrawn on October 16, 2009. A Development Agreement pursuant to WCC16.16.260(E)(1) and RCW36.70B.170 through .210 which sets forth an agreed upon Mitigation Plan is being heard by the Whatcom County Hearing Examiner concurrent with the hearing for this Conditional Use Application.

IV. RECOMMENDATION

In conclusion, as a result of the above technical review, Planning and Development Services 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) Any signs installed on the site for the proposed use, shall comply with the sign requirements of WCC 20.80.210 and WCC 20.80.450 (attached), and a building permit shall be obtained for the installation of any such sign.
- 3) The applicant shall comply with the attached conditions of the Division of Engineering’s memo of February 8, 2007 unless modified by the Division of Engineering or appealed to the appropriate agency.
- 4) The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner’s memo unless modified by the Plans Examiner or appealed to the appropriate agency.
- 5) Outdoor lighting shall be shielded or directed away from neighboring streets and properties.
- 6) The applicant shall obtain and complete the requirements for a commercial building permit.
- 7) A landscaping/buffering plan designed in accordance with WCC 20.80.300 shall be submitted to Planning and Development Services with the building permit application.
- 8) The applicant shall provide a final parking plan which meets the requirements of WCC20.80.500 at the time of building permit application.

- 9) All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
- 10) It shall be the applicant's responsibility to request a Certificate of Occupancy from Planning and Development Services upon completion of all conditions in order to finalize the Conditional Use Permit.
- 11) Prior to issuance of a Certificate of Occupancy:
 - a. All landscaping/buffering and parking shall be installed per the approved plan, or bonded for 125% of the cost of labor and materials for installation and irrigation.
 - b. In addition, a landscape maintenance bond for 10% of the cost of labor and materials for installation shall be submitted to Planning and Development Services. This bond shall be released in two years after completion of the landscaping if the Landscaping has been maintained in a healthy growing condition and any dead or dying plants have been replaced.

Report prepared in coordination with the Technical Review Committee by:

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