

**Whatcom County
Council Planning and Development Committee**

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Committee Minutes - Final

**Tuesday, May 21, 2024
2:15 PM
Hybrid Meeting**

**HYBRID MEETING - ADJOURNS BY 3:20 P.M., MAY BEGIN EARLY
(PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010)**

COUNCILMEMBERS

Todd Donovan
Ben Elenbaas
Jon Scanlon

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Committee Chair Ben Elenbaas called the meeting to order at 2:30 p.m. in a hybrid meeting.

Roll Call

Present: 3 - Todd Donovan, Ben Elenbaas, and Jon Scanlon

Also Present: Barry Buchanan, Tyler Byrd, Kaylee Galloway, and Mark Stremmer

Announcements

Special Presentation

1. [AB2024-276](#) Overview of land use development and the appearance of fairness doctrine
Amy Keenan, Planning and Development Services Department, read from a presentation (on file) about three types of project permits for which Council is the final decision maker. She answered what a good process is for Councilmembers to refer inquiring community members who come to them about a project that comes before Council and who want to be involved. She stated they always have a public process with these types of permits and the website is probably the first place to start. It lists the planner there and she would suggest that anyone who is interested in a public process should talk to the planner.

George Roche, Prosecuting Attorney's Office, read from the presentation regarding the Appearance of Fairness Doctrine, actions that are exempt from the doctrine, ex parte communication and how it should be handled, and things that might make them not able to sit as a quasi-judicial decision maker. He answered what happens if there is not a quorum of Councilmembers being able to be in the decision-making process (because of challenges such as bias or recusal), and stated they would apply the rule of necessity and bring those Councilmembers back into the decision-making process. They would have to then make a really clear record of why they were challenged or recused. He answered whether they will continue to accept all public comment in meetings and stated they will keep track of when those (ex parte) communications occurred and what the subject matter was. Then, in the quasi-judicial setting, the Chair will read through that list. He continued to answer questions on examples of specific scenarios and answered how Councilmembers will know what topics they should not be talking about and whether there is a current list of issues that will later come before them.

Keenan spoke about types of projects (major project permits, planned unit developments, or development agreements) that may come before the Council and stated they will make an effort to let Council know things that Planning realizes are controversial. She stated there are also projects that are not set to go before the Council now but may be in the future, and, until that future time, are not considered under these rules. She answered what the current projects are that will eventually come before the Council and listed the City of Bellingham mitigation bank, R&R Acres, Red Mountain, and Royal Emerald Motors.

Roche stated the intention is to have a published version of an updated list in every Council agenda and he spoke about what best practice would be for projects in the “gray area” that are not identified yet as needing to go to Council in a quasi-judicial capacity. He read from the presentation about special rules that apply during elections.

Keenan spoke about recent (within the last several years) quasi-judicial hearings that have come before the Council (noted as file type “Hearing Examiner Recommended Decision”) and answered how the Council knows they are acting in that capacity.

Roche stated there is currently a quasi-judicial section in every agenda and they plan to expand that by listing the specific permit applications by their permit application number and maybe some additional language identifying developers or the name of the project so that it can be really clear to people who read the agenda what would be an inappropriate topic of conversation. He and Councilmembers discussed other ideas for identifying files, flagging email messages, not using the term “gray area” but approaching all conversations using the Appearance of Fairness Doctrine, and letting people know the appropriate place where they can state their opinion.

This agenda item was PRESENTED AND DISCUSSED.

Committee Discussion

1. [AB2024-321](#) Discussion of Docket Item PLN2024-00007, Review of uses allowed in the Heavy Impact Industrial District within a city’s urban growth area

Donovan spoke about what the Planning Department sent to the Planning Commission on this docket item and that it did not reflect the broad discussion and ideas the Council had on what potential changes there might be, or give detail on what the Planning Commission should be looking at. He asked how they as the Council should communicate to Planning that they want more on the table than maybe what Planning might be sending to the

Planning Commission.

Mark Personius, Planning and Development Services Department Director, stated he had a short presentation to talk about a process that they are looking at to address the neighborhood concerns. The first step or phase is PLN2024-00007 that specifically directs them to amend just the zoning code to define appropriate heavy industrial uses and inappropriate heavy industrial uses in that Bellingham Urban Growth Area (UGA). This item would not specifically involve changing the land use maps or the zoning maps, because that requires a Comprehensive Plan amendment, and is a much lengthier and more time-consuming process. He stated what is before Council on the docket is something they would look at as kind of “surgical zoning amendments” to the text of that code that they can get accomplished quickly. So, it is a great time for any additional guidance to Planning or to the Commission that Council would like to provide, just on those zoning code text amendments.

The second phase, which is a better, more time-consuming and longer-term solution (though also more complex and lengthier), would be to revise both the Heavy Impact Industrial (HII) and the Light Impact Industrial (LII) zone rules and possibly rezone some of those HII parcels to LII and adopt performance standards for things like light, glare, noise, and odors. He answered whether they are just talking about within the UGA and stated that is correct. He answered why they need a Comprehensive Plan amendment to change the zoning from HII to LII and stated if they are changing maps, it is a Comprehensive Plan amendment, but they could include looking at rezoning those parcels and updating the allowed or not-allowed uses in that particular UGA in the Comprehensive Plan conversation. He answered how down-zoning this parcel and then changing another parcel from LII to HII in a different location is not compliant with our Comprehensive Plan. He stated part of this is making sure they have a robust public involvement component such as a joint sub-area process with the City, the Port of Bellingham, and the residents of the neighborhood, but they do not have the time, resources or capability to do that right now. So, they have proposed this triage approach to address these issues on an interim basis.

Councilmembers and Personius discussed doing this as an annual Comprehensive Plan amendment after the Comprehensive Plan is completed, and whether he is saying that phase II could be a Comprehensive Plan amendment in the current cycle but there is not capacity for that. Personius stated he is saying that they do not know. The City of Bellingham has to be on board with whatever changes we would propose because it is

their UGA. When they go through the Comprehensive Plan process, it is the cities that are proposing to change their UGAs. He answered whether they could jump start that so it is happening in this Comprehensive Plan process and stated that is what the second phase would do.

Donovan moved that the committee recommend to the full Council that the Council is interested in an examination of the HII versus LII zoning in this UGA to be part of the Comprehensive Plan. They could expand that to looking for areas to find more HII in different parts of the county, but that would be part of this Comprehensive Plan process and that is a priority.

The motion was seconded by Scanlon.

Councilmembers discussed the motion, making it clear to the public what this process looks like, what the process would look like if the community wanted to go for housing on some of these lands, and that now is the appropriate time to address this.

Donovan restated his motion to recommend to the full Council that the HII in this UGA be examined in terms of converting to LII and work with the relevant jurisdictions as part of the Comprehensive Plan update we are doing right now.

Elenbaas stated he feels like maybe the community is saying maybe not just LII.

Donovan stated what they want is more on the table than he thinks is going to the Planning Commission right now.

Donovan restated his motion again **and moved** to recommend that the Council support re-examining changing the use of the HII zone in the UGA to include other zoning designations as possible.

The motion was seconded by Scanlon.

Donovan spoke about questions that could be part of his motion and stated the motion is trying to get phase II done that Mr. Personius has been talking about.

Elenbaas stated just because they are supporting this does not mean they are changing anything; they are talking about going through the process of doing it now and that is what he supports.

Scanlon stated he agrees that they need to find industrial use sites across the county because we need that for our economy.

Satpal Sidhu, County Executive, stated he wants to make it clear they are not looking at changing HII to LII. They should say that HII needs to be changed and they should look at all the possibilities.

The motion carried by the following vote:

Aye: 3 - Scanlon, Elenbaas, and Donovan

Nay: 0

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 3:34 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Ben Elenbaas-via email 6/18/2024

Dana Brown-Davis, Council Clerk

Ben Elenbaas, Committee Chair

Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE