



MEMORANDUM

Clallam County

Department of Community Development

Date: January 31, 2007
To: Board of County Commissioners
From: Selinda Barkhuis, Senior Planner
Subject: February 5, 2007 BOCC Work Session

Response to minority objection:

The Planning Commission minority opinion cited the following language in Section 8.010(2) as the reason for their opposing vote: "Penalties for failure to obtain any required permit shall begin to accrue on the first day activity subject to the permit requirement is commenced and shall cease to accrue on the day the permit is obtained." The concern is that DCD will use this language to impose huge fines retroactively to dates far in the past on innocently ignorant landowners.

Background on language:

- Language came from Snohomish County code compliance title.
- Language was in both drafts that went to the PC, in November and December.
- Building Code violations are subject to the enforcement and penalty provisions of the relevant international codes referenced in Chapter 21.01 CCC.

Safeguards against abuse:

- The Code Compliance Title itself identifies voluntary compliance as the primary goal, see Section 2.020 on page 1, and steers limited enforcement resources to the highest priority cases, see Section 3.050 on page 4. The Title also identifies warnings as the preferred first step to achieving code compliance, see Section 3.080(2) and (3) on page 5, and provides that a landowner may request to enter into a voluntary compliance agreement at any time. The sooner a landowner stops or remedies the violation, the less, if any, penalties are incurred. There would surely be considerable negative feedback and consequences if DCD were to spend its limited enforcement resources by ignoring the Title's guidelines and proceed with imposing the harshest penalties on the least culpable violators.
- While perhaps there are some innocently ignorant landowners, such ignorance should not be encouraged by adopting a Code Compliance Title that limits the imposition of daily fines only forward from the day that somebody "gets caught." Such a scheme would encourage individuals to act without asking, instead of asking before acting. A Code Compliance Title needs to have some teeth for it to have any deterrence value.
- Lack of teeth in the form of significant penalties has been identified by both WRIA 20 and a natural resource consultant who testified at the Planning Commission's public hearing as resulting in a failure to deter violations under current enforcement sections. There is indication that codes are being violated because the cost of the potential penalty is minimal compared to the resulting benefit of greatly increased property values.
- To quote the Washington State Forest Practices Appeals Board in *Walden v. DNR*, FPAB No. 96-1: "The purpose of a penalty has been set forth as follows: 'A penalty is a sum of money of which the law exacts payment by way of punishment for doing some act that is prohibited or omitting to do some act that is required to be done. The term involves the idea of punishment, and, indeed, the term has been said to be synonymous with, or to strictly and primarily denote, punishment. This

punishment may be either civil or criminal. A penalty ordinarily is imposed for derelictions of duty existing in favor of the public at large, and a civil penalty may be enacted to enforce the observance of legislative policy.’ 70 Corpus Juris Secundum, Penalties, Sec. 1.

The purpose of a penalty is both to punish past misconduct, and to deter future misconduct. To be just, a penalty must impose upon the recipient a punishment that is proportionate to the wrong committed. At the same time justice requires that the penalty must be adequate, in the public interest, to deter the recurrence of that wrong, and bring about observance of legislative policy.”

- If a penalty is imposed that the alleged violator considers wrong or excessive, (s)he can appeal both the determination that a violation has occurred, and the appropriateness of the penalty, first to the Hearing Examiner, and then to the court.
- Washington State case law has held that a claim that penalties imposed under a local ordinance are excessive and an unconstitutional violation of due process rights under U.S. Const. amend. XIV, sec. 1 is to be considered on the following bases:
 - (1) whether the regulation is aimed at achieving a legitimate public purpose;
 - (2) whether it uses means that are reasonably necessary to achieve that purpose;
 - (3) whether it is unduly oppressive on the landowner.

Presbytery of Seattle v. King County, 114 Wn.2d 320, 330, 787 P.2d 907, cert. denied 498 U.S. 911 (1990). In Sleasman v. City of Lacy, 128 Wn.App. 617 (2005) (reviewed granted, 2006), the court upheld a penalty amount imposed for violating a city’s tree protection ordinance stating that “the economic loss to the Sleasmans is not oppressive beyond a reasonable doubt given the large amount of non-permitted clearing and the resultant potential public and environmental impacts...”
- Also, removal of this language would prevent sending citations with fines for code violations which have already happened and do not require remediation, i.e. assemblies or festivals, limiting enforcement only to the filing of a misdemeanor charge, which seems highly excessive.

Public Testimony received:

Proposed ordinances amending the following provisions of the Clallam County Code, in conjunction with adoption of new Code Compliance Title:

- Brad Shaw, 475 Walker Valley Road, Port Angeles, WA 98363. Mr. Shaw, Westech Company, indicated that his company provides environmental consulting, and commended staff and the Planning Commission on the enforcement provisions within in the Critical Areas Code, Shoreline Management Ordinance, and other areas relating to environmental issues. Mr. Shaw indicated the appropriateness of code enforcement staff having law enforcement backgrounds, that the provisions hold property owners accountable, and agreed with the fee structure.
- L. Edmund Cates, P. O. Box 537, Scottsdale, AZ 85252. Mr. Cates submitted written testimony (included herewith) in favor of expanding public nuisances to include “other forms of junk and debris, i.e. camper shells, trailers, household appliances, furniture, industrial equipment, and other debris which creates blight, depressing property values, generates health hazards, contributes to injury and damages the environment” and included copies of relevant Arizona State Code.

Wireless Communication Facilities, CCC 33.49.510

- Hugh Haffner, 402 Goa Way, Port Angeles, WA 98362. Mr. Haffner, PUD Commissioner, indicated concern of adopting the proposed enforcement provisions without reviewing the initial code adopted in 2001. Chapter 33.49 should be addressed by staff, PUD, and providers, to review provisions and regulations prior to enforcement, and to ensure that it is compliant with regard to new technology.
- Thomas Thomas, 686 Wasankari Road, Port Angeles, WA 98363. Mr. Thomas indicated that his concerns were reflected in Mr. Haffner’s testimony, and submitted photos (1 page) as part of his testimony. Mr. Thomas noted that he provides an internet connectivity between the PUD and the subscriber, and clarified that he is not an internet service provider. Conditional Use Permit fees are not feasible to service 3-4 customers, and the customers cannot afford the service. Mr. Thomas referred to Section 703 [then mentioned Section 253] (a) or (b) of the Telecommunications Act 1996 which states that the local power authority may not set the bar so high that a service cannot be provided, and no discrimination of service types. Mr. Thomas suggested that the Planning Commission assign a subcommittee to further address this issue.

- Rob Robertsen, 3775 Deer Park Road, Port Angeles, WA 98362. Mr. Robertsen clarified that with regard to tower installation, engineering is required and associated fees are set forth by the State within the Building Code. Conditional Use Permit fees are set by the County, and the process provides public input with regard to proposed applications.

Proposed ordinance to repeal and replace Junk Vehicle Nuisance Code, CCC 19.60:

- Darlene Jones, 2323 East 6th Avenue, Port Angeles, WA 98362. Ms. Jones asked when her neighborhood will be cleaned up, as she recently lost a potential buyer of her home because of approximately 75 junk vehicles located on East 6th Avenue. Ms. Jones indicated that there are a number of people in the neighborhood that are equally concerned. Staff asked that she discuss this matter with Rich Sill and Tony Polizzi following the meeting. Staff noted that Rich Sill and Tony Polizzi are currently going through the large backlog of nuisances that will need to be addressed initially.
- John Fager, 2227 East 3rd Avenue, Port Angeles, WA 98362. Mr. Fager indicated that he was involved in filing a complaint with the County approximately one year ago, and to date, no one has contacted the community with regard to the numerous complaints that have been filed with regard to Gales Addition. Action is necessary, and the ordinance needs to be enforced.
- Rob Robertsen, 3775 Deer Park Road, Port Angeles, WA 98362. Mr. Robertsen commented that the original ordinance had no enforcement attached that is why complaints from the past have not been addressed with regard to enforcement.

Response to public comments:

Two public comments were received that warrant mention:

1. Both Hugh Haffner, PUD Commissioner, and Thomas Thomas testified against adoption of these ordinances until certain substantive changes are made to the WCF code at Chapter 33.49 CCC. No materials were submitting detailing the proposed substantive changes. Instead, they requested that a working group be convened to identify, discuss, and agree on proposed changes. Staff recommends against delaying the adoption of these ordinances because it would result in a linking of the substance of the land use codes to the process of enforcing them, and would most likely invite considerable additional requests for substantive changes. The Planning Commission then requested DCD to consider the WCF issue (without delaying the adoption of these ordinances) and DCD Director John Miller indicated he would begin to meet with interested parties and prioritize issues relating to this matter.
2. L. Edmund Cates testified in favor of expanding public nuisances to include “other forms of junk and debris, i.e. camper shells, trailers, household appliances, furniture, industrial equipment, and other debris.” It may be appropriate for Clallam County to adopt additional code that deals with other forms of junk and debris, and perhaps the new Code Compliance team can consider such an issue, but staff recommends that adoption of these ordinances is not delayed for that purpose. It would not be appropriate to expand the Junk Vehicle Public Nuisance chapter to include such situations as it carefully follows RCW 46.55.240, which provision authorizes local jurisdictions to proceed with certain administrative processes but only as they pertain to junk vehicles. Nothing currently limits the county from prosecuting any situation as a public nuisance under Chapter 7.48 RCW, Nuisances.

Process to date:

- This project was initiated in March of 2006, about ten months ago:
 - The primary reason for taking on this project was to develop a uniform process of enforcing code compliance, for those codes that are under the authority of the Department of Community Development.
 - Right now, code compliance sections are scattered throughout the various land use codes, are different, and sometimes even contrary to each other, with many missing detail. The result is a lack of efficiency that we want to resolve.

- Another primary reason was to enable DCD to enter into voluntary and cooperative code compliance agreements, which will also serve to improve efficiency.
- After thoroughly reviewing relevant state laws, and what some of the other jurisdictions were doing, the following were drafted:
 - A proposed ordinance to create a separate code compliance title. This new title contains a uniform set of code compliance processes.
 - Proposed ordinances amending the various codes enforced by DCD – which are listed on today's agenda. These amendments consist of simply replacing provisions dealing with enforcement with references to this new code compliance title, and
 - A proposed ordinance to replace the junk vehicle public nuisance chapter.
- Over the last 10 months, these proposed ordinances have been thoroughly reviewed at various stages of their development, by, among others, :
 - The Prosecuting Attorney's Office which provided significant input.
 - By the Board of County Commissioners, who reviewed the proposed ordinances at three separate work sessions (4/10/06, 8/28/06, & 10/9/06).
 - By the Planning Commission, who also reviewed the proposed ordinances at two separate work sessions (4/19/06, 12/6/06) and who held a public hearing receiving public testimony (1/17/07).
 - By other clallam county departments.
 - And by the new code compliance officers, who will be using these new ordinances to do their job.
- In addition, the text of the proposed ordinances has been available on the clallam county website, and notice of them has gone out to many local agencies and individuals, including
 - The towns and tribes located within Clallam County.
 - State agencies with local interests.
 - The Washington State Department of Community, Trade, and Economic Development, which forwarded the notice to a number of state agencies (all ordinances except the ordinance replacing Chapter 19.60, Junk Vehicle Public Nuisance).
 - All the consultants on the DCD approved natural resource plans consultants list
 - Any individuals who have expressed an interest in these ordinances.
 - And to the local newspapers.
- Over the last ten months, the local newspapers have reported on the fact that these ordinances were being developed on various occasions:
 - By printing the agenda of the various BOCC and Planning Commission work sessions where these ordinances were being discussed.
 - By reporting on the proposed new ordinances in various articles about junk vehicles and other county code compliance issues.
 - And by publishing Notices of the Planning Commission public hearing.
- All input received was seriously considered, and reflected in various staff reports and memoranda.
- After the Planning Commission received and considered testimony at its public hearing, the Planning Commission voted 7 in favor, 2 against forwarding the proposed ordinances to the BOCC. No additional recommendations were made.

Cc Project file