

October 24, 2023

Whatcom County Council
Whatcom County Courthouse
311 Grand Ave., Ste. 105
Bellingham, WA 98225

RE: AB2023-646 Interim moratorium on applications and permits
For uses in Heavy Impact Industrial zones in municipal UGAs

Dear Council Members:

Please consider the following comments submitted by the Whatcom County Association of REALTORS® concerning the proposed interim moratorium on applications and permits for uses in Heavy Impact Industrial (HII) zones within municipal UGAs. Based on the following concerns, Whatcom REALTORS® urges the council to forgo another emergency moratorium concerning a specific use and, instead, pursue code changes through the annual comprehensive plan amendment process proposed in AB2023-701.

It must be noted at the outset that the areas under consideration are limited to the sites of the present Lehigh Hanson/Heidelberg Cement Group, Oeser Company, and Mt. Baker Products. The cement plant has been operating at that location since approximately 1912, *see*, <https://cob.org/project/the-pier-at-little-squalicum-park>, and Oeser has operated continuously at the same location since nearly 1929. Indeed, historical photographs included with these comments demonstrate that these uses predate the vast majority of residential development in the area. The long history of these industrial uses, coupled with Bellingham's recent development, necessarily raises the question of whether the industrial uses were poorly sited nearly a century ago or whether Bellingham's recent residential planning has created the zoning conflict we seemingly now encounter?

The council is also aware from the Whatcom Buildable Lands Report that Bellingham has nearly exhausted its current supply of industrial lands. *See*, Whatcom County Buildable Lands Report, ppg. 46-47 (Feb. 2023). Bellingham's own analysis reveals approximately 316 acres of remaining industrial land, land located in close proximity to existing residential areas and characterized by streams, wetlands, and other constraints. Indeed, during discussions regarding the buildable land inventories in Whatcom County, Bellingham stated the city would seek additional industrial lands.

The consideration of this proposed moratorium raises questions concerning whether the Council believes future industrial lands, and the associated employment with operations that would locate in those lands, would be better located elsewhere in the county. Likewise, this moratorium raises significant questions concerning economic development in Whatcom County and where such high tax, high employment, livable wage jobs should be located – in close proximity to the Bellingham employment center and Port of Bellingham operations (rail, air, shipping), or in the

more rural areas of Whatcom County, areas without easy access to such transportation or employment pools.

Whatcom County adopted an Urban Fringe Subarea Plan in 2018, five years ago, addressing the HII zones inside the Bellingham UGA. Urban Fringe Subarea Plan, § I.D., pg. 1 (2018). The purpose of the plan is not only to encourage development of neighborhoods within the UGA, but also to “[m]inimize land use conflicts in the Urban Growth Area through the use of appropriate buffering mechanisms, design standards, and locational criteria. Promote compatibility between land uses, especially among residential, commercial, industrial and Airport Operations designations.” *Id.*, § III.A.1.13, pg. 3 (2018). Whatcom County has adopted those zoning designations, locational criteria, and policies contemplated in that plan. Further scrutiny under this moratorium would be duplicative and result in little more than inserting additional uncertainty into the planning process for prospective industrial uses.

Whatcom County’s stated purpose for the policies involving HII zones in the Bellingham UGA is “to acknowledge existing heavy industrial uses situated in proximity to Bennett Drive, Marine Drive, and Roeder Avenue; to endorse a diverse economic base; and to attain compatibility between industrial activities and adjoining residential land uses.” *Id.*, § 4.2, pg. 9 (2018) (emphasis added). What follows that general statement is one and one-half pages detailing the locational criteria to be considered in evaluating uses in the HII, criteria including “sufficient land to provide buffers to non-industrial uses,” *Id.*, § 4.3.2, pg. 9 (2018), and proximity to transportation corridors, and easy access to “labor pools.” *Id.*, § 4.4, pg. 9 (2018). Regarding truck traffic cited as a potential impact, the locational criteria specifically provides that the County “should work with the City of Bellingham to manage and improve direct truck access to and from the HII area which minimizes truck traffic flows in adjacent and surrounding residential areas situated in the county and city.” *Id.*, § 4.6, pg. 9-10 (2018). Finally, the plan provides for monitoring by a host of state and federal agencies to not only monitor pollution and noise, but to also provide for abatement measures for all impacts on other areas including “encourage[ing] industrial operations to take place within enclosed structures with the intent of minimizing potential light, glare, odors and noise impacts to adjoining residential uses..” *Id.*, §§ 4.7 and 4.8, pg. 10 (2018). All the various impacts now cited as justification for a moratorium on HII zones were all contemplated and apparently evaluated for future consideration five years ago. Accordingly, the need for a moratorium, particularly a moratorium in an established industrial area existing for over a century, is dubious and violates Whatcom planning policies at best.

A common argument in favor of this moratorium is that a contemplated use in the HII zone involves “primary metals.” Whatcom County Code, Title 20, Chapter 20.68 is the general zoning regulations for HII zones within the County, regulations that allow for the “primary metal” industries within that zone as a permitted use. Whatcom Co. Code § 20.68.054(6) (2023). That code, of course, is specifically limited by the Urban Fringe Subarea Plan § 4.9, which provides in relevant part:

Because the HII areas adjoin existing and planned residential areas situated in Whatcom County and the City of Bellingham, it is necessary to move toward obtaining mutual compatibility with these residential areas.

* * *

The following uses will not be permitted in the Heavy Impact Industrial zoning district in the Urban Fringe Subarea: manufacturing and processing of asbestos and products derived therefrom; petroleum refining and the primary manufacture of products derived directly therefrom; primary manufacturing of rubber, plastics, chemicals, paper, and primary metal industries.

Urban Fringe Subarea Plan, § 4.9, pg. 10 (2018). The Whatcom County Code, and the Urban Fringe Subarea Plan, do not define “primary metal industries.” This is an important point in that it would be easy to conclude metal recycling may be included within the definition of “primary metal industries” and, accordingly, prohibited in the HII zone. Indeed, several REALTOR® members debating this matter made a similar error.

Primary metal industries is a term of art contemplating the smelting, refining, and forging of ferrous and non-ferrous metals from raw materials, or scrap, into finished products. *See, e.g.*, U.S. Dept. of Labor, Occ. Safety and Health Admin. Stnd. Ind. Class. Manual, Div. “D,” Major Group 33, Primary Metal Industries (2023). What is not included in that term is the recycling of ferrous and non-ferrous metals. Whatcom County, in an effort to prevent one type of activity in the urban fringe, specifically excludes an activity that is expressly permitted, and described, in the same zone within other areas of the county. Whatcom County Code § 20.68.054(6) (2023), utilizes terms like smelting, casting, blast furnaces, and finishing to define what may occur in conjunction with “primary metal industries;” recycling of such finished products is not mentioned. For this reason, it would appear that while siting such industrial operations resulting in finished products would be excluded from the urban fringe, the recycling of such finished products at the end of the products’ useful life is not “primary metal industry.”

Some have questioned why the Whatcom REALTORS® have an interest in this matter, particularly when the issue involves perceived conflicts between industrial and residential zoning. Why would this organization take a position that seems, on its face, to perpetuate harm to residential neighborhoods? The answer, simply, lies in the purpose of urban planning and the role that zoning plays in determining the future of our communities.

Landowners, residential and industrial alike, rely on zoning codes to ensure land use is appropriate for the purpose to which the owner intends to use that land. Often, purchasers will expend time and money to research and verify zoning prior to making substantial investments in land to avoid “surprises” upon submitting a land use application. Regulatory changes after a purchase is complete, particularly preceding a land use application, can be maddening and, worse, result in financial harm to the owner including possible reductions in the value of the land as a result of new restrictions. Zoning codes are not just for reducing conflicts between uses, but must also provide certainty in how future uses will develop.

Whatcom County has had provisions in effect since at least 2018 governing the siting and permit application for uses in the HII zone in the Bellingham Urban Fringe. Moreover, those provisions cover nearly every concern enunciated in the proposed moratorium. The presence of a five-year plan with provisions for public health and safety considerations, transportation planning, and criteria for siting new uses negates any rationale for such a moratorium. Moreover, the

imposition of such a moratorium and the significant considerations contemplated to be addressed as a result, certainly foreshadow serious and consequential discussions about future industrial lands in Bellingham and, given expressed concerns, likely preclude additional industrial lands within future Bellingham comprehensive plans.

The Whatcom County Comprehensive Plan contains a planning goal that explicitly states the policy of the county is to “[p]rovide predictability to property owners in land use designation.” Whatcom Comp. Plan, Chap. 2, Policy 2A-5, pg. 2-5 (2016). That plan also provides

A key need for meeting land demands to generate family wage employment is land that is “ready to go” for industrial development. Many potential industrial employers seeking to locate in Whatcom County require large tracts of land where the infrastructure and site improvements are already in place. This is a major missing element of the industrial land supply.”

Id., ppg. 2-3 and 2-4 (2016).

Moratoria such as the one proposed here accomplish neither predictability nor additional industrial land, but achieve the opposite: insecurity for land owners and employees alike. Comprehensive planning is serious with many implications for a community including housing and employment, too serious to be left to chance and political expediency. For these reasons, the Whatcom REALTORS® urge the council to proceed with the consideration of industrial lands in the Bellingham UGA during the normal course of the comprehensive planning process now underway and forgo ad-hoc moratoria limiting industrial options to those already “existing.” Whatcom County’s future success, and the success of its citizens, lies in land use zones providing sufficient lands for both housing opportunities and “family wage employment.”

Sincerely,



R. Perry Eskridge
Govt. Aff. Dir.

Enclosures

cc: File
Board
GA Committee

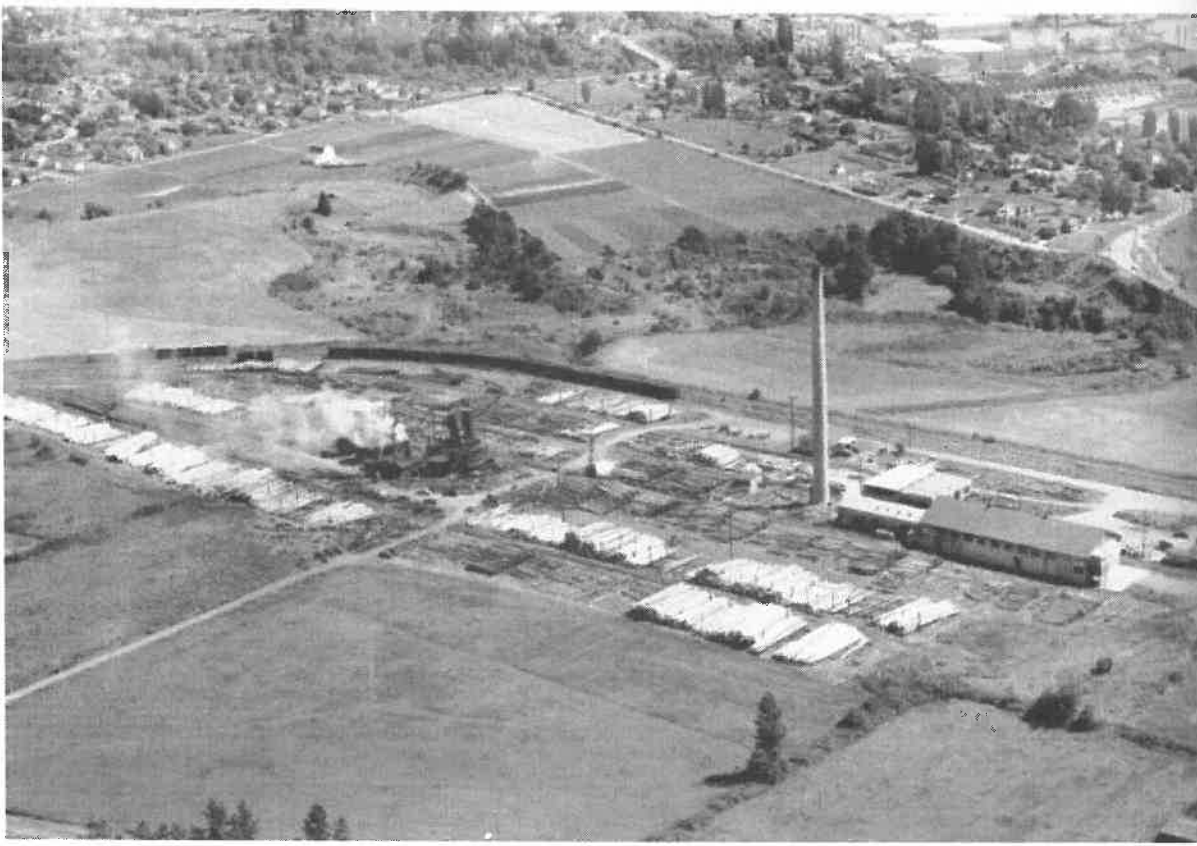
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The Oeser Company – 1954