

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit ) CUP2009-0016  
Application for )  
 )  
*Ed Powers* ) FINDINGS OF FACT,  
 ) 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 expand a nonconforming use that was established under project file number (NON2001-00001) in order to construct an unheated warehouse/storage building consisting of 9,600 square feet (80-ft x 120-ft).

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: Ed Powers

Applicant's Representative: Michelle Thompson, Planned Perfection

Property Address: 1060 East Pole Road  
Everson, WA 98247

Legal Description: SW ¼ of Section 4, Township 39, Range 3E, W.M.

Assessor's Parcel Number: 390304 232068

Zone: Agriculture

Comprehensive Plan: Agriculture

SEPA Review: SEPA EXEMPT (WAC 197-11)

Shoreline Designation: N/A

Fire District: No. 21

Water District: Pole Road Water Association

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Agriculture  
South: Agriculture  
East: Agriculture  
West: Agriculture

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 5, 2009  
Mailed – November 1, 2009  
Published – August 21 and November 5, 2009

Hearing Date: November 18, 2009

Parties of Record:

Ed Powers  
5215 North 179<sup>th</sup> Drive  
Litchfield Park, AZ 85340

Michelle Thompson  
Planned Perfection  
PO Box 30823  
Bellingham, WA 98228

Brenda Wilson  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Aerial of Proposed Site
  - 1-2 Supplemental Application
  - 1-3 Letter of Completeness, dated August 19, 2009
  - 1-4 Technical Committee Form Memo, dated August 21, 2009
  - 1-5 Property Owners Form Letter, dated August 21, 2009
  - 1-6 Property Owners Address Labels
  - 1-7 Warranty Deed
  - 1-8 Customer Receipt
  - 1-9 Preliminary Stormwater Proposal
  - 1-10 Preliminary Traffic Concurrency Information, with aerial site map
  - 1-11 Plat Map
  - 1-12 Application Form
  - 1-13 Revocable Encroachment Permit Application
  - 1-14 Real Property Parent/Child Parcels Info
- 2 Site Plan
- 3 Revised DNS, dated September 3, 2007
- 4 DNS, dated November 9, 1987
- 5 Letter dated May 9, 2007 from PDS re: Legal Nonconforming Status
- 6 Aerial Site Photo
- 7 Plat Map
- 8 Zoning Map
- 9 Environmental Checklist
- 10 Comment Form opposing construction
- 11 Memorandum, dated November 3, 2009 from Sanja Barisic r: Engineering Conditions
- 12 Legal Notice, dated August 21, 2009
- 13 Certificate of Mailing, dated November 1, 2009
- 14 Certificate of Posting, dated November 5, 2009

- 15 Legal Notice, dated November 5, 2009
- 16 Staff Report, dated November 14, 2009, with Agency Comments attached

**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 #16, dated November 14, 2009, 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 at the public hearing.

**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 an unheated warehouse/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 Ed Powers for the proposed construction of a 9,600 square foot unheated warehouse/storage building to be located on Assessor's Parcel No.390304 2320568, 1060 East Pole 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 the conditions of the Division of Engineering, memorandum, dated November 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 August 31, 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 September 8, 2009; unless modified by the Health Department or appealed to the appropriate agency.
5. The Applicant shall comply with the conditions of the Whatcom County Fire Marshal, memorandum, dated August 25, 2009; unless modified by the Fire Marshal or appealed to the appropriate agency.
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 parking plan pursuant to WCC.20.80.580 at the time of building permit application.
9. Pursuant to WCC20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
10. Pursuant to WCC20.80.355; 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.
11. 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 20<sup>th</sup> day of November 2009.

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Michael Bobbink, Hearing Examiner

November 14, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Ed Powers</b> for a Zoning Conditional Use Permit	<b>CUP2009-00016</b>   FINDINGS, CONCLUSIONS,   <u>AND RECOMMENDATIONS</u>
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Application: The applicant is requesting a zoning conditional use permit to expand a nonconforming use established under project file number (NON2001-00001) in order to construct an unheated warehouse/storage building consisting of 9,600 square feet (80' x 120').

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

**II. PRELIMINARY INFORMATION**

Applicant: Ed Powers

Applicant's Representative: Michelle Thompson, Planned Perfection

Property Address: 1060 E. Pole Rd.  
Everson, WA. 98247

Legal Description: SW¼ of Section 4, Township 39, Range 3E., W.M.

Assessor's Parcel Number: 390304232068

Zone: Agriculture

Comprehensive Plan: Agriculture

SEPA Review: SEPA EXEMPT (WAC 197-11)

Shoreline Designation: N/A

Fire District: #21

Water District: Pole Rd. Water Association

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Agriculture  
South: Agriculture  
East: Agriculture  
West: Agriculture

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.

**Applicable Codes and Policies:**

Although compliance with the Whatcom County Comprehensive Plan is not required; the proposed expansion of a nonconforming use which requires a conditional use permit is in accordance with the objectives of Whatcom County's Comprehensive Plan. For example, the Introduction section of Chapter Seven "*Economics*" states: *Purpose:*

1. Maintenance of a strong sustainable economic base.



Also, Chapter Seven states in part...Economic vitality can also be described as private capital investment. The proposed Health Rehabilitation Center contributes to the maintenance of a strong economic base and economic vitality through private capital investment.

In addition, the following goal and policies within Chapter Seven “*Economics*” support the proposed conditional use:

**GOAL 7A:** Promote a healthy economy which provides ample opportunity for family-wage jobs for diverse segments of the community which is essential to the quality of life in the area.

**Policy 7A-1:** Together with the cities, provide an ample, developable land supply for commercial and industrial uses to provide opportunity for new and expanding firms wishing to locate or remain in Whatcom County.

**Policy 7A-3:** Employ innovative techniques to attract a mix of diversified industries for a broader economic base.

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 50 feet and the side and rear yard setbacks are 20 feet. A review of the site plan indicates the setback requirements are met.

Lot Coverage: Pursuant to WCC20.40.450, the maximum lot coverage is 25%. The addition of this proposed 9,600 square foot building will equal a total lot coverage of .099%.

Landscaping: Landscaping shall be installed pursuant to WCC20.80.300. Prior to the issuance of a building permit a scaled landscape site plan shall be submitted to and approved by planning and development services.

Parking: Parking shall be installed pursuant to WCC20.80.580. Pursuant to WCC30.80.580(53) Storage uses: 1 for every employee (on the largest shift for which the building is designed) plus 1 for each motor vehicle used in the business. Prior to the issuance of a building permit a scaled parking plan shall be submitted to and approved by planning and development services. No new employees will be required as a result of this expansion.

Lighting: Pursuant to WCC20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

Trash and storage areas: Pursuant to WCC20.80.355; 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.

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 any specific standards of the use districts defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

**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.**

(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.

**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.

**Essential character:** The proposed storage building will be appropriate in appearance with the existing character of the general vicinity. Landscaping, parking and lighting conditions are established in the Conditions section of this report in order to ensure compatibility with existing surrounding land uses.

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

**Discussion:**

The proposed use is not hazardous and is an addition to the existing use. Landscaping, parking and lighting conditions are established in the Conditions section of this report in order to ensure compatibility with existing surrounding land uses.

(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 Temporary Erosion and Sedimentation Control Plan to be submitted and approved prior to any clearing or grading on the site. Fire protection is provided by Fire District #21. Refuse disposal is provided by the private sector. Potable water is provided by the Pole Rd. Water Association and the site is served by an existing on site sewage system.

(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.

(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 9,600 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 operation and use of the property which will serve to mitigate potential impacts. Building lights will produce light at night however they will not create a safety hazard and will be placed to avoid the glare produced by such lights. No fumes or odors are anticipated as a result of this proposal. Glare impacts will be mitigated by the imposition of conditions on the use of the land and operation of the facility.

(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 a revised WSDOT access permit or equivalent letter of approval.

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 August 21, 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 one public comment. However, the comment did not address why the person is opposed to the construction of the new building.

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)**

The proposal is exempt for SEPA pursuant to WAC 197-11 (Categorical Exemptions)

**VI. AGENCY COMMENTS**

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

Sanja Barasic of Whatcom County Public Works Department, Engineering Services provided comment on November 3, 2009. 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 #2. 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 August 25, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

### **Health Department Comments**

Kyle Dodd, Environmental Health Specialist for the Whatcom County Health Department provided comment on September 8, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

### **Building Services Comments**

Curtis Metz, Whatcom County Plans Examiner provided comment on August 31, 2009. See attached memo for entry into the hearing Examiner File as an exhibit and condition of approval.

### **Critical Areas**

**Lyn Morgan Hill** provided comment on August 21, 2009. "The proposed storage building will have no wetland or habitat conservation area impacts."

## **VII. RECOMMENDATION**

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

### **VII. 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 November 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 August 31, 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 September 8, 2009; 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 Fire Marshal's Office memo dated August 25, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.

- 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 parking plan pursuant to WCC.20.80.580 at the time of building permit application.
- 9) Pursuant to WCC20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
- 10) Pursuant to WCC20.80.355; 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.

Report prepared in coordination with the Technical Review Committee by:

Brenda Wilson  
Senior Planner