

# **Whatcom County Council (Special)**

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



## **Minutes - Final**

**VIRTUAL MEETING - CHERRY POINT (TO PARTICIPATE, SEE  
INSTRUCTIONS AT [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) OR CALL**

**360.778.5010)**

**Thursday, April 15, 2021**

**2 PM**

**Virtual Meeting**

### **COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## Call To Order

Council Chair Barry Buchanan called the meeting to order at 2 p.m. in a virtual meeting.

## Roll Call

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

**Absent:** None

## Committee Discussion

1. [AB2020-345](#) Discussion of proposed Cherry Point amendments

**Approximate Timestamp: 00:01:06**

The following stakeholder group members and other representatives were present:

- Pam Brady, BP
- Jeff Chalfant, BP
- Cindy Chapman, BP
- Gavin Carscallen, Petrogas
- Andrew Gamble, Petrogas
- Brad Brown, Phillips 66
- Scott Irwin, Phillips 66 Contractor
- Tim Johnson, Phillips 66
- Holli Johnson, Western States Petroleum Association (WSPA)
- Trevor Smith, Laborers Local 292
- Crispina O'Connor, ERM
- Carl Weimer
- Shannon Wright RE Sources
- Rick Eggerth, Independent Consultant
- Johan Hellman, BNSF Railway
- Matt Krogh, Stand.earth
- Edward Ury

Brad Brown, Phillips 66, briefed the Councilmembers on the code language proposal for the Cherry Point Comprehensive Plan and Code amendments and answered questions.

**Approximate Timestamp: 00:08:42**

Councilmembers and the following people discussed proposed language in

Whatcom County Code (WCC) 20.68.050 and WCC 20.68.068 Subsection 21 (Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks):

- Brad Brown, Phillips 66
- Jeff Chalfant, BP
- Satpal Sidhu, County Executive

**Browne moved** that they ask the stakeholder group to come up with alternative language WCC 20.68.068 Subsection 21 and revise the definition of committed inter-refinery shipments to exclude large volumes of refined fuels as a primary function. The motion was seconded by Frazey.

Councilmembers discussed whether they should vote on accepting the work of the stakeholder group first, Browne's motion, and how the motion might be worded differently.

**Donovan moved** that the stakeholder group come back to the Council with a narrower definition and code language defining inter-refinery shipments to address the concerns discussed in the meeting today.

**Browne withdrew** his motion and accepted Donovan's motion as an alternative.

Councilmembers and Brown discussed Donovan's motion and when such language might come back to the Council.

The motion carried by the following vote:

**Aye:** 4 - Browne, Buchanan, Donovan, and Frazey

**Nay:** 3 - Byrd, Elenbaas, and Kershner

**Approximate Timestamp: 01:04:39**

Donovan stated he would like to discuss an amendment to language in WCC 20.68.207 (Coal-fired power plants) so that it is expanded to new facilities that are primarily burning fossil fuels but he did not make a motion.

Councilmembers discussed the proposed amendment.

The following people answered questions about gas-fired power plants and co-generation plants:

- Matt Aamot, Planning and Development Services Department

- Brad Brown, Phillips 66

**Browne moved** to create a new section 20.68.090 that cogeneration of power from byproducts of refining is a permitted use. The motion was seconded by Byrd.

Councilmembers discussed the motion.

Aamot answered whether there is already code language addressing this.

**Browne withdrew** his motion with the condition that the Stakeholders have an understanding that the Council is interested in this topic and they can add it to their list.

Dana Brown-Davis, Clerk of the Council, answered a question about withdrawing the motion.

Byrd withdrew his second so the motion was withdrawn.

**Approximate Timestamp: 01:31:44**

**Browne moved** to amend 16.08.090 Subsection E to add “and the County Council” as follows:

The form of the worksheet shall be prepared and updated as needed ~~once per year~~ by the SEPA Responsible Official in consultation with the Planning Commission and the County Council ~~and taking into account the comments of the Climate Impacts Advisory Group and its members.~~

The motion was seconded by Frazey.

Councilmembers discussed the motion and the following people answered questions:

- Mark Personius, Planning and Development Services Department Director
- Royce Buckingham, Prosecuting Attorney’s Office

The motion carried by the following vote:

**Aye:** 7 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, Kershner, and Browne

**Nay:** 0

**Approximate Timestamp: 01:41:34**

**Browne moved** to amend WCC 16.08.160 (Substantive authority) Subsection E (Relationship to Federal, State and Regional Regulations) as follows:

The County ~~needs~~shall not so defer if such regulations did not anticipate or are otherwise inadequate to address a particular impact of a project **or would be less restrictive than County Code.**

The motion was seconded by Donovan.

The following people spoke

- Royce Buckingham, Prosecuting Attorney's Office
- Karen Frakes, Prosecuting Attorney's Office

**Browne amended** his motion to replace the word "need" with "shall" as follows:

The County ~~needs~~shall not so defer if such regulations did not anticipate or are otherwise inadequate to address a particular impact of a project **or would be less restrictive than County Code.**

Councilmembers and the attorneys discussed the motion and the following people also spoke:

- Brad Brown, Phillips 66
- Mark Personius, Planning and Development Services Department Director
- Matt Aamot, Planning and Development Services Department

The amended motion carried by the following vote:

**Aye:** 4 - Donovan, Frazey, Browne, and Buchanan

**Nay:** 3 - Byrd, Elenbaas, and Kershner

**Approximate Timestamp: 01:57:05**

Frazey spoke about prohibited uses and the previous discussion on new facilities.

**Elenbaas moved** to accept the recommendations of the stakeholder group

as presented, minus already passed motions from this meeting.

**Kershner** seconded and **suggested** a friendly amendment to rephrase the motion to change “minus already passed motions from this meeting” to “with the passed amendments”.

**Elenbaas accepted** the friendly amendment to accept the recommendations of the stakeholder group as presented with the passed amendments.

Karen Frakes, Prosecuting Attorney's Office, and Councilmembers discussed the motion.

Browne asked and the following people answered questions about insurance and liability:

- Brad Brown, Phillips 66
- Scott Irwin, Phillips 66 Contractor
- Cindy Chapman, BP
- Rick Eggerth, Independent Consultant

Councilmembers discussed the topic.

**Elenbaas moved** that they accept the stakeholder's proposed language on insurance. The motion was seconded by Byrd.

*Clerk's note:* There was already a motion on the floor at this time.

Councilmembers and the speakers discussed the motion with the following people:

- Rick Eggerth, Independent Consultant
- Scott Irwin, Phillips 66 Contractor
- Johan Hellman, BNSF Railway
- Karen Frakes, Prosecuting Attorney's Office

**Elenbaas** stated he did not want to withdraw his first motion and **restated the motion** to accept the recommendations of the stakeholder group as presented with the amendments passed today and excluding what the Council has directed them to address. The motion was seconded by Kershner.

Councilmembers discussed the motion and the following person spoke:

- Rick Eggerth, Independent Consultant

*Elenbaas restated* his original motion to accept the recommendations of the stakeholder group as presented with the amendments passed today and excluding what the Council has directed them to address.

*Browne suggested* a friendly amendment to forward the document to the Planning and Development Services Department (PDS) for cleanup with the understanding that the issues the Council has already asked the stakeholder group to address will be brought back to the Council.

*Elenbaas accepted* the friendly amendment and stated it would go to PDS next for them to incorporate into a clean version for PDS and legal review.

Donovan clarified that the motion does not preclude them from taking recommendations from PDS and legal to make further changes but nothing beyond what they discussed today.

Elenbaas agreed and stated if PDS comes up with something they think we need input on, the Council can ask for more input.

Donovan stated he would bring up WCC 20.68.207 and whether they want the prohibition to be coal-fired plants or fossil fuel plants generally and assumes that topic is still on the table.

Elenbaas' motion carried by the following vote:

**Aye:** 5 - Donovan, Elenbaas, Kershner, Buchanan, and Byrd

**Nay:** 2 - Frazey and Browne

**Approximate Timestamp: 03:16:30**

Karen Frakes, Prosecuting Attorney's Office discussed with Councilmembers the contract with Cascadia Law, how the Council would like to spend the money they allocated to it if at all, and how it might relate to the timing of the interim Ordinance.

The following Person also spoke about whether information from the stakeholder group could be brought to the Council by the next regular Council meeting date:

- Brad Brown, Phillips 66

Councilmembers thanked the stakeholder group for their work.

**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 5:31 p.m.

The County Council approved these minutes on May 4, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE