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COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

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WHATCOM COUNTY FIRE DISTRICT NO. 21,
Respondent,

v.

WHATCOM COUNTY, a municipal corporation; BIRCH POINT
VILLAGE LLC, a Washington Corporation; SCHMIDT
CONSTRUCTING, INC., a Washington Corporation; and BRIGHT
HAVEN BUILDERS, LLC, a Washington corporation;
MAYFLOWER EQUITIES, INC; LISA SCHENK and MIKE
SUMNER, Appellants.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY
#06-2-02364-8

REPLY BRIEF OF APPELLANTS

BURI FUNSTON MUMFORD, PLLC

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ORIGINAL

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INTRODUCTION

In 48 pages of briefing, respondent Fire District 21 avoids the core issue in this appeal: the District may not unilaterally change the level of service in Whatcom County's comprehensive plan and then claim a lack of concurrency under County development regulations. If the County's level of service for fire protection needs review, the District, like any other participant in the land use process, must propose an amendment to the comprehensive plan. It cannot change it on its own.

The Fire District acknowledges in a footnote that the County has the authority to set the appropriate levels under the Growth Management Act.

The County retains the authority in its comprehensive plan to change levels of service or to assist public service providers to provide adequate facilities and services to allow concurrency standards to be met.

(Response Brief at 42 n.33). The Growth Management Act and accompanying regulations give this authority exclusively to the County, not the District, because the County is the planning jurisdiction.

The concept of concurrency is based on the maintenance of specified levels of service with respect to each of the public facilities to which concurrency applies. For all such facilities, *planning*

jurisdictions should designate appropriate levels of service.

WAC 365-195-510(3) (emphasis added).

Here, Fire District 21 increased the level of service in Birch Bay to urban levels. The District may believe it has good reason to do this, but only the County may change the level of service in the comprehensive plan. Because the Fire District failed to obtain an amendment to the Birch Bay subarea plan, it cannot claim a lack of concurrency based on a level of service different from the County's. Appellants Birch Point Village LLC, Schmidt Constructing, Inc., Mayflower Equities, Inc., and Lisa Schenk and Mike Sumner (Birch Point Village) respectfully request this Court to affirm the decision of the Hearing Examiner and Whatcom County Council, and remand this case for removal of the mitigation fee in the SEPA mitigated determination of non-significance.

I. FIRE DISTRICT 21 UNILATERALLY CHANGED THE LEVEL OF SERVICE

This controversy began with the District's Board of Fire Commissioners adopting Resolution 2005-17. (Resolution 2005-17; CP 588-591; Attached as Appendix A) In this Resolution, the Commissioners expressly changed the level of service from rural to urban and from local to national.

WHEREAS, Whatcom County through its adopted Birch Bay Community Plan, page 15-6, provides the standard for levels of service for emergency medical service as follows: the "...standard for successful emergency medical services is four (4) to six (6) minute response times for aid services and fifteen (15) to twenty (20) minutes for ambulance services."

WHEREAS, *The Whatcom County Comprehensive Plan does not include an urban level of service for fire emergency response.*

WHEREAS, the District believes that the appropriate urban level of service standard for urban development is set forth in the National Fire Protection Association (NFPA) standard 1710 that calls for a four (4) minute response for urban levels of service.

WHEREAS, in order to provide the Services to the Birch Bay UGA *at urban levels of service* consistent with NFPA 1710 and the adopted County standards, it is estimated that significant upgrades to existing stations, the addition of approximately 11 new fire fighters, and possibly a new station in the Birch Bay UGA will be required due to the population allocated to the Birch Bay UGA by Whatcom County.

(Resolution 2005-17; CP 588-589) (emphasis added).

The Fire District reinforced this new urban level of service when it demanded that the County's SEPA official include a voluntary mitigation fee as a condition of approval.

The District is undergoing a capital facilities planning process that would ideally result in an interlocal agreement between the County and the District to assure that prior to development occurring in the Birch Bay area, the appropriate mitigation fee related to urban levels of service would be paid.

Alternatively, the County Council will need to be made aware that development in the Birch Bay area will not be receiving urban levels of service as called for by national standards, unless paid for by the developers. Thereafter the County Council will have to determine if urban levels of development without adequate urban levels of fire protection or a plan to pay for those necessary facilities and staffing is appropriate.

(3/30/06 District SEPA Comments at 8; CP 260) (Appendix D to Opening Brief).

The District avoids discussing the changed levels by blending the District's level with the comprehensive plan's. For example, Chief Tom Fields wrote the Hearing Examiner that the District does not have capacity,

to serve the proposed developments at urban levels of service expectations commensurate with the Standards set forth in NFPA 1710, NFPA 1720, or as set forth in the Birch Bay Community Plan Chapter 15 page 15-6 titled "STANDARDS".

(5/10/06 Fields Letter at 2; Exhibit H to Petitioners' Brief on the Merits; CP 521). Nothing in the Birch Bay Plan mentioned urban levels of service based on national standards.

The gold standard for successful emergency medical services is four to six minute response times for aid services and 15 to 20 minutes for ambulance services...*Fire District #13 [21] responds between five to six minutes.*

(Birch Bay Community Plan at 15-6; CP 244) (Attached as Appendix C) (emphasis added).

The District's response brief repeats this pattern, referring to appropriate "urban" levels of service. "The developers, however, offered *no evidence* that the District could provide urban-level services mandated by the Birch Bay Plan to their projects." (Response Brief at 9-10). The District added the need for urban response times under national standards, independent of the Birch Bay Plan. This is not the standard the County adopted and uses to judge concurrency.

Changing the standard is significant because it reduces the required response times below current levels and greatly increases the cost of facilities and staff necessary to comply. As Chief Fields stated in his May 10, 2006 letter to the Hearing Examiner,

the Board of Fire Commissioners identified that the need for capital improvements brought about by the increase in demand for urban levels of service could not be met through property tax collections and therefore initiated the request for voluntary mitigation from the developer.

(5/10/06 Fields Letter at 9; CP 528). The higher the standard; the more money the District needs to satisfy it.

The District dismisses this argument by calling its earlier use of mitigation fees a straw man argument. Regardless of its tactics on appeal, the District still insists it needs more money to fund operations. (Response Brief at 17-18). Whether the source is a mitigation fee, tax receipts, or some other revenues, the District created its capital shortfall by increasing the level of service from that in the County's comprehensive plan. The question in this appeal is whether the District could make the change on its own and then stop all development until it receives more revenues.

II. THE HEARING EXAMINER CORRECTLY REJECTED THE DISTRICT'S SPECULATION THAT IT COULD NOT FUND ADEQUATE LEVELS OF SERVICE

The District offers two arguments on changing the level of service. First, it argues it did not make a change.

Contrary to the developers' again unsupported assertion, br. of appellants, at 14, the District did not unilaterally change that level of services. The District did express its belief by resolution that with the increased development in Birch Bay, an urban level of services was important. CP 588-89. The critical point here, however, is that *the District could not meet the County's proposed levels of service in the Birch Bay Plan with its facilities or personnel.* CP 539, 571, 588.

(Response Brief at 19) (emphasis original). Second, it argues it has the power to unilaterally change the level of service.

In sum, the County's GMA planning process does not trump the District's statutory duty to establish necessary level of services for emergency services, and to provide the facilities and staff to deliver them.

(Response Brief at 23). These arguments failed to persuade the Hearing Examiner, and they should not convince this Court.

The Hearing Examiner found that the District could satisfy the levels of service in the Birch Bay Plan, concluding that the budget shortfall was speculative.

The District states that it will not be able to provide the current level of service to future development without such a concurrency mitigation or impact fee. However, since the Fire District has not completed its planning process, the District's position can be best characterized only as speculation. The District has a number of State authorized funding mechanisms, including levies and issuance of capital facilities bonds. Central to the District's arguments about its potential inability to provide an adequate level of service to meet the demands of new growth without "concurrency mitigation fees," the District cites the increased burden on the District's ability to provide Emergency Medical Services to a growing population and cites the financial impact that these increased EMS services will have on the District's ability to provide fire protection to the district. At no point does the District discuss the fact that Whatcom County voters increased the sales tax to provide a separate funding mechanism for Emergency Medical Services county-wide. This funding source is in addition to the other specific authorized funding mechanisms that the State has provided to fire districts.

Based on the record before the Hearing Examiner, the Hearing Examiner finds, on a more likely than not

basis, that the Fire District will be able to continue to provide an adequate level of fire protection and emergency response services to the district, even with significant new growth, based on the currently authorized funding mechanisms available to the Fire District and the increased taxes and fees paid by the new growth.

(Hearing Examiner's Decision at 7; CP 344) (Appendix C to Opening Brief).

The Hearing Examiner's decision rests on four facts: (1) the District did not have a capital facilities plan documenting any shortfall; (2) the District has a number of funding mechanisms; (3) separate funds exist for Whatcom County's Emergency Medical Services; and (4) on a more likely than not basis, the Fire District will be able to provide an adequate level of fire protection and emergency response services. Viewing the facts in favor of the Hearing Examiner, substantial evidence supports each of these findings.

First, the Fire District had not conducted, let alone completed a capital facilities plan, when it claimed it could not accommodate future growth in Birch Bay. As Chief Fields testified at the hearing,

HEARING EXAMINER: I've seen where – I've seen allusions to a capital facilities plan, and my understanding is that there isn't one now.

CHIEF FIELDS: Currently, the RFQ is – is going to be submitted to the elected officials for approval. We have had conversations with four different consultants and they're waiting for the RFQ. We anticipate, in talking with the consultants, we'll have the plan completed before the end of the year.

(6/9/06 VRP 26; Exhibit J to Petitioners Brief on the Merits; CP 583). The District errs in its response brief, suggesting the capital facilities plan was complete. (Response Brief at 6) (“the [Birch Bay] Plan did not have the benefit of the District’s capital facilities plan because it was not adopted until 2005”). The County adopted the Birch Bay Plan in 2005; the District had not even begun its capital facilities plan a year later.

A capital facilities plan requires the District to forecast the long-term demand for its services and the available sources of revenues for capital improvements. Under RCW 52.16.030, the District creates an annual budget that drives the tax levies for the year. But these annual budgets do not substitute for a long range capital facilities plan, like those required of the County under the Growth Management Act. RCW 36.70A.070 (“at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes”). Because it had no capital facilities plan, the District

could not predict with accuracy its capital requirements and revenues beyond its annual budget.

The lack of a capital facilities plan undercuts the District's claim it could not fund future demands for service. Chief Fields testified that tax revenues from the developments alone could not pay for necessary expansion.

The tax revenue coming from that development is going to have to use – is going to be used for paying the costs, the total costs of compensation for additional staff. Therefore, this project is going to impact our ability to replace apparatus in a timely fashion, especially when an increased demand for services is going to accelerate the replacement schedule.

(6/9/06 VRP 16; CP 573) He concluded,

the tax revenue generated from the Horizons Village project is certainly not going to be sufficient to allow the fire district to pay the total cost of compensation for an additional paid shift to meet their capital improvement replacement plan.

(6/9/06 VRP 17; CP 574). Chief Fields could only estimate the overall demand for the District's services and its potential revenues. As the Hearing Examiner concluded correctly, without a capital facilities plan, the District could only speculate that it would lack money in the next six years.

Second, the Hearing Examiner correctly identified numerous funding sources for the district. Under RCW 52.16.061 and .080, the District could issue general obligation bonds for operating expenses and capital projects. Furthermore, under RCW Ch. 52.20, the District could form a local improvement district for Birch Bay and levy a special assessment to pay for the increased demand on services.

The board of fire commissioners may include the lands in a local improvement district, and may levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of improvements ordered in the local improvement district.

RCWA 52.20.010. Next, "any fire protection district which provides emergency medical services may by resolution establish and collect reasonable charges for these services in order to reimburse the district for its costs of providing emergency medical services."

RCW 52.12.131.

The District pursued none of these alternatives because it had not conducted any long-term planning. The Commissioners' sole decision on funding was "the cost of the...capital improvement items must be paid as a mitigation fee by the developer and should

not be a cost passed on to existing tax payers.” (6/08/06 Fields Letter at 12; CP 540) (emphasis original). The Fire District had alternative funding sources, but it chose not to use them. Contrary to the District’s suggestion, the Hearing Examiner did not betray “a naïve understanding of how revenues and expenditures, both capital and operating, for a special purpose district like the District are handled.” (Response Brief at 27). Instead, the Hearing Examiner held the District accountable for not pursuing the funding sources provided by the Legislature.

Third, the District has a statutory right to seek reimbursement from Whatcom County Medic One funds. As noted above, under RCW 52.12.131, the District may establish and collect reasonable charges for emergency medical services. Furthermore, under Whatcom County Code Ch. 3.35, sixty percent of the EMS tax goes to Whatcom County. WCC 3.35.040 (Attached as Appendix B). As a service provider, the District has a valid claim to those funds.

Fourth, the District is able to meet the standards of the Birch Bay Plan. In his May 10, 2006 letter to the Hearing Examiner, Chief Fields stated “it is the Fire District’s position that they are not in violation of the Birch Bay Community Plan, but are acting

responsibly in accordance with the plan.” (5/10/06 Fields Letter; CP 520-528). Chief Fields also could not claim that the District was out of compliance from 2004 until he joined the department in 2005. (6/09/06 VRP 23; CP 580). Although he testified that the District is currently out of compliance with the Birch Bay Plan standards, his written submission does not show that. (6/09/06 VRP 23). The District provided only average response times for all responders at 12 minutes 28 seconds for fire and 13 minutes 00 seconds for emergency medical care. (6/08/06 Fields Letter at 10; CP 538). The Birch Bay standard is 4 to 6 minutes for the aid services and 15 to 20 minutes for ambulance services. (Birch Bay Plan at 15-6; CP 244). The District’s 13 minute average is within the standard.

Finally, the District has the funding sources available to meet the Birch Bay Plan standards in the future. As described above, the District chose not to use the statutory means available in favor of charging developers. Had the District completed a capital facilities plan and issued bonds or created a local improvement district, the financial picture would have been much different.

In sum, the District’s claims of a budget shortfall – and declining service – represented the District’s fears, not a carefully calculated assessment. Substantial evidence supports the Hearing

Examiner's conclusion that without a capital facilities plan, the District's assertions were speculation, not fact.

III. FOR CONCURRENCY PLANNING, THE COUNTY SETS THE LEVEL OF SERVICE

In addition to declaring them "naïve", the District accuses Birch Point Village, and by implication the Hearing Examiner, of "betraying a fundamental lack of understanding regarding a fire district's authority and responsibilities, and a lack of attention to the record." (Response Brief at 20). The opposite may be true. The District confuses its unquestioned authority to operate at the appropriate levels of service with the County's authority to set the level of service for concurrency under the Growth Management Act. No one argues that the County should tell the District how to provide fire and emergency services. But the converse is also true – Fire Districts do not hold trump cards over the County's comprehensive plan and development regulations. If the Fire District believes the level of service is too low in the Birch Bay Plan, it must use the County's procedures to amend it. The District does not have power to change it unilaterally.

For concurrency analysis, the County has exclusive authority to select the level of service. WAC 365-195-510(3) ("planning

jurisdictions should designate appropriate levels of service”) WAC 365-195-315; RCW 36.70B.030(2); (Opening Brief at 25-27). The District has the responsibility to either meet this standard or propose an amendment to the comprehensive plan under WCC Ch. 20.10 (Comprehensive Plan Amendments). In response, the District argues that under WCC 20.80.212, “the County must deny permits if it determines that adequate capacity does not exist at the time of review of a specific development.” (Response Brief at 36). It does not, however, claim that WCC 20.80.212 allows the District to rewrite the standard.

The parties do not disagree on this point. The District acknowledges,

WCC 20.80.212 does not supersede the levels of service (the gold standard for emergency response time) set in the Birch Bay Plan, it *implements* those planning standards.

(Response Brief at 36) (emphasis original). Because WCC 20.80.212 does not change or enhance the level of service, the argument returns to the District changing the level from that in the Birch Bay Plan. The District cannot claim a lack of concurrency on the evidence it presented to the Hearing Examiner. It has not shown that its levels of service have fallen below the Birch Bay

Plan (as opposed to urban and national standards), and it cannot claim an inability to fund future services, giving its lack of a capital facilities plan and its decision not to use statutory funding mechanisms.

Finally, as the Hearing Examiner concluded, the District's failure to issue a concurrency letter does not prevent the County from finding concurrency nonetheless. (Hearing Examiner's Decision at 12; CP 349)(Appendix C to Opening Brief) The District recognizes this, suggesting "while the District's concurrency letter is powerful evidence of a violation of WCC 20.80.212, nothing prevents a developer from producing other evidence to the County, as the land use decision maker, regarding the satisfaction of the concurrency mandate in the ordinance." (Response Brief at 43).

That is, in effect, what happened here. The Birch Bay Plan set the level of service and the method of funding for future increases. The District, beginning in late 2005, increased the level of service and concluded it could not fund future improvements. When the District refused to issue concurrency letters, Birch Point Village appealed to the Hearing Examiner, who concluded that the District's reasons for denying the concurrency letter were inadequate. Although the District believes no evidence exists to

counter its assertions, the evidence the District provided was insufficient to justify finding a lack of concurrency.

IV. THE DEVELOPMENTS SATISFY RCW 58.17.110

Under RCW 58.17.110,

the city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

RCWA 58.17.110. The statute requires the developers to make appropriate provisions for public health, safety, and general welfare. The developers satisfied this condition by obtaining a will service letter from the District.

In his May 10, 2006 letter to the Hearing Examiner, Chief Fields acknowledged that the District will provide fire protection services to the developments. "The Fire District does provide fire protection services to the Horizons Village at Semihamoo project location and will continue to do so." (5/10/06 Fields Letter at 9; CP

528). The only dispute was whether the District could “provide or maintain the appropriate levels of service commensurate with nationally recognized standards such as NFPA 1710 and/or NFPA 1720, and the levels of service identified in the Birch Bay Community Plan...” (5/10/06 Fields Letter at 9; CP 528).

The District’s argument under RCW 58.17.110 does not differ from its concurrency argument. As the District implicitly recognizes, the general subdivision statute does not provide an independent ground to reverse the Hearing Examiner. (Response Brief at 46) (“the four developments here failed to meet State and County requirements because the District cannot provide adequate, urban-level emergency services to the four developments for the reasons articulated *supra*”). Because the Hearing Examiner correctly concluded the developments satisfied all County requirements, Birch Point Village requests this Court to affirm that the developments satisfied RCW 58.17.110.

V. APPELLANTS’ OPENING BRIEF COMPLIES WITH THE COURT RULES

In a footnote, the District asks the Court to strike Appellants’ opening brief. (Response Brief at 3 n.3). The District takes offense at the statement of the issues presented.

[T]he issues pertaining to the developers' assignments of error bear little resemblance to how issues pertaining to assignments of error should be formulated. Form 6, Rules of Appellate Procedure. Those assignments are replete with improper argument.

(Response Brief at 3).

Birch Point Village patterned its issue statements on Bryan Garner's instructions on how to frame an issue.

You must pose your question so that just about any reader will understand it on a first reading. This means you must reject the four dogmas that have infected traditional thinking about issue-framing — namely, that you should (1) start with *Whether*, (2) put it into one sentence, (3) omit all facts, and (4) always make the question call for a “yes” answer. These dogmas lead to highly superficial issues.

Garner, Bryan, The Elements of Legal Style, 183 (2nd Ed. 2002).

Contrary to the District's reformulation, an effective issue statement takes the form of a syllogism.

A persuasive issue is a syllogism with three special characteristics: (1) a major premise consisting of a concise statement of law; (2) a specific, concrete minor premise; and (3) a conclusion phrased as a question.

Garner, ibid., at 185. Appellants' issue statements follow this more helpful form.

Appellants respectfully request the Court to deny the District's motion to strike.

CONCLUSION

Whatcom County makes the ultimate decision on whether concurrency exists for a specific development in its borders. Fire District 21 acted outside its authority by changing the level of fire protection services established in the County's comprehensive plan, and then claiming a lack of concurrency. Appellants Birch Bay Village et al., respectfully request this Court to affirm the Hearing Examiner's decisions and remand this case for further proceedings to remove the voluntary mitigation fee from the conditions of SEPA approval.

DATED this 5th day of February, 2009.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of Reply Brief of Appellant to:

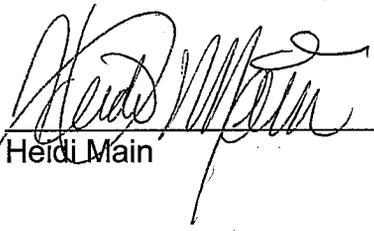
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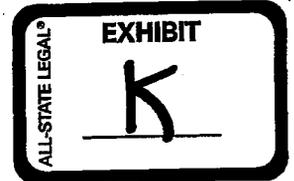


Heidi Main

APPENDIX A

Whatcom County Fire Protection District No. 13
307 19th Street
Lynden, WA 98264

ORIGINAL



RESOLUTION NUMBER 2005-017

A RESOLUTION OF THE BOARD OF FIRE COMMISSIONERS OF WHATCOM COUNTY FIRE PROTECTION DISTRICT NO. 13 ADVISING WHATCOM COUNTY OF THE NEED FOR MITIGATION FOR WHATCOM COUNTY FIRE PROTECTION DISTRICT NO.13 TO PROVIDE URBAN LEVELS OF SERVICE ESTABLISHED BY WHATCOM COUNTY AND NATIONAL STANDARDS AND REQUESTING MITIGATION OF SUCH IMPACTS UNDER THE STATE ENVIRONMENTAL POLICY ACT.

WHEREAS, Whatcom County Fire Protection District No. 13 ("District") is the designated provider of fire protection, fire suppression and emergency medical response services ("Services") for nearly all of the Birch Bay Urban Growth Area ("Birch Bay UGA").

WHEREAS, the District, as discussed below, is not able to provide these Services at an urban level in a manner consistent with urban levels of service as established by the Whatcom County Birch Bay Community Plan and national fire standards.

WHEREAS, as of mid September 2005, it was estimated that there were currently at least 1100 new living units within the Birch Bay UGA pending approval by Whatcom County. At an average of 2.8 people per unit, a total of approximately 3080 new residences are anticipated in Birch Bay. Collectively, all proposed and potential residential development in the Birch Bay UGA are referred to herein as the "Development", and all owners, proponents, and applicants of Development are referred to herein as "Developers".

WHEREAS, based upon historical trends, the District estimates that 3080 new people will result in 300 new call outs per year from the Birch Bay UGA. Of those 300 call outs, based upon historical information, it is estimated that 240 of those will be EMS responses. Of those 240 EMS responses, 60%, or 144 call outs, will require BLS and transport to St. Joseph's hospital. Thus, a conservative estimate would be that for two (2) hours each day, two (2) fire fighters would be unavailable for other responses. If the population growth that occurs is higher then the figure estimated above, than these call out numbers would be obviously higher.

WHEREAS, the Birch Bay Community Plan adopted by the County Council in September 2004 indicates that over the next 20 years there will be approximately 5000 additional people will be living in Birch Bay, 2000 more than the people indicated that are arriving based upon the units in the queue for approval at this time. This higher population figure serves to increase the demand on services, necessitating more equipment, stations and/or station upgrades. A higher rate of growth would accelerate the demand for the services. Further, this figure will add an additional approximately 96 callouts to the 144 estimated (totaling 240 call outs and transports to St. Joseph's hospital) additional callouts per year.

WHEREAS, Whatcom County through its adopted Birch Bay Community Plan, page 15-6, provides the standard for levels of service for emergency medical services as follows: the "...standard for successful emergency medical services is four (4) to six (6) minute response times for aid services and fifteen (15) to twenty (20) minutes for ambulance services."

WHEREAS, The Whatcom County Comprehensive Plan does not include an urban level of service for fire emergency response.

Whatcom County Fire Protection District No. 13
307 19th Street
Lynden, WA 98264

WHEREAS, the District believes that the appropriate urban level of service standard for urban development is as set forth in the National Fire Protection Association (NFPA) standard 1710 that calls for a four (4) minute response for urban levels of service.

WHEREAS, in order to provide the Services to the Birch Bay UGA at urban levels of service consistent with NFPA 1710 and the adopted County Standards, it is estimated that significant upgrades to existing stations, the addition of approximately 11 new fire fighters, and possibly a new station in the Birch Bay UGA will be required due to the population allocated to the Birch Bay UGA by Whatcom County.

WHEREAS, the minimum necessary improvements to the Birch Bay and Semiahmoo stations to man these stations on a 24 hour 7 day a week basis for the fire fighter requirements to provide urban levels of service to the Birch Bay UGA are estimated to be as follows:

Birch Bay station improvements are estimated to cost in excess of \$500,000.00;

The Semiahmoo station will require an additional bay and other changes totaling another \$300,000.00.

Thus, the improvements to the existing stations alone would be roughly \$800,000.00.

WHEREAS, the scale and pace of the development of Birch Bay at urban level densities may require a new station as well, in addition to the above station improvements. A new station has not been calculated in the figures herein.

WHEREAS, additional equipment will be required for these new stations, in addition to the replacement equipment that is currently required by 2009 to maintain current levels of service without any new developments occurring in the Birch Bay area. It is also likely that new engines will be required, in addition to the replacement engines.

WHEREAS, presently the District cannot meet the urban levels of service standard established by Whatcom County and NFPA 1610 in the Birch Bay area and cannot provide any comments with regard to the Development without significant revenue increases, including mitigation of impacts arising from developments.

WHEREAS, the District is undergoing a capital facilities planning process that would ideally result in an Inter-local agreement between the County and the District to assure that prior to development occurring in the Birch Bay area the appropriate mitigation fee would be paid related to assuring that the District would be capable of providing urban levels of service to the Birch Bay UGA at County and national standards.

WHEREAS, Whatcom County must be made aware that development in the Birch Bay UGA will not be receiving urban levels of service as called for by Whatcom County and national standards, unless that costs of providing the required level of service is paid for by the Developers through a mitigation fee, and that without such mitigation fee a moratorium on development in the Birch Bay UGA, and denial of any developments pending approval would be appropriate.

Whatcom County Fire Protection District No. 13
307 19th Street
Lynden, WA 98264

WHEREAS, The District has not, to date, issued a letter that it has *adequate capacity* to serve or that arrangements have been made to provide adequate services to any developments within the Birch Bay UGA. The District will not issue a letter pursuant to WCC 20.80.212 indicating that adequate capacity exists or arrangements have been made to provide adequate services for the development or any other new development in the Birch Bay UGA, unless the Developers in the Birch Bay UGA pay or agree to pay the concurrency mitigation fee set forth herein.

WHEREAS, The District is currently reviewing what interim mitigation fee is appropriate to be sought to allow the District to be able to provide a "concurrency" letter indicating that the District anticipates being able to provide urban levels of service as established by Whatcom County and national standards if all new development paid this mitigation fee. At this time, subject to change as better information is collected, the District would require a \$2500.00 per living unit fee to be charged or paid directly to the District prior to the District's issuance of a letter of concurrency. Any County fee to administer this assessment would be additional.

WHEREAS, With the Developer and the County's written agreement to the forgoing mitigation measures, the District would comment that it can adequately provide services to the Development. If the County and the Developer cannot so agree, and an alternative proposal is not presented that is acceptable to the District, the District would not be able to provide fire protection, fire suppression and emergency medical response at urban levels of service at the Whatcom County or national standards.

WHEREAS, the County may require mitigation measures under the State Environmental Policy Act ("SEPA") SEPA process to mitigate impacts of such a development on the District's ability to provide fire suppression response and other emergency response services to such unknown future developments, and the impact of such developments on the District to be able to continue to provide the current level of fire and emergency response services within the District; and,

WHEREAS, WAC 197-11-350 allows the County to adopt mitigating measures as part of a mitigated determination of non-significance; and

WHEREAS, based upon this information contained in this resolution, the District believes that it is appropriate for the County SEPA Official to withdraw any SEPA determination issued for development in the Birch Bay area and amend that SEPA determination to include the mitigation proposed herein as a condition of SEPA.

WHEREAS, the County may identify, adopt and require mitigating measures for a proposal through the development of a Final Environmental Impact Statement or a Mitigated Determination of Non-Significance.

NOW THEREFORE BE IT RESOLVED as follows:

1. The Board of Fire Commissioners of Whatcom County Fire Protection District No.13 does demand that any a SEPA Mitigated Determination of Non-Significance or a Final Environmental Impact Statement, and all project permit or approval for any type of residential development in the Birch Bay Urban Growth area, include as required mitigation and as a condition of development as follows:

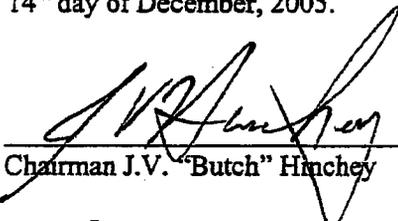
Whatcom County Fire Protection District No. 13

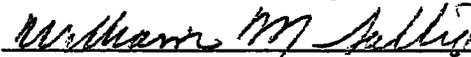
307 19th Street
Lynden, WA 98264

A mitigation fee of \$2500.00 per proposed living unit shall be paid directly to the District prior to the issuance of a letter of concurrency by the District, unless the property owner and/or developer has executed a concurrency mitigation agreement and said agreement has been approved by the District Commission.

2. The purpose of this mitigation measure is to mitigate impacts from this development and assures that the District is able to maintain the efficiency and continuity of fire suppression service and emergency medical services to the subject property at current service levels, and can meet the levels of service standard adopted by Whatcom County and national standards.
3. This mitigation measure does not include separate requirements that may be imposed by the County Fire Marshall's office related to building code compliance and structural issues.
4. The District reserves the right to seek mitigation measures and the right to comment on future commercial, industrial and other non-residential projects in the Birch Bay area.
5. With the payment of the fee or execution of the agreement as outlined in section 1, the District would enter comments into the record of any development proposal such that the proposal would then meet all of the criteria for approval for all required permits for this proposal, including that adequate capacity exists or arrangements have been made to provide adequate services for the development or any other new development in the Birch Bay area consistent with WCC 20.80.212, and would offer no objections based upon SEPA procedural concerns.
6. Resolution 2005-10, and any other prior resolution inconsistent with the forgoing conditions is hereby rescinded.

Passed By The Board Of Fire Commissioners Of Whatcom County Fire Protection District No. 13 on the 14th day of December, 2005.


Chairman J.V. "Butch" Hinchey


Commissioner William Salter

Commissioner Eddie Lathers

Tom Fields
Board Secretary

APPENDIX B

Chapter 3.35
SALES AND USE TAX FOR FUNDING EMERGENCY MEDICAL SERVICES

Sections:

- 3.35.010 Imposition of sales and use tax.
- 3.35.020 Rate of tax imposed.
- 3.35.030 Administration and collection of tax.
- 3.35.040 Distribution.
- 3.35.050 Use of tax.
- 3.35.060 Inspection of records.
- 3.35.070 Authorizing execution of contract for administration.
- 3.35.080 Violation – Penalty.

3.35.010 Imposition of sales and use tax.

There is hereby imposed a sales and use tax, as the case may be, as authorized by RCW 82.14.450, upon every taxable event occurring within Whatcom County, except for the retail sales or use of motor vehicles, and the lease of motor vehicles for up to the first 36 months of the lease, are exempt from tax imposed under this section. The tax shall be imposed upon and collected from those persons from whom the state sales or use tax is collected pursuant to Chapters 82.08 and 82.12 RCW. (Ord. 2006-001 Att. A).

3.35.020 Rate of tax imposed.

The rate of the tax imposed shall be one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of the use tax). (Ord. 2006-001 Att. A).

3.35.030 Administration and collection of tax.

The administration and collection of tax imposed by this chapter shall be in accordance with the provisions of RCW 82.14.450. (Ord. 2006-001 Att. A).

3.35.040 Distribution.

When distributing moneys collected under this section, the State Treasurer shall distribute 60 percent of the moneys to Whatcom County and 40 percent shall be distributed on a per capita basis to cities in the county. (Ord. 2006-001 Att. A).

3.35.050 Use of tax.

Two-thirds of the moneys received by the cities and the county from this tax shall be used by Whatcom County solely for the purpose of providing funds for costs associated with countywide emergency medical services. One-third of the moneys received from this tax shall be used by the cities and the county for criminal justice purposes. "Criminal justice purposes" means additional police protection, mitigation of congested court systems, or relief of overcrowded jails or other local correctional facilities. (Ord. 2006-001 Att. A).

3.35.060 Inspection of records.

Whatcom County hereby consents to the inspection of such records as are necessary to qualify the county by the Department of Revenue, pursuant to RCW 82.32.330. (Ord. 2006-001 Att. A).

3.35.070 Authorizing execution of contract for administration.

The Whatcom County executive is hereby authorized to enter into a contract with the Department of Revenue for the administration and collection of this tax. (Ord. 2006-001 Att. A).

3.35.080 Violation – Penalty.

Any seller who fails or refuses to collect the tax as required with the intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor. (Ord. 2006-001 Att. A).

APPENDIX C

Chapter 3

PLANNING PROCESS

Birch Bay Community

Community Planning Area

The Birch Bay Community Planning Area is located in northwest Whatcom County as shown in Figure 3 -1. The Planning Area is located along Birch Bay, a saltwater inlet of Puget Sound, northeast of the City of Ferndale and south of the City of Blaine. The Canadian border is six miles to the north and the City of Bellingham is seventeen miles to the south. The Birch Bay Community Plan boundaries include most of the Birch Bay US Census Designated Place, the Birch Bay Urban Growth Area, those areas whose development is likely to affect Birch Bay, and those areas that are likely to be affected by development in Birch Bay. The heart of Birch Bay Planning Area is the 12.2 miles of saltwater shoreline most of which is designated as Whatcom County's only Washington State designated Marine Shoreline of Statewide Significance. The primary shoreline attraction is the exposed tide flats which extend out as far as a mile at summer low tides providing crabbing, clamming and warm, marine water swimming.

Initially, Birch Bay developed as a summer vacation or resort area catering to vacationing urban populations from the Cities of Seattle and Vancouver. Summertime cabins and camper/trailer lots dotted the waterfront properties. Amusement facilities provided the vacationing public a variety of recreational opportunities. Today, the Birch Bay area is rapidly changing. Vacationers and recreation seekers come to Birch Bay year around. The children who visited Birch Bay with their parents twenty/thirty years ago are returning to purchase a year round home or to buy a lot to build a home in the near future. Birch Bay is turning into a mature community with year-round residents. Birch Bay was the fastest growing urban area of Whatcom County from 1990 to 2000. The planning area is approximately 8,700 acres or 15.5 square miles.

U.S. Census Designated Place

In 1990, the US Census created the Birch Bay Census Designated Place. In 1990, the population of the Birch Bay Census Designated Place was 2,656 persons. By the year 2000, the population had increased to 4,961 persons, a ten-year growth rate of 86.7 percent.

The Birch Bay Community Planning Area differs somewhat from the Birch Bay Census Designated Place. The boundaries of the Birch Bay Census Designated Place and the Community Planning area are shown on Figure 3 -1. The northern portion of the Birch Point area and the Drayton Harbor area were excluded from the Birch Bay Community Planning area because these areas are part of the Urban Growth Area of the City of Blaine.

Urban Growth Areas

As an unincorporated community, Birch Bay comprehensive planning is the responsibility of Whatcom County. Recognizing that certain areas of Whatcom County are urban in nature and, to be in compliance with the Washington State Growth Management Act requirements, the County has designated these areas as Urban Growth Areas. Whatcom County, in their GMA Comprehensive Plan, has delineated two urban growth areas for Birch Bay. The Birch Bay urban growth area and the Cherry Point industrial urban growth areas are shown in Figure 3 -2. The Birch Bay urban growth area is further divided into short and long term planning areas also shown in Figure 3 -2. Utility services (sewer and water) are generally available in the short term planning area and therefore, building permits can be readily issued. In the long term planning area utility services may need to be constructed or extended prior to issuance of building permits. Along the north border, the Birch Bay urban growth area joins the urban growth area of the City of Blaine.

Past Planning Work

As an unincorporated urban area, Birch Bay's comprehensive planning is the responsibility of the Whatcom County Planning and Development Services Department. There have been three past comprehensive planning efforts which have directly affected Birch Bay:

Figure 3-1
Planning Area
and
Census Designated Place

PLANNING PROCESS

- Birch Bay Comprehensive Plan, 1977
- Blaine – Birch Bay Sub-Area Plan, 1987
- Whatcom County Comprehensive Plan, 1997

Birch Bay Comprehensive Plan 1977

The 1976-77 Plan was similar in structure to today's 2002 Birch Bay Community Plan in that it established a Citizens Steering Committee to guide community discussion. The recommendations and resulting zoning from the 1976-77 process are essentially still in place today.

Birch Bay – Blaine Sub-Area Plan 1987

To accomplish its comprehensive planning goals in the late seventies, the County divided the western third of the county into ten geographic sub-areas. The Birch Bay and Blaine area represented a logical geographic sub-area. While the 1987 plan left much of the 1977 plan intact, the new plan reflected the County's desire to integrate local community thinking with a regional approach.

Whatcom County Comprehensive Plan 1997

This planning effort reflected a county-wide implementation of the goals, policies and procedures of the 1990 Washington State Growth Management Act. The plan was the first to be formatted around the thirteen required Growth Management Act goals. It included extensive citizen involvement resulting in a support document titled Visioning Community Value Statements. The plan also included a major review of existing Urban Growth Areas. As a result of this planning process, the concept of short and long term land use designations was implemented as part of Birch Bay's Urban Growth Area.

Birch Bay Economic Development Action Plan 2000

In addition to the above plans, the Birch Bay Chamber of Commerce facilitated preparation of the Birch Bay Economic Development Action Plan, which was completed and published in the fall of 2000. The plan was

PLANNING PROCESS

Figure 3-2
Existing Urban Growth Areas

PLANNING PROCESS

overseen by a committee called the Birch Bay Planning and Development Group and was funded by the Port of Bellingham. The Group consisted of a cross section of residents, the business community, and representatives from various organizations and public agencies. The Plan's primary funding came from the Port of Bellingham with additional funds provided by the Trillium Corporation to conduct a community survey. The Plan, as its name implies, had an original goal of mapping out economic development and marketing strategies. As the process evolved, it became clear to the Group that more comprehensive planning was needed before effective economic development plans could be implemented. Before the Group disbanded in December of 2000, they initiated the structure and funding for the 2002 Birch Bay Community Plan update. Some of the important accomplishments of the group included:

- A Vision Statement of what Birch Bay could be in the year 2020
- A community attitude survey to help prioritize planning efforts.
- The establishment of a recommended planning area and ten Neighborhoods within the area.
- The establishment of a partnership with various Stakeholders to provide needed funds and expertise.
- A primary relationship with the Whatcom County Planning and Development Services Department so that the Community Plan could become, without extensive additional work, a part of a 2003 update of Whatcom County's Comprehensive Plan.

Birch Bay Shoreline Planning 1999

In 1999, the Birch Bay Chamber of Commerce began a commitment to enhance Birch Bay's shoreline and raised funds to hire a consultant for design work and implementation strategies. The effort was centered on reviving a concept developed in a 1975 Birch Bay Shore Resource Analysis by Wolf Bauer. In addition to an analysis of the geohydraulic characteristics of the bay waters and shoreline, the study recommended the establishment of a shoreline sand and cobble berm as a storm defense alternative to bulkheads, rip rapping, gabions and concrete groins. In 1982, as a result of major storm damage to Birch Bay Drive and adjacent properties, a berm

PLANNING PROCESS

was created from the mouth of Terrell Creek to the south boundary of Jacobs Landing Condominiums. Besides acting as effective protection from storms, the berm has the added benefit of creating additional shoreland for public pedestrian use.

In light of new shoreline regulations and restrictions, a grant was sought and received in 2001 from the Coastal Zone Management Act Program under sponsorship of the Washington State Department of Ecology and the Whatcom County Council of Governments. Under grant requirements, a Birch Bay Shoreline Enhancement Citizen Advisory Committee was established to provide input to a Technical Committee made up of, among others, Department of Ecology, Washington State Fish and Wildlife Department, Department of Natural Resources, Whatcom County Planning and Development Services, and Whatcom County Public Works Department. A great deal of inventory data has been assembled utilizing the volunteer efforts of the Citizen Committee. The data analysis and study recommendations are being conducted by the Technical Committee, leading to a goal of improving the beach environment through the creation of beach berms and removal of some or all of the existing cement groins. This planning effort was completed in 2003.

Planning Organization

Neighborhoods

To better coordinate community and citizen involvement, the Planning Area was divided into ten neighborhoods as shown in Figure 3-3. Throughout the process, the neighborhoods have been the building blocks in preparing the Plan.

Each neighborhood has its own characteristic and geographic identity. For example, people living in the Point Whitehorn neighborhood, clearly identify themselves as Point Whitehorn people of Birch Bay. Table 3-1 gives the number of acres and the year 2000 population in each neighborhood.

Population in each neighborhood varies. For example, the year 2000 US Census counted population in the Birch Bay Village Reach neighborhood amounts to 1,031 persons. The population in the Point Whitehorn neighborhood amounted to 388 persons. West Cherry Point Neighborhood had no residences and therefore zero population.

PLANNING PROCESS

Table 3-1
Neighborhood Acreage

Neighborhood	Number of Acres	2000 Population
Birch Point	721	51
Birch Bay Village Reach	444	1,031
Cottonwood Reach	622	946
Hillsdale	812	677
Central Reaches	397	428
Central Uplands	2,275	733
State Park Reach	688	169
Terrell Creek	1,300	62
Point Whitehorn	546	388
West Cherry Point	894	--
Total	8,699	4,485

Steering Committee

To direct the preparation of the Birch Bay community plan or sub-area plan, the Birch Bay community created a Steering Committee, composed of elected representatives from each of the ten neighborhoods. The Steering Committee elected from amongst themselves a Chairman and Vice-Chairman. The Steering Committee is made up of representatives as shown below:

Chairman
Vice-Chairman

Neighborhood Representatives

Birch Point (2)
Birch Bay Village Reach (2)
Cottonwood Reach (2)

Figure 3-3
Birch Bay Community and Neighborhoods

PLANNING PROCESS

Hillsdale (2)
Central Uplands (2)
Central Reaches (2)
State Park Reach (2)
Terrell Creek (2)
Point Whitehorn (2)
West Cherry Point (1)

Stakeholders

The planning process was financed by a group of eleven Stakeholders. In addition to contributing their funds, the Stakeholders also contributed their expertise and in-kind services. For example, Whatcom County contributed map making and printing services, in addition to contributing their expert planning advice. The eleven Stakeholders are listed below:

- Birch Bay Chamber of Commerce
- Blaine School District
- Brown and Cole Stores
- BP – Cherry Point
- Port of Bellingham
- Trillium Corporation
- Washington State Department of Ecology
- Whatcom County Planning & Development Services
- Whatcom County Fire District # 7
- Whatcom County Fire District # 13
- Williams Energy

Whatcom County

The Whatcom County Planning and Development Services Department agreed to act as an administrator for the planning process, providing Interlocal Agreements with Stakeholders, billing and budgeting service, and absorbing mailing and printing costs. The County also provides technical oversight and guidance to the Steering Committee.

Consultants

Kask Consulting, Inc. was selected as the lead consultant to prepare the Plan with sub consultant involvement of J. Patrick Milliken and James Zervas and Associates. James Wiggins was retained by the Washington State Department of Ecology to prepare a reconnaissance level survey of wetlands in the Birch Bay planning area.

Planning Process

Overview

In September 2000 a Birch Bay Economic Action Plan was published. The Plan was the results of a years work by a citizen-based Birch Bay Planning & Development Group with facilitation and funding by the Port of Bellingham. One of the primary recommendations of this Plan was that the community goes through a more comprehensive planning process. In early January 2001 just over 5,000 invitation letters to participate in the process were mailed to property owners in the planning area, 37% to Birch Bay addresses and 37% to Canada. Over 600 different property owners and residents have either attended meetings or indicated their desire to be kept informed of progress via E-mail or postal service.

A number of public agencies and the private sector have committed to act as Stakeholders providing both funding and expertise. This plan is titled the Birch Bay Community Plan and, as such, is a stand-alone document. The Birch Bay Community Plan has been prepared in close cooperation with the Whatcom County Planning and Development Services Department. The intended result is that the Birch Bay Community Plan that will be the major input to Whatcom County's 2003 Comprehensive Plan update.

Neighborhoods

The planning process began on 27 January 2001 when about 300 Birch Bay property owners and residents attended a meeting to introduce the process and to invite community and citizen participation in neighborhood meetings. Initial neighborhood meetings were held in February and March of 2001 and focused on the following:

PLANNING PROCESS

- a) Finalizing neighborhood boundaries
- b) Identification of neighborhood values and issues
- c) Selection of neighborhood Steering Committee members.

In April the consultants prepared baseline data and draft materials for presentation at neighborhood meetings. Beginning in May, and throughout the process, neighborhoods reviewed and commented on the various planning elements. In the fall, the process evolved from individual neighborhood meetings to groupings of neighborhoods to deal with issues relating to southern, central and northern Birch Bay areas. And finally, draft plan recommendations were presented to the community at large for review and comment.

Steering Committee

Steering Committee members had their initial meeting on 14 March 2001 having accepted the responsibility to represent their neighborhood. Having two representatives and an alternate from each neighborhood provided a structure which better assured cross sectional representation and higher attendance at meetings. The Steering Committee and the citizens at large are to be congratulated for not only attending many meetings, but also for reading a great deal of material and participating in thoughtful, constructive discussion. A summary of meetings, rosters and attendance is on file with Whatcom County Planning & Development Services.

General Public

In addition to the Neighborhood meetings and the Steering Committee meetings, there were three general public or community meetings. At these meetings, the general public was invited to review the planning work completed to date, to ask questions and provide their comments on issues of concern to them.

Plan Adoption Process

Steering Committee

Throughout the planning process, all direction to the consultants was given either by Steering Committee consensus or by voting on motions. As drafts were prepared, they were presented and reviewed at neighborhood and community meetings prior to action by the Steering Committee. The Steering Committee adopted the plan on 28 August 2002. The Steering Committee made minor amendments on February 26, 2003. Additionally, on April 23, 2003, the Steering Committee voted to "put the West Cherry Point Neighborhood on a separate track from the balance of the Birch Bay Community Plan."

Whatcom County

After the Birch Bay Community Plan was adopted by the Steering Committee, the Whatcom County Planning Commission began its review of the adopted Plan as a Sub-Area element of the County's Comprehensive Plan. The Planning Commission conducted two public hearings as part of their review and then forward the Plan as amended to the County Council for final approval. Upon receipt from the Planning Commission, the Whatcom County Council will vote on whether to adopt the Sub-Area element, as presented, as an official component of the County's Comprehensive Plan update. The Council may make changes and may conduct their own public hearings. The County Council action is anticipated sometime in 2004.

Washington State Office of Community Development

The Whatcom County Comprehensive Plan, containing the Birch Bay Sub-Area or Community Plan will be reviewed for consistency with the Growth Management Act by the Washington State Office of Community Development. All cities and counties Comprehensive Plans are required by the Growth Management Act procedure to be updated by December 2004. The Office of Community Development acts as the administrator for the Growth Management Act compliance.

Appeals Procedure

There are a number of appeals processes built into the planning process. If a citizen, a business, a property owner or an organization does not like what they see, they can appeal, in written form, to the Steering Committee for a specific action. If they fail to persuade the Steering Committee to see their way, they can appeal to the Whatcom County Planning Commission when they review the work of the Steering Committee. If they fail to persuade the Planning Commission, they can appeal to the Whatcom County Council. The next appeal after the Whatcom County Council is to the Washington State Growth Management Hearings Board for Western Washington. Any appeals after that need to go to a Superior Court in the State of Washington.

Environmental Documentation

Before the Whatcom County Council can adopt the County's Comprehensive Plan, containing the Birch Bay Community or Sub-Area Plan, the Council must subject the entire Plan to environmental review in accordance with the Washington State Environmental Policy Act. The environmental review is the responsibility of the County. On July 7, 2003 the Whatcom County SEPA Administrator issued a Determination of Nonsignificance (DNS) for adoption of the Birch Bay Community Plan. The SEPA Administrator re-affirmed that determination on June 14, 2004 and again on September 3, 2004.

Plan Implementation

Many of the Plan recommendations, once they are adopted by the Whatcom County Council, become substantive changes in the County's Development Regulations, such as the Zoning Code or Subdivision Code. The responsibility to see that policy changes are carried through and are made part of the Development Regulations is the responsibility of the County Planning and Development Services Department. Any significant changes to the County's Development Regulations must go through a public review and environmental review process of their own.

Chapter 15

PUBLIC HEALTH AND SAFETY

Health Care

Existing Health Care Facilities

Today, there is only one health care facility located at Birch Bay. The facility is a clinic located at the intersection of the Birch Bay-Lynden Road and Harborview Road. It is open during the business hours, during the work week.

Emergency medical services are accessed through the enhanced 911 system and provided by three fire departments. Both Fire District #7 and #13 operate emergency medical aid services. District #7 serves from the Bay Road south and District #13 serves from the Bay Road north. Each District provides Certified Emergency Medical Technicians and First Responders. Whatcom Medic One Ambulance Service provides paramedic ambulance transport. This service is provided by the Bellingham Fire Department. St. Joseph's hospital provides a licensed and verified level II Trauma Center and is listed in the top 100 facilities in the United States for Cardiac Care services.

Adequacy of Existing Health Care Facilities

The existing health clinic seems to serve its customers well. With the increased population, additional clinics or doctor's offices need to be located in the area. The elderly population makes up a significant part of the total area population. The health care needs of the elderly become more important every day. A nursing home or a long-term elderly care facility probably could succeed in the area. With the growth of a community with increasing numbers of retired citizens comes an increasing number of medical emergencies, and need for preventative health care.

Proposed Improvements in the Health Care System

Since most health care services are provided by for-profit organizations, the marketplace will determine what type of health care facilities are to be located in the Birch Bay area. If the market for a nursing home or long-term care facility exists, a facility will be built.

Due to the increasing number of requests for emergency medical services the fire departments serving Birch Bay have placed increased emphasis on improving the level of service provided. A key element to the success of these programs is funding. Special attention to property tax reduction legislation should be considered, as a loss of funding would have a negative impact to the level of service provided.

Fire Protection Services

In order to protect life and property, and to provide the best fire protection possible in the neighborhoods, fire districts carefully plan the location of fire stations. In accordance with standard fire protection practices, fire stations are generally located with respect to existing and anticipated land uses and densities, the physical environment, fire flow requirements and desired minimum response time. As a result, the dwellings in the Birch Bay community are within two to five miles of district fire stations. Figure 15-1 shows the boundaries of Fire District 7 and the Consolidated Fire District 13.

Fire protection services are coordinated within the jurisdiction of each fire district. The districts plan fire station locations, purchase firefighting apparatus and recruit and train volunteer firefighters from within the Birch Bay area. Volunteer firefighters reside within fire district boundaries and attend monthly meetings. In addition, each firefighter has the opportunity to receive emergency medical training (EMT) and Basic Life Support Training (BLS). Fire District #7, and #13 also have career firefighters. The provisions of emergency aid protection in each district are provided oversight by the Washington State Department of Health Office of Emergency Medical Services and Trauma Prevention. Each fire district provides program management and follows the Patient Care Procedures and Protocols, developed locally.

Figure 15-1
Fire District Boundaries

Fire District 7

Existing Facilities and Services. Fire District 7 serves a 75 square mile area in Whatcom County including the city of Ferndale and the southern part of the Birch Bay Community Planning Area. Fire District 7 serves the area south of the Bay Road.

The District is a combination paid and volunteer fire department. There are currently 18 paid employees which include a fire chief, Administrative Assistant, Office Assistant, Training Officer Lieutenant, Maintenance Officer Captain, three Company Officer Lieutenants, and nine fire fighters. The District also has 78 volunteer officer/fire fighters posted to six stations.

The District owns and operates three staff vehicles, seven engines, three rescue/pumpers, two aid ambulances, two water tenders, one utility Re-Hab, one utility service and three utility units to support requests for fire and aid services from the general public.

The District operates six stations. The two fire stations serving the Birch Bay community are Station 4 at Point Whitehorn and Station 2 at the Kickerville and Brown Road intersection. The Whitehorn Station is equipped with one Rescue/Aid pumper and one pumper. The Kickerville/Brown Road Station is equipped with one Rescue/Aid pumper, one water tender, and one pumper.

In the year 2000, the District responded to 1252 alarms. Of the total, 313 alarms were for fire, 813 for emergency medical services, 88 for hazardous conditions, and 38 for other purpose. The average District wide response time was 6.19 minutes.

Within the Birch Bay Community Planning Area, the District responded to 23 alarms with an average response time of 7.19 minutes.

Standards. The gold standard for successful emergency medical services is four to six minute response times for aid services and 15 to 20 minutes for ambulance services. EMS system response times within this time period have been proven to lead to an increased number of lives being saved in incidents in which time is critical. Response for fire emergencies is also time dependent and require larger numbers of personnel and fire suppression equipment. Fire District 7 responds between seven to eight minutes. Considering the voluntary nature of the district operation and the

location of fire stations these response times are not likely to improve. To shorten the response time requires the manning of the fire station at Point Whitehorn on a round the clock basis. The cost of such an operation is significant.

Consolidated Fire District No. 13

Existing Facilities and Services. Fire District 13 serves all of the Birch Bay community planning area north of Bay Road. They also serve the City of Blaine, as well as the Custer, and Haynie areas. The Fire District provides fire protection, emergency medical, and hazardous materials response services. Fire District #13 has entered into a Cooperative Interlocal Agreement with Fire District #3, and #5 that has resulted in the formation of the North Whatcom Fire & Rescue Services (NWFRS) organization. The NWFRS organization serves a 165 square mile total area. This agreement allows enhanced training programs and more depth in staffing, volunteers, and resources than would otherwise be possible.

North Whatcom Fire & Rescue Services organization is a combination paid and volunteer fire department. There are currently 28 paid employees, which include a fire chief, Assistant Fire Chief, 3 Division Chiefs, Training Captain, Volunteer Resource Coordinator, Finance Manger, 2 Administrative Assistants, two apparatus maintenance technicians, 1 Emergency Medicine Physician, five Career Company Officer Lieutenants, and nine Career Firefighters. The NWFRS organization also has 165 volunteer officer/fire fighters posted to 10 fire stations.

North Whatcom Fire & Rescue operates 7 staff vehicles, 14 engines, 12 aid ambulances, 5 water tenders, 1 Re-Habilitation unit, one Breathing Air response unit and 5 utility units to support requests for fire and aid services from the general public.

Fire District 13 operates 5 stations. The 3 fire stations serving the Birch Bay community are Station 1 at 4581 Birch Bay-Lynden Road, Station 2 located in Custer, and Station 4 located in Blaine. The Birch Bay Station is staffed 24 hours a day with career Firefighters/EMTS and is also served by 30 volunteer members participating in a sleeper program. The Birch Bay Station is equipped with 2 Rescue/Aid pumpers, 1 ladder truck, and 1 BLS Ambulance Aid vehicle. The Custer Station is equipped with one Rescue/Aid pumper, 1 water tender, and 1 BLS Ambulance Aid vehicle; the Blaine station has 2 Rescue/Aid pumpers and 1 BLS Ambulance.

PUBLIC HEALTH AND SAFETY

In the year 2002, the District responded to 1038 alarms. Of the total, 178 alarms were for fire, 686 for emergency medical services, 27 for hazardous conditions, and 147 for other purposes.

Within the Birch Bay Community Planning Area, the District responded to 403 alarms with a Fractal response time utilizing a 90% standard of 6 minutes or less. In the Semiahmoo area the Fire District responded to 40 alarms with a Fractal response time utilizing a 90% standard of 7 minutes and 30 seconds or less.

Standards. The gold standard for successful emergency medical services is four to six minute response times for aid services and 15 to 20 minutes for ambulance services. EMS system response times within this time period have been proven to lead to an increased number of lives being saved during medical emergencies in which time is critical. Response for fire emergencies is also time dependent and require larger numbers of personnel and fire suppression equipment. Fire District #13 responds between five to six minutes. To shorten the response time the fire District has career and volunteer firefighters and emergency medical technicians manning the fire station in Birch Bay 24 hours a day. ✓

Proposed Expansions and Improvements. Increased population, particularly in the Birch Point area will necessitate the manning the fire station at Semiahmoo on a 24-hour basis. Additional equipment will also need to be brought to the station to maximize its effectiveness. These costs will be born by taxes paid by the growing population. The Birch Bay station now being utilized as a manned fire station must under go substantial remodeling in the future to house firefighters and EMTs.

Police Services

Police services to the residents and business of the Birch Bay area are provided by the Whatcom County Sheriff's Department. The Sheriff's Department headquarters are located in the Whatcom County courthouse in Bellingham. Table 15-2 presents overall Sheriff's Department calls in Whatcom County from 1996 through 2000. The statistics in the table indicate that the incidents calls have decreased slightly over the last five year period.

Table 15-1
Whatcom County Sheriff's Office Calls for Service

Year	Total Calls
2000	24411
1999	24759
1998	26738
1997	25702
1996	25957

Table 15-3 presents the incidence statistics for Birch Bay area from 1996 through 2000. The incidence statistics in the table show that the number of incidences is decreasing.

Standards

Standards for police services are measured in terms of number of uniformed police officers per 1,000 population, the response time to an emergency call, and the number of incidences per 1,000 population. To increase the standards beyond what exists today, the Whatcom County Sheriff's office would have to establish a police precinct office in the Birch Bay area and man it around the clock with five uniformed officers. This level of service would approach the level of municipal police services.

PUBLIC HEALTH AND SAFETY

Table 15-2
Birch Bay Police Incident Reports 1996 - 2000

Year	High Crimes	Traffic	Domestic	Misc.	Total
2000	126	128	141	1050	1445
1999	147	154	150	1092	1543
1998	200	187	141	1289	1817
1997	142	150	116	1112	1520
1996	180	180	121	1046	1527

Source: Whatcom County Sheriff's Office

Proposed Improvements

To greatly improve police presence in the area.

Industrial Safety

Living near or next to industrial areas poses some potential safety problems. Often hazardous chemicals and other hazardous chemicals are transferred to industrial sites to be manufactured into consumer products, such as crude oil to gasoline, etc. Other hazardous materials are used in manufacturing process, such as butane for heating purposes. Industrial operators, over the years, have developed safety procedures that minimize potential accidents leading to hazardous conditions for both the workers at the site and to those living and working in the near-by area. Most hazardous industrial operations are regulated and monitored by the federal, state and local governments.

Desired Health and Safety Future

Vision Statement - Public Health and Safety

Crime that periodically raises its ugly head in all communities has subsided considerably in the Birch Bay Community as a result of crime prevention education and increased police presence. Further, the Community has matured, neighbors know their neighbors and neighborhood crime watch programs have caught on. Fire service has also improved. Fire and emergency medical response time has decreased considerably due to having constructed additional fire stations and staffing them with full-time fire and emergency medical service personnel. As a result of improved fire services, the fire insurance rates on residential structures have decreased significantly. Fire and police safety seminars are being conducted throughout the community on a regular basis.

Goals - Public Health and Safety

- Goal PS 1: To achieve and maintain a community feeling of living in a safe and secure environment.
- Goal PS 2: To reduce fire and police response times.
- Goal PS 3: To promote and encourage citizen involvement in such things as neighborhood watch programs and emergency awareness.
- Goal PS 4: To achieve and maintain high standards in providing normal and emergency medical treatment.
- Goal EH 1: To work cooperatively with other agencies, especially the City of Blaine, the Blaine School District and Fire Districts 7 and 13 in providing facilities and programs relating to both community education and health.

Action Strategies

1. Amend the zoning code to allow (outright) medical service facilities to be located in Resort Commercial district.

PUBLIC HEALTH AND SAFETY

2. Promote the development of a nursing home or long-term care facility in the Birch Bay area.
3. Continue to work with Fire Districts No. 7 and 13 and assist them in making improvements when warranted by increased population growth and increased commercial development.
4. Assure adequate fire flow in the water system for fire-fighting purposes.
5. Work with the Whatcom County Sheriff's Department to bring more uniformed patrol officers to the area during critical periods.
6. Promote the County Sheriff's enforcement of speed limits on Birch Bay Drive and the provision of safety measures such as pedestrian crossings and safety warning signs.
7. Identify a site and local funding source for a future police station.