

Next Ord: 1753-12
Next Res: 870-12

VISION STATEMENT

SEDRO-WOOLLEY IS A FRIENDLY CITY THAT IS CHARACTERIZED BY CITY GOVERNMENT AND CITIZENS WORKING TOGETHER TO ACHIEVE A PROSPEROUS, VIBRANT AND SAFE COMMUNITY

MISSION STATEMENT

TO PROVIDE SERVICES AND OPPORTUNITIES WHICH CREATE A COMMUNITY WHERE PEOPLE CHOOSE TO LIVE, WORK AND PLAY

CITY COUNCIL AGENDA

September 26, 2012

7:00 PM

Sedro-Woolley Municipal Building

Council Chambers

325 Metcalf Street

1. Call to Order
2. Pledge of Allegiance
3. Consent CalendarPages 1 - 46

NOTE: Agenda items on the Consent Calendar are considered routine in nature and may be adopted by the council by a single motion, unless any Councilmember wishes an item to be removed. The Council on the regular agenda will consider any item so removed after the Consent Calendar.

- a. Approval of Agenda
- b. Minutes from Previous Meeting
- c. Finance
 - Claim Checks #75225 to #75326 in the amount of \$622,593.71.
 - Payroll Checks #53936 to #54046 in the amount of \$189,286.53. (Voided Check #54042)
- d. Professional Services Agreement - Wallace & Associates
- e. Skate Park
 - Ordinance 1751-12 - Prohibiting Smoking
 - Ordinance 1752-12 - Establishing Rules
- f. Amendment – 2012-PW-03 Aaction Excavating, Inc. On-Call Construction Services
Contract Total and Task Order #3 Total

4. Public Comment (Limited to 3-5 minutes)

UNFINISHED BUSINESS

5. CUP 1-11 Closed Record Appeal.....see separate binder

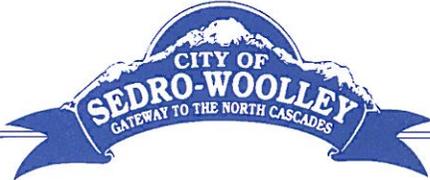
COMMITTEE REPORTS AND REPORTS FROM OFFICERS

EXECUTIVE SESSION

There may be an Executive Session immediately preceding, during or following the meeting.

SEP 26 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 1-3



DATE: September 26, 2012
TO: Mayor Anderson and City Council
FROM: Patsy Nelson, Finance Director
SUBJECT: 1) CALL TO ORDER; 2) PLEDGE OF ALLEGIANCE; 3) CONSENT
CALENDAR

1. CALL TO ORDER - The Mayor will call the September 26, 2012 Regular Meeting to Order. The Finance Director will note those in attendance and those absent.

___ Ward 1 Councilmember Kevin Loy
___ Ward 2 Councilmember Tony Splane
___ Ward 3 Councilmember Thomas Storrs
___ Ward 4 Councilmember Keith Wagoner
___ Ward 5 Councilmember Hugh Galbraith
___ Ward 6 Councilmember Rick Lemley
___ At-Large Councilmember Brett Sandström

2. PLEDGE OF ALLEGIANCE - The Mayor will lead the City Council and citizens in the Pledge of Allegiance to the United States of America.
3. CONSENT CALENDAR - Mayor will ask for Council approval of Consent Calendar items.

SEP 26 2012

CITY OF SEDRO-WOOLLEY

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 36

Regular Meeting of the City Council
September 12, 2012 – 7:00 P.M. –City Hall Council Chambers

ROLL CALL: Present: Mayor Mike Anderson; Councilmembers: Kevin Loy, Tony Splane, Tom Storrs, Keith Wagoner, Hugh Galbraith, Rick Lemley and Brett Sandström. Staff: Recorder Brue, City Supervisor/Attorney Berg, Engineer Freiburger, Asst. Fire Chief Olson and Police Chief Wood.

The Meeting was called to order at 7:00 P.M.

Pledge of Allegiance

Consent Calendar

- Approval of Agenda
- Minutes from Previous Meeting
- Finance
 - Claim Checks #75120 to #75224 in the amount of \$202,247.11
 - Payroll Checks #53825 to #53935 in the amount of \$258,411.15
- Resolution 869-12 Appointing Members to the Lodging Tax Advisory Committee
- Interlocal Cooperative Agreement with Skagit county for Library Services – 2012
- Amendment 2 to the Interlocal Agreement dated 10/18/2011 with Skagit County Conservation District – NPDES Phase II Stormwater Permit WAR-04-5555
- Supplemental Agreement 1 – Professional Services Agreement No. 202-PS-14 for Design Phase Services for the SR/Cook Road Realignment and Extension Project – David Evans & Associates, Inc.

Councilmember Lemley requested to abstain from check #75162 payable to JJ's Cruisers, as he is a member of that organization.

Councilmember Storrs moved to approve the consent calendar Items A through G. Seconded by Councilmember Wagoner. Motion carried (7-0).

Public Comment

No comment received.

PUBLIC HEARING

Black Rock Franchise Ordinance

City Supervisor/Attorney Berg reviewed additional information requested by Council regarding the Black Rock Cable franchise ordinance. He noted a change in Section 4.2 (b) which puts a cap on the dollar value of pole line extensions. He introduced Bob Warshawer, President of Black Rock Cable.

Bob Warshawer, President of Black Rock Cable addressed the Council and briefly explained how the system works as well as who their customers are. He noted they service larger businesses with multiple locations and do not service residential areas. Black Rock Cable is based out of Bellingham and has a service area from the Canadian boarder to South Skagit County with one continuous network and a second network that starts in Arlington and goes to the King County line. He noted they are committed extending ease to Job Corps.

Mayor Anderson opened the public hearing at 7:10 P.M.

Mayor Anderson closed the public hearing at 7:10 P.M.

Councilmember Sandström moved to adopt Ordinance No. 1750-12, An Ordinance Granting a Non-Exclusive Franchise to Blackrock Cable Inc. Seconded by Councilmember Splane. Motion carried (7-0).

NEW BUSINESS

Selection of Alternate for Community Action Agency Board

Mayor Anderson stated that he sits on the board of the Community Action Agency. Sometimes he runs into conflicts and requested an alternate for the times that he is unable to attend.

Councilmember Storrs volunteered with no one else speaking up.

Councilmember Storrs was approved by acclamation by the Council.

COMMITTEE REPORTS AND REPORTS FROM OFFICERS

Police Chief Wood – stated there has been lots of activity in the Police Department but nothing to report.

He then reported, in his role as Rotary President on the progress of the Skate Board Park. He noted a grand is tentatively scheduled for October 13th. He also reported that Rotary applied for and received a \$3000 grant for protective gear which will be given out at the

grand opening. Wood offered tours and also spoke of the webcam that has been installed to keep an eye on the park.

Discussion of the webcam's ensued with it being noted that a second camera will be installed at Hammer Heritage Square.

Asst. Fire Chief Olson – reported on recent events that they participated in on September 11th. They participated in a parade around Big Lake in memory of the fallen firefighters and the Boys and Girls Club open house which also honored the Police and Fire. He also reported on a mini-academy being held along with District 8 for new recruits.

Engineer Freiburger – reported on the progress of the Metcalf Street improvements. He noted that paving will take place around the second week of October. He also reported on an on-call repair project on Greenstreet Blvd. The Solid Waste department will be working on crushing concrete which has been taken in at the recycle site to be used for the Swedelius Tree Farm Loop Road. The design phase project is coming along well and grant applications have been completed and sent off. Grant announcements will begin to come in sometime in mid-November. He also noted the TIB meeting is scheduled for mid-November in Bellingham.

City Supervisor/Attorney Berg – addressed rules for the Skate Park to include No BMX or other bikes of any kind, No homemade equipment and Hours of operation.

Discussion ensued regarding disallowing BMX bikes as they do not mix well with skate boards, improved BMX Park within the Bingham Park plans, park maintenance, request for no smoking in the park, closing hours and liability.

City Supervisor/Attorney Berg noted the rules have been reviewed by the City's insurance company and reviewed the Washington State immunity laws.

Councilmember Loy – reported it is rumored that Food Pavilion in Mt. Vernon is closing and he expressed concern for the Food Pavilion store in Sedro-Woolley.

Councilmember Splane – reported to Engineer Freiburger that there are poplar tree sprouts in the sidewalk on Sapp Road, across from where the large trees were removed.

Councilmember Wagoner -- questioned if there had been any progress on the abandoned vehicles reported on Sterling Street at the last Council meeting. He also questioned if there is an ordinance or any rules regarding people living in trailers or motor homes on residential property.

Police Chief Wood and City Supervisor/Attorney Berg responded.

Councilmember Galbraith – questioned if there has been any progress on Cascade Middle School break in.

Police Chief Wood stated that they have been following all leads, have issues several search warrants but have not received anything concrete. The detectives have been working hard to try to solve the case.

Councilmember Lemley – reported on the Founders Day festivities. He noted a smaller than usual crowd attended. The event honored the Stendal family and the car show had 188 cars and 1 motorcycle.

Councilmember Sandström – also reported on Founders Day as well as the grand opening of the Teen Center at the Boys and Girls Club.

EXECUTIVE SESSION

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The meeting was adjourned to Executive Session at 7:41 P.M. for the purpose of personnel, collective bargaining and the performance of a public under RCW 42.30.110.1(g) and RCW 42.30.140.4, for approximately fifteen minutes with no decision expected.

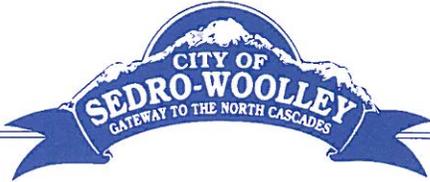
The meeting reconvened at 8:07 P.M.

Councilmember Splane moved to adjourn. Seconded by Councilmember Lemley. Motion carried (7-0).

The meeting adjourned at 8:07 P.M.

SEP 26 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 3C



DATE: September 26, 2012
TO: Mayor Anderson and City Council
FROM: Patsy Nelson, Finance Director
SUBJECT: FINANCE - CLAIMS

Attached you will find the Claim Checks register proposed for payment for the period ending September 26, 2012.

Motion to approve Claim Checks #75225 to #75326 in the amount of \$622,593.71.

Motion to approve Payroll Checks #53936 to #54046 in the amount of \$189,286.53. (Voided Check #54042)

If you have any comments, questions or concerns, please contact me for information during the working day at 855-1661. This will allow me to look up the invoices that are stored in our office.

CITY OF SEDRO-WOLLEY
 SORTED TRANSACTION WARRANT REGISTER
 09/26/2012 (Printed 09/21/2012 08:51)

PAGE 1

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75225	SKAGIT COUNTY AUDITOR	MISC-FILING FEES/LIEN EXP	SWR	800.00
		MISC-FILING FEES/LIEN EXP	SAN	768.00
		WARRANT TOTAL		1,568.00
75226	AACTION EXCAVATION, INC.	MAINTENANCE OF LINES	SWR	25,000.00
		OTHER IMPROVEMENTS	SWR	21,559.86
		WARRANT TOTAL		46,559.86
75227	ALLELUJAH BUSINESS SYSTEMS	POSTAGE	IT	19.77
		POSTAGE	PD	25.03
		WARRANT TOTAL		44.80
75228	ALL-PHASE ELECTRIC	OPERATING SUPPLIES	SWR	57.08
		WARRANT TOTAL		57.08
75229	ALLIED WASTE SERVICES #197	SOLID WASTE DISPOSAL	SAN	92.06
		WARRANT TOTAL		92.06
75230	ANDGAR CORP	REPAIR/MAINT-CITY HALL	PK	101.66
		REPAIR/MAINT-CITY HALL	PK	243.45
		REPAIR/MAINT-CITY HALL	PK	911.66
		WARRANT TOTAL		1,053.45
75231	ARAMARK UNIFORM SERVICES	MISC-LAUNDRY	ST	5.60
		MISC-LAUNDRY	ST	10.98
		LAUNDRY	SWR	12.74
		LAUNDRY	SWR	31.59
		WARRANT TOTAL		60.91
75232	ASSOCIATION OF WA CITIES	RETIRED MEDICAL	PD	7,589.96
		WARRANT TOTAL		7,589.96
75233	ASSOC PETROLEUM PRODUCTS	AUTO FUEL	CS	258.05
		AUTO FUEL	CS	64.41
		AUTO FUEL	CS	268.54
		AUTO FUEL	PD	1,836.93
		AUTO FUEL/DIESEL	FD	1,286.83
		AUTO FUEL/DIESEL	PK	927.36
		AUTO FUEL/DIESEL	ST	532.27
		AUTO FUEL/DIESEL	SWR	203.18
		WARRANT TOTAL		5,377.57
75234	BAY CITY SUPPLY	OPERATING SUP - LIBRARY	PK	94.52
		OPERATING SUP - MEMORIAL PARK		94.40
		OPERATING SUPPLIES	SAN	153.95
		WARRANT TOTAL		342.87
75235	BEITLER, HAROLD	RETIRED MEDICAL	PD	316.00
		WARRANT TOTAL		316.00
75236	BLUMENTHAL UNIFORM & EQUIP	UNIFORMS/ACCESSORIES	PD	147.15
		WARRANT TOTAL		147.15

CITY OF SEDRO-WOOLLEY
 SORTED TRANSACTION WARRANT REGISTER
 09/26/2012 (Printed 09/21/2012 08:51)

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WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75237	BOULDER PARK, INC	SOLIDS HANDLING	SWR	1,460.14
		WARRANT TOTAL		1,460.14
75238	BOUWENS, JENNIFER A.	PROF SVC-PROSECUTING ATTY	LGL	2,500.00
		WARRANT TOTAL		2,500.00
75239	CASCADE NATURAL GAS CORP.	PUBLIC UTILITIES	PD	10.60
		PUBLIC UTILITIES	FD	20.79
		UTILITIES-COMMUNITY CTR	PK	10.60
		UTILITIES-SENIOR CENTER	PK	28.43
		UTILITIES-HAMMER SQUARE	PK	13.15
		UTILITIES - SHOP	PK	61.48
		UTILITIES - SHOP	PK	15.69
		PUBLIC UTILITIES-CITY HALL	PK	86.56
		PUBLIC UTILITIES	ST	10.60
		PUBLIC UTILITIES	ST	26.36
		PUBLIC UTILITIES	LIB	11.45
		PUBLIC UTILITIES	SWR	43.69
		PUBLIC UTILITIES	SAN	10.60
		WARRANT TOTAL		350.00
75240	CHEMSEARCH	REPAIRS/MAINT-BUILDING	SAN	381.89
		WARRANT TOTAL		381.89
75241	CENTRAL WELDING SUPPLY	OPERATING SUPPLIES	SAN	21.64
		WARRANT TOTAL		21.64
75242	CITIES INSURANCE ASSOC.	INSURANCE & BONDS	JUD	2,505.41
		INSURANCE & BONDS	FIN	5,112.49
		INSURANCE	LGL	765.49
		INSURANCE	PLN	3,163.70
		INSURANCE	ENG	3,777.74
		INSURANCE	PD	36,774.12
		INSURANCE	FD	22,860.32
		INSURANCE	INSP	2,376.42
		INSURANCE	PK	16,787.47
		INSURANCE	CEM	4,353.01
		INSURANCE	ST	12,175.62
		INSURANCE	LIB	8,962.07
		INSURANCE	SWR	31,406.26
		INSURANCE	SAN	15,491.51
		PROFESSIONAL SERVICES	SWTR	3,827.12
		WARRANT TOTAL		170,338.75
75243	COLLINS OFFICE SUPPLY, INC	OFFICE/OPERATING SUPPLIES	PD	43.17
		WARRANT TOTAL		43.17
75244	CONCRETE NOR'WEST, INC.	MAINTENANCE OF LINES	SWR	256.52
		WARRANT TOTAL		256.52
75245	CRAWFORD GARAGE DOORS INC	REPAIR/MAINT-GARAGE	FD	313.78
		WARRANT TOTAL		313.78

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75246	CRYSTAL SPRINGS	OPERATING SUPPLIES	SWR	23.21
		WARRANT TOTAL		23.21
75247	DATA BASE RECORDS DESTRUCTION LLC	SUPPLIES	JUD	22.39
		SUPPLIES	FIN	22.39
		SUPPLIES/BOOKS	PLN	6.51
		SUPPLIES	ENG	6.51
		OFFICE/OPERATING SUPPLIES	PD	44.78
		OFF/OPER SUPPS & BOOKS	INSP	6.50
		WARRANT TOTAL		109.08
75248	DAVID EVANS & ASSOC INC	PROFESSIONAL SERVICES	ENG	1,443.09
		PROFESSIONAL SERVICES	ENG	1,486.41
		PROFESSIONAL SERVICES	ENG	335.51
		ENG-SR20 WIDE METCALF-TOWN	ART	58,683.30
		ENG-SR20/COOK REALIGNMENT	ART	3,400.00
		PROFESSIONAL SERVICES		214.79
		WARRANT TOTAL		65,563.10
75249	DEBT RECOVERY SPECIALISTS	UNAPPLIED CASH - SUSPENSE		975.15
		WARRANT TOTAL		975.15
75250	DIMENSIONAL COMM, INC.	PROFESSIONAL SERVICES	IT	513.96
		WARRANT TOTAL		513.96
75251	E & E LUMBER	MACHINERY & EQUIPMENT	PD	12.65
		MACHINERY & EQUIPMENT	PD	7.84
		REPAIRS/MT-RV PARK	PK	84.04
		OPERATING SUPPLIES	ST	11.51
		OPERATING SUPPLIES	SWR	22.71
		OPERATING SUPPLIES	SWR	6.89
		OPERATING SUPPLIES	SWR	22.31
		WARRANT TOTAL		167.95
75252	EMERGENCY REPORTING	PROFESSIONAL SERVICES	FD	483.65
		WARRANT TOTAL		483.65
75253	EDGE ANALYTICAL, INC.	PROFESSIONAL SERVICES	SWR	37.00
		WARRANT TOTAL		37.00
75254	ENTERPRISE OFFICE SYSTEMS	SUPPLIES	JUD	17.27
		OFFICE/OPERATING SUPPLIES	PD	91.50
		WARRANT TOTAL		108.77
75255	EMERGENCY MEDICAL PRODUCTS INC	OPERATING SUPPLIES	FD	228.75
		WARRANT TOTAL		228.75
75256	E.S.R.I INC.	MISC-DUES/SUBSCRIP/MEMSHIP	PLN	252.46
		DUES/SUBSCRIPTIONS	ENG	577.08
		MAINTENANCE CONTRACTS	SWR	1,009.86
		WARRANT TOTAL		1,839.40

CITY OF SEDRO-WOOLLEY
 SORTED TRANSACTION WARRANT REGISTER
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WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75257	FEDERAL CERTIFIED HEARING	MISC-DUES/SUBSCRIPTIONS	ST	20.00
		WARRANT TOTAL		20.00
75258	FRONTIER	TELEPHONE	JUD	19.68
		TELEPHONE	EXE	29.52
		TELEPHONE	FIN	29.52
		TELEPHONE	LGL	13.12
		TELEPHONE	IT	9.84
		TELEPHONE	PLN	9.84
		TELEPHONE	ENG	22.96
		TELEPHONE	PD	98.18
		TELEPHONE	FD	36.08
		TELEPHONE	FD	134.31
		TELEPHONE	INSP	9.84
		TELEPHONE	PK	6.56
		TELEPHONE	PK	83.09
		TELEPHONE	ST	3.28
		TELEPHONE	LIB	16.40
		TELEPHONE	SWR	26.24
		TELEPHONE	SAN	13.12
		WARRANT TOTAL		561.58
75259	H.B. JAEGER CO. LLC	MAINTENANCE OF LINES	SWR	85.10
		WARRANT TOTAL		85.10
75260	HACH COMPANY	OPERATING SUPPLIES	SWR	490.25
		WARRANT TOTAL		490.25
75261	HERMAN TRAFFIC ENGINEERING	CONST-SR20 WIDENING SK COUNTY		1,165.00
		WARRANT TOTAL		1,165.00
75262	HONEY BUCKET	UTILITIES-PORTABLE TOILETS	PK	75.00
		WARRANT TOTAL		75.00
75263	INDUSTRIAL MOWING & SPRAYING	REPAIR/MAINT-STREETS	ST	4,648.73
		WARRANT TOTAL		4,648.73
75264	INGRAM LIBRARY SERVICES	BOOKS, PERIOD, RECORDS	LIB	1,835.52
		BOOKS, PERIOD, RECORDS	LIB	17.99
		BOOKS, PERIOD, RECORDS	LIB	364.04
		BOOKS, PERIOD, RECORDS	LIB	38.35
		BOOKS, PERIOD, RECORDS	LIB	133.80
		BOOKS, PERIOD, RECORDS	LIB	378.51
		WARRANT TOTAL		2,768.21
75265	INT'L UNDERCOVER TRAINING	TUITION/REGISTRATION	PD	600.00
		WARRANT TOTAL		600.00
75266	C. JOHNSON CONSTRUCTION INC.	CONSTRUCITON-METCALF OVERLAY A		2,238.80
		CONST-TIB PAVING	AST	139,003.76
		IMPROVEMENT-METCALF LINE	SWR	5,631.81
		WARRANT TOTAL		146,874.37

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75267	LAKESIDE INDUSTRIES	REPAIR/MAINT-STREETS	ST	75.47
		WARRANT TOTAL		75.47
75268	LIBRARY CORPORATION (THE)	CATALOGUE SUBSCRIPTION	LIB	7,266.71
		CATALOGUE SUBSCRIPTION	LIB	7,420.81
		WARRANT TOTAL		14,687.52
75269	LIBRARY JOURNAL	BOOKS, PERIOD, RECORDS	LIB	157.99
		WARRANT TOTAL		157.99
75270	LOGGERS AND CONTRACTORS	MACHINERY & EQUIPMENT	PD	12.98
		OPERATING SUPPLIES	ST	180.48
		WARRANT TOTAL		193.46
75271	LITHTEX NW	SUPPLIES	JUD	90.89
		SUPPLIES	JUD	90.89
		SUPPLIES	JUD	93.23
		WARRANT TOTAL		275.01
75272	MATERIALS TEST &	CONST-TIB PAVING	AST	1,740.00
		WARRANT TOTAL		1,740.00
75273	MCCANN, WILLIAM R.	INDIGENT DEFEND CONTR	JUD	2,557.50
		WARRANT TOTAL		2,557.50
75274	MARTIN MARIETTA MATERIALS	REPAIR/MAINT-STREETS	ST	1,028.70
		CONST-TIB PAVING	AST	166.93
		CONST-TIB PAVING	AST	1,439.01
		WARRANT TOTAL		2,634.64
75275	MUNICIPAL EMERGENCY SERVICES, INC.	REPAIRS/MAINT-EQUIP	FD	263.04
		WARRANT TOTAL		263.04
75276	MID-AMERICAN RESEARCH CHEM.	OPERATING SUPPLIES	SAN	616.75
		OPERATING SUPPLIES	SAN	280.52
		WARRANT TOTAL		897.27
75277	MOORE, JACK R.	PROFESSIONAL SERVICES	INSP	113.51
		PROFESSIONAL SERVICES	INSP	137.17
		WARRANT TOTAL		250.68
75278	NORTH CASCADE FORD	REPAIR & MAINT - AUTO	PD	40.23
		REPAIR & MAINT - AUTO	PD	40.23
		WARRANT TOTAL		80.46
75279	OASYS	REPAIRS & MAINTENANCE	PD	70.54
		REPAIRS/MAINT-EQUIP	FD	70.53
		WARRANT TOTAL		141.07
75280	OFFICE DEPOT	SUPPLIES/BOOKS	PLN	4.85
		SUPPLIES	ENG	15.84
		SUPPLIES	ENG	28.12

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		OFF/OPER SUPPS & BOOKS	INSP	19.90
		WARRANT TOTAL		68.71
75281	OLIVER-HAMMER CLOTHES	SMALL TOOLS & MINOR EQUIP	PK	88.66
		WARRANT TOTAL		88.66
75282	ORCA PACIFIC INC.	OP SUPPLIES-CHEMICALS	SWR	1,535.36
		WARRANT TOTAL		1,535.36
75283	OSBORNE, ROBERT	PROFESSIONAL SERVICES	INSP	175.00
		WARRANT TOTAL		175.00
75284	PAT RIMMER TIRE CTR, INC	REPAIR & MAINT - AUTO	PD	697.48
		REPAIRS/MAINT-EQUIP	SAN	967.39
		REPAIRS/MAINT-EQUIP	SAN	229.24
		REPAIRS/MAINT-EQUIP	SAN	725.55
		REPAIRS/MAINT-EQUIP	SAN	27.79
		REPAIRS/MAINT-EQUIP	SAN	4,619.74
		REPAIR/MAINTENANCE	SAN	241.85
		WARRANT TOTAL		7,509.04
75285	PARTSMASTER	SMALL TOOLS & MINOR EQUIP	SWR	118.29
		WARRANT TOTAL		118.29
75286	PENN VALLEY PUMP CO., INC.	MAINT OF GENERAL EQUIP	SWR	2,562.85
		WARRANT TOTAL		2,562.85
75287	PETTY CASH-DEBRA PETERSON	SUPPLIES	LIB	37.94
		BOOKS, PERIOD, RECORDS	LIB	16.76
		WARRANT TOTAL		54.70
75288	PITNEY BOWES	OPERATING RENTALS/LEASES	FIN	47.34
		POSTAGE	PLN	47.33
		POSTAGE	ENG	47.33
		POSTAGE	PD	47.34
		POSTAGE	FD	47.33
		POSTAGE	INSP	47.33
		WARRANT TOTAL		284.00
75289	PUBLIC UTILITY DIS. NO.1	PUBLIC UTILITIES	PD	18.10
		PUBLIC UTILITIES	FD	173.82
		UTILITIES-RIVERFRONT	PK	249.22
		UTILITIES-COMMUNITY CTR	PK	92.72
		UTILITIES-SENIOR CENTER	PK	230.20
		UTILITIES-TRAIN	PK	18.10
		UTILITIES-HAMMER SQUARE	PK	74.16
		UTILITIES-BINGHAM & MEMORIAL P		49.04
		UTILITIES - OTHER	PK	61.60
		PUBLIC UTILITIES-CITY HALL	PK	189.71
		PUBLIC UTILITIES	CEM	87.18
		PUBLIC UTILITIES	ST	33.34
		PUBLIC UTILITIES	LIB	80.90

CITY OF SEDRO-WOLLEY
 SORTED TRANSACTION WARRANT REGISTER
 09/26/2012 (Printed 09/21/2012 08:51)

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		REPAIRS AND MAINT		36.20
		PUBLIC UTILITIES	SWR	199.72
		PUBLIC UTILITIES	SAN	39.62
		WARRANT TOTAL		1,633.63
75290	PUGET SOUND ENERGY	PUBLIC UTILITIES	ST	9,135.19
		WARRANT TOTAL		9,135.19
75291	PURCHASE POWER	POSTAGE	JUD	357.72
		POSTAGE	FIN	293.03
		POSTAGE	LGL	16.76
		POSTAGE	PLN	15.74
		POSTAGE	ENG	118.77
		POSTAGE	PD	157.26
		POSTAGE	FD	3.39
		POSTAGE	FD	22.31
		POSTAGE	INSP	14.82
		POSTAGE	CEM	17.46
		POSTAGE	SWR	118.78
		POSTAGE	SAN	54.82
		OPERATING SUPPLIES	SWTR	9.14
		WARRANT TOTAL		1,200.00
75292	SCHOOL LIBRARY JOURNAL	BOOKS, PERIOD, RECORDS	LIB	136.99
		WARRANT TOTAL		136.99
75293	SCIENTIFIC SUPPLY	OPERATING SUPPLIES	SWR	197.86
		OPERATING SUPPLIES	SWR	183.53
		WARRANT TOTAL		381.39
75294	SEDRO-WOLLEY AUTO PARTS	REPAIR/MAINT COMM CTR	PK	15.23
		SMALL TOOLS & MINOR EQUIP	PK	81.82
		REPAIR/MAINT-OFFICE EQUIP	PK	18.51
		OPERATING SUPPLIES	CEM	18.92
		REPAIR/MAINTENANCE-EQUIP	ST	41.06
		SMALL TOOLS & MINOR EQUIP	SAN	36.79
		SMALL TOOLS & MINOR EQUIP	SAN	202.50
		WARRANT TOTAL		341.25
75295	SEDRO-WOLLEY CHAMBER OF	CHAMBER OF COMMERCE	HOT	2,790.90
		WARRANT TOTAL		2,790.90
75296	SEDRO-WOLLEY VETERINARY CARE	VETERINARY SERVICES	PD	45.49
		WARRANT TOTAL		45.49
75297	SKAGIT CO. PUBLIC WORKS	SOLID WASTE DISPOSAL	SAN	47,729.44
		WARRANT TOTAL		47,729.44
75298	SKAGIT COUNTY SHERIFF	PRISONERS	PD	9,386.64
		WARRANT TOTAL		9,386.64
75299	SKAGIT FARMERS SUPPLY	SMALL TOOLS/MINOR EQUIP	ST	46.50

WARRANT	VENDOR NAME	DESCRIPTION	AMOUNT
		WARRANT TOTAL	46.50
75300	SKAGIT REGIONAL CLINICS	PROF SERVICE-MEDICAL EXAMS FD	215.00
		WARRANT TOTAL	215.00
75301	SKAGIT SOILS	RECYCLING FEE - YARD WASTE SAN	500.15
		WARRANT TOTAL	500.15
75302	SKAGIT PUBLISHING	LEGAL PUBLICATIONS LGS	45.00
		LEGAL PUBLICATIONS LGS	55.00
		ADVERTISING PLN	105.00
		ADVERTISING PLN	75.00
		WARRANT TOTAL	280.00
75303	STAPLES BUSINESS ADVANTAGE	OFFICE/OPERATING SUPPLIES PD	120.74
		OPERATING SUPPLIES SWR	268.46
		WARRANT TOTAL	389.20
75304	SKAGIT REGIONAL CLINICS PHARMACY	RETIRED MEDICAL PD	77.00
		RETIRED MEDICAL PD	73.40
		RETIRED MEDICAL PD	48.40
		RETIRED MEDICAL PD	46.87
		RETIRED MEDICAL PD	27.21
		WARRANT TOTAL	272.88
75305	STILES & STILES	MUNICIPAL COURT JUDGE JUD	2,728.00
		WARRANT TOTAL	2,728.00
75306	STORIE, WILLIAM	UNIFORMS/ACCESSORIES PD	159.99
		WARRANT TOTAL	159.99
75307	TIGERDIRECT INC.	NETWORK HARDWARE IT	690.63
		WARRANT TOTAL	690.63
75308	TRUE VALUE	MACHINERY & EQUIPMENT PD	10.81
		MACHINERY & EQUIPMENT PD	6.48
		OPERATING SUPPLIES FD	31.35
		OPERATING SUP - CITY HALL PK	11.84
		SMALL TOOLS & MINOR EQUIP PK	11.89
		SMALL TOOLS & MINOR EQUIP PK	45.91
		REPAIRS/MT-RIVERFRONT PK	28.12
		REPAIRS/MT-RIVERFRONT PK	22.69
		REPAIRS/MT-RIVERFRONT PK	2.69
		REPAIRS/MT-RIVERFRONT PK	.16
		REPAIRS/MT-RIVERFRONT PK	15.62
		REPAIRS/MT-RV PARK PK	6.43
		REPAIRS/MT-PARKS SHOP PK	9.19
		REPAIRS/MT-PARKS SHOP PK	7.12
		REPAIR/MAINT-MUSEUM PK	14.46
		REPAIR/MAINTENANCE-EQUIP ST	17.30
		CAP OUTLAY-GRANT FOR HHS PKR	138.06
		OPERATING SUPPLIES SWR	43.26

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
		OPERATING SUPPLIES	SWR	4.96
		OPERATING SUPPLIES	SWR	1.28
		OPERATING SUPPLIES	SWR	57.13
		OPERATING SUPPLIES	SWR	7.55
		OPERATING SUPPLIES	SWR	18.15
		MT VIEW PS INS REPLACE	SWR	20.31
		REPAIRS/MAINT-BUILDING	SAN	10.88
		REPAIRS/MAINT-BUILDING	SAN	8.78
		OPERATING SUPPLIES	SAN	26.41
		OPERATING SUPPLIES	SAN	32.40
		SMALL TOOLS & MINOR EQUIP	SAN	27.04
		WARRANT TOTAL		625.41
75309	TUCKER, WILLIAM L.	MACHINERY & EQUIPMENT	PD	8.63
		WARRANT TOTAL		8.63
75310	US BANK -- PURCHASE CARDS	MEALS/TRAVEL	EXE	353.24
		EMPLOYEE WELLNESS	EXE	6.49
		MISC-TUITION/REGISTRATION	FIN	50.00
		TRAVEL	LGL	183.60
		NETWORK HARDWARE	IT	513.33
		PRINTING/PUBLICATIONS	PD	24.99
		PRINTING/PUBLICATIONS	PD	32.79
		TRAVEL	PD	140.55
		MACHINERY & EQUIPMENT	PD	47.25
		MACHINERY & EQUIPMENT	PD	44.94
		COMMUNITY GRANT PROGRAMS	LIB	484.64
		COMMUNITY GRANT PROGRAMS	LIB	2,009.79
		BOOKS, PERIOD, RECORDS	LIB	33.50
		BOOKS, PERIOD, RECORDS	LIB	74.21
		EQUIPMENT		656.17
		PROFESSIONAL SERVICES	SWR	85.00
		MISC-TUITION/REGISTRATION	SWR	150.00
		OPERATING SUPPLIES	SAN	47.52
		SUSPENSE		1,437.45
		WARRANT TOTAL		6,375.46
75311	UTIL UNDERGROUND LOC CTR	OPERATING SUPPLIES	SWR	72.50
		WARRANT TOTAL		72.50
75312	VALLEY AUTO SUPPLY	REPAIR/MAINTENANCE-EQUIP	ST	30.29
		REPAIR/MAINTENANCE-EQUIP	ST	3.56
		REPAIRS/MAINT-EQUIP	SAN	35.01
		WARRANT TOTAL		68.86
75313	VALLEY VIEW MHC	REPAIRS AND MAINT		388.87
		WARRANT TOTAL		388.87
75314	VOYAGER FLEET SYSTEMS INC.	AUTO FUEL/DIESEL	FD	34.80
		AUTO FUEL/DIESEL	PK	39.68
		AUTO FUEL/DIESEL	ST	162.53
		WARRANT TOTAL		237.01

CITY OF SEDRO-WOLLEY
 SORTED TRANSACTION WARRANT REGISTER
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WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75315	VISION FORMS, LLC	POSTAGE	SWR	1,524.96
		POSTAGE	SAN	727.29
		OPERATING SUPPLIES	SWTR	93.85
		WARRANT TOTAL		2,346.10
75316	WALLACE & ASSOCIATES	INSURANCE & BONDS	JUD	36.09
		INSURANCE & BONDS	FIN	60.73
		INSURANCE	LGL	10.88
		INSURANCE	PLN	75.62
		INSURANCE	ENG	61.30
		INSURANCE	PD	994.02
		INSURANCE	FD	448.02
		INSURANCE	INSP	28.64
		INSURANCE	PK	207.97
		INSURANCE	CEM	50.99
		INSURANCE	ST	130.63
		INSURANCE	LIB	250.94
		INSURANCE	SWR	610.79
		INSURANCE	SAN	354.06
		PROFESSIONAL SERVICES	SWTR	179.32
		WARRANT TOTAL		3,500.00
75317	WA ST DEPT OF PROF LICEN	INTERGOV SVC-GUN PERMITS	PD	96.00
		INTERGOV SVC-GUN PERMITS	PD	72.00
		WARRANT TOTAL		168.00
75318	WA STATE DEPT OF REVENUE	SUPPLIES	FIN	16.65
		SMALL TOOLS/MINOR EQUIP	IT	4.50
		SUPPLIES/BOOKS	PLN	2.68
		SUPPLIES	ENG	4.18
		PRINTING/PUBLICATIONS	PD	2.68
		AMMUNITION	PD	65.60
		OPERATING SUPPLIES	FD	12.23
		TAXES AND ASSESSMENTS	PK	113.62
		TAXES AND ASSESSMENTS	CEM	232.95
		MISC-DUES/SUBSCRIPTIONS	ST	41.00
		TAXES AND ASSESSMENTS	LIB	9.67
		EQUIPMENT		416.89
		MAINTENANCE OF LINES	SWR	94.30
		TAXES AND ASSESSMENTS	SWR	5,424.79
		OPERATING SUPPLIES	SAN	28.03
		TAXES & ASSESSMENTS	SAN	5,175.86
		WARRANT TOTAL		11,645.63
75319	WASHINGTON STATE PATROL	INTERGOV SVC-GUN PERMITS	PD	165.00
		WARRANT TOTAL		165.00
75320	WA ST DEPT OF ENTERPRISE SVC	DUES/SUBSCRIPTIONS	ENG	971.05
		WARRANT TOTAL		971.05
75321	WASTE MANAGEMENT OF SKGT	RECYCLING FEE - HOUSEHOLD	SAN	8,016.05
		WARRANT TOTAL		8,016.05

WARRANT	VENDOR NAME	DESCRIPTION		AMOUNT
75322	WEST PAYMENT CTR	WESTLAW SERVICES	LGL	230.14
		WARRANT TOTAL		230.14
75323	WESTERN ELECTRICAL SERVICES, INC.	MAINTENANCE CONTRACTS	SWR	6,443.41
		WARRANT TOTAL		6,443.41
75324	WOOD'S LOGGING SUPPLY INC	REPAIR/MAINT-OFFICE EQUIP	PK	34.41
		REPAIR/MAINT-EQUIP & BLDG	CEM	25.97
		REPAIR/MAINT-EQUIP & BLDG	CEM	17.08
		REPAIR/MAINTENANCE-EQUIP	ST	61.09
		MAINTENANCE OF LINES	SWR	97.40
		MAINTENANCE OF LINES	SWR	59.38
		WARRANT TOTAL		295.33
75325	INSPIRE CHURCH	BUILDING REVIEW FEES		172.41
		WARRANT TOTAL		172.41
75326	HOWELL, JAMES R. & JENNIFER F.	MISC-FILING FEES/LIEN EXP	SWR	118.00
		MISC-FILING FEES/LIEN EXP	SAN	118.00
		WARRANT TOTAL		236.00
		RUN TOTAL		622,593.71

FUND	TITLE	AMOUNT
001	CURRENT EXPENSE FUND	123,525.53
101	PARK FUND	21,149.71
102	CEMETERY FUND	4,803.56
103	STREET FUND	28,432.09
104	ARTERIAL STREET FUND	207,836.80
105	LIBRARY FUND	29,738.98
107	PARKS RESERVE FUND	138.06
108	STADIUM FUND	2,790.90
109	SPECIAL INVESTIGATION FUND	1,498.13
311	PARKS IMPACT FEE RESERVE FUND	214.79
401	SEWER FUND	108,204.46
412	SOLID WASTE FUND	87,738.67
425	STORMWATER	4,109.43
621	SUSPENSE FUND	2,412.60
TOTAL		622,593.71

DEPARTMENT	AMOUNT
001 000 000	172.41
001 000 011	100.00
001 000 012	8,519.07
001 000 013	389.25
001 000 014	5,632.15
001 000 015	3,719.99
001 000 017	1,752.03
001 000 018	591.00
001 000 019	3,758.73
001 000 020	8,895.89
001 000 021	60,379.55
001 000 022	26,686.33
001 000 024	2,929.13
FUND CURRENT EXPENSE FUND	123,525.53
101 000 076	21,149.71
FUND PARK FUND	21,149.71
102 000 036	4,803.56
FUND CEMETERY FUND	4,803.56
103 000 042	28,432.09
FUND STREET FUND	28,432.09
104 000 042	207,836.80
FUND ARTERIAL STREET FUND	207,836.80
105 000 072	29,738.98
FUND LIBRARY FUND	29,738.98
107 000 076	138.06
FUND PARKS RESERVE FUND	138.06
108 000 019	2,790.90
FUND STADIUM FUND	2,790.90
109 000 021	1,498.13
FUND SPECIAL INVESTIGATION FUND	1,498.13
311 000 000	214.79
FUND PARKS IMPACT FEE RESERVE FUND	214.79
401 000 035	108,204.46
FUND SEWER FUND	108,204.46
412 000 037	87,738.67
FUND SOLID WASTE FUND	87,738.67
425 000 039	4,109.43
FUND STORMWATER	4,109.43
621 000 000	2,412.60

CITY OF SEDRO-WOLLEY
SORTED TRANSACTION WARRANT REGISTER
09/26/2012 (Printed 09/21/2012 08:51)

VENDOR	VENDOR NAME	INVOICE NUMBER	REFERENCE	INVOICE DATE	DUE DATE	COMMENTS
	FUND SUSPENSE FUND		2,412.60			
	TOTAL		622,593.71			

SEP 26 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 3d

CITY OF Sedro-Woolley
PROFESSIONAL SERVICES AGREEMENT
Insurance Broker

THIS AGREEMENT made and entered into on this 1st day of September, 2012, by and between the **CITY OF Sedro-Woolley**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City," and Norm Wallace Agency Inc., Dba: Wallace & Associates, hereinafter referred to as the "Contractor."

Contractor Business: Wallace & Associates
Contractor Address: P.O. Box 405 Burlington, WA 98233
Contractor Phone: (360) 755-0631
Contractor Fax: (360) 755-9389
Contact Name Glenn Ash
Contractor e-mail: glenn@wallace-insurance.com
Federal Employee ID No.: 91-0720427

Authorized City Representative for this contract:

WHEREAS, the City desires to engage the Contractor to provide Risk Management, Claim, and Insurance Brokerage Services for the City of Sedro-Woolley; and

WHEREAS, Contractor represented, and by entering into this Agreement now represents, that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner; and

WHEREAS, Sedro-Woolley does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a Contractor to provide the necessary services; and

WHEREAS, Contractor represents that it is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish the services to Sedro-Woolley; and

WHEREAS, funds for this purpose are authorized through Sedro-Woolley's budget appropriation;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. **Engagement of Contractor.** The City hereby agrees to engage the Contractor, and the Contractor hereby agrees, to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A – Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City, the Contractor shall not perform any services that are in addition to, or beyond the scope of, the Work. If the Contractor's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of the Agreement, then the Contractor expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City and Contractor.

2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City for all purposes, whether the project

created by Contractor prior to engagement, or not created by Contractor for its performance of this Agreement.

3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by August 31, 2013.

4. **Compensation.**

A. The Contractor shall be paid by the City for Work and services which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Contractor shall be paid such amounts and in such manner as described in Exhibit B.

C. Contractor may receive payment as reimbursement for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses either listed in Exhibit C or such expenses as are approved for reimbursement by the City in writing prior to the expense being incurred. If Exhibit C is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City. An expense shall not be reimbursed if: (1) the expense is not identified in Exhibit C; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in Exhibit C; or (3) the expense was not approved in writing by an authorized City representative prior to the Contractor incurring the expense.

D. Total compensation, including all services and expenses, shall not exceed a maximum of Thirty-Five Hundred Dollars (\$3,500).

5. **Method of Payment.**

A. To obtain payment, the Contractor shall (a) file its request for payment: (b) to the extent reimbursement of Eligible Expenses is sought, submit itemization of such expenses and, if requested by the City, copies of receipts and invoices; and (c) comply with all applicable provisions of this Agreement.

B. All requests for payment should be sent to

City of Sedro-Woolley
Attn: Eron Berg-City Supervisor
325 Metcalf Street
Sedro-Woolley, WA 98284

6. **Submission of Reports and Other Documents.** The Contractor shall submit all reports and other documents specified in Exhibit A. Contractor is specifically required to submit all information required in this Agreement not later than February 15 of each year. Said information shall be subject to review by the City, and if found to be unacceptable, Contractor shall correct and deliver to the City any deficient Work at Contractor's expense with all practical dispatch. Contractor shall abide by the City's determinations concerning acceptability of Work.

7. **Termination of Contract.** City reserves the right to terminate this Agreement at any time by sending written notice of termination to Contractor ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (60) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Contractor (whether by fax, mail, delivery or other method reasonably calculated to be received by Contractor in a reasonably prompt manner) or three calendar days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor's material breach, the Contractor shall be paid in full. The Notice shall be sent by the United States Mail to Contractor's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, the Notice may also be sent by any other method reasonably believed to provide Contractor actual notice in a timely manner, such as fax. The City does not by this section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement.

8. **Changes.** The City may, from time to time, unilaterally change the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the scope of work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by the authorized City representative for this contract, (b) be explicitly identified as a Change Order and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Contractor shall not sublet or assign any of the Work without the express, prior written consent of the City.

10. **Indemnification.** Except as otherwise provided in this paragraph, the Contractor hereby agrees to defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor (or its employees, agents, representatives subcontractors/subconsultants) relating to this Agreement. The Contractor shall not indemnify the City for Claims caused solely by the negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which the Contractor is to indemnify the City is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City, then the Contractor's duty to indemnify shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City, the Contractor specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Contractor recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Contractor employs or engages subconsultants or subcontractors, then Contractor shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph.

11. **Insurance.**

A. Contractor shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M.Best Company and which are acceptable to the City.

1. **Workers' Compensation Insurance** as required by Washington law and **Employer's Liability Insurance** with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Contractor shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Contractor covers such employees.

2. **Commercial General Liability Insurance** on an occurrence basis in an amount not less than \$2,000,000 per occurrence and at least \$4,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. **Business Automobile Liability Insurance** in an amount not less than \$2,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. **Professional Errors and Omissions Insurance** in an amount not less than \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate. Such coverage may be written on a claims made basis. If both parties agree that the Work does not warrant Contractor providing

Professional Errors and Omissions Insurance, this paragraph may be stricken and initialed by both parties.

B. The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Agreement.

C. Upon written request to the City, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Contractor performing any Work, Contractor shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Sedro-Woolley, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.

E. If the policy listed in paragraph 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims made policy form shall not be less than 36 months following expiration of the policy. (This paragraph shall not apply if paragraph 11.A.4. above is stricken.)

F. Contractor certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington which requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Contractor shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

G. In case of the breach of any provision of this section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Contractor, such types of insurance in the name of the Contractor, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement or may demand Contractor to promptly reimburse the City for such cost.

12. Independent Contractor.

A. It is further agreed by and between the parties that because this Agreement shall not constitute nor create an employer-employee relationship, and since the Contractor is an independent contractor, Contractor shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions, including, but not limited to, industrial insurance (Workers' Compensation), and that the Contractor agrees to indemnify, defend and hold the City harmless from any claims, valid or otherwise, made to the City, because of these obligations.

B. Any and all employees of the Contractor, while engaged in the performance of any Work, shall be considered employees of only the Contractor and not employees of the City. The Contractor shall be solely liable for any and all claims that may or might arise under the Workers' Compensation Act on behalf of said employees or Contractor, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the Work.

C. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as

applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

D. Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the Work and Contractor shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

13. **Employment.** The Contractor warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, the Contractor shall make available to the City for the City's examination all of the Contractor's records and documents with respect to all matters covered by this Agreement and, furthermore, the Contractor will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement..

15. **State of Washington Requirement.** Contractor agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

16. **Compliance with Federal, State and Local Laws.** Contractor shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

17. **Waiver.** Any waiver by the Contractor or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

18. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

19. **Modification of Agreement.** This Agreement may be modified as provided in ¶8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Contractor.

20. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

21. **Notices.**

A. Notices to the City of Sedro-Woolley shall be sent to the following address:

City of Sedro-Woolley
Attn: Eron Berg, City Supervisor, 325 Metcalf Street
Sedro-Woolley, WA 98284

B. Notices to the Contractor shall be sent to the following address:

Attn: Glenn Ash
P.O. Box 405
Burlington, WA 98233

22. **Venue.** It is agreed that venue for any lawsuit arising out of this Agreement shall be Skagit County.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the date first above written

	<i>CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.</i>
CITY OF Sedro-Woolley WASHINGTON	<i>Corporation</i> _____ Norm Wallace Agency, Inc. dba Wallace & Associates
By: _____ Mike Anderson, Mayor	By:  Typed/Printed Name: <u>ERIC DYKSTRA</u> Its <u>VICE PRESIDENT</u>
Date: _____	Date: <u>9-6-12</u>
ATTEST:	
_____ Eron Berg, City Supervisor Date: _____	
APPROVED AS TO FORM:	
_____ Eron Berg, City Attorney Date: _____	

EXHIBIT A
SCOPE OF WORK

Exhibit A
Scope of Work

Assist the City with a quality Risk Management & Loss Control Program

- Advise the City on Risk Management and Loss Control issues as they arise. Work with the insurance pool personnel on Risk Management issues which need carrier input.
- Serve as a coordinator between insurance carrier, risk managers and the City.

Market the City's Insurance needs

- Assist with completion of documents necessary for the procuring of the City's insurance coverage.
- Solicit quotes from insurance carriers, which could include conventional insurance companies and risk sharing groups.
- Review available quotes and coverage's, and advise the City on the options available along with the options for short and long term implications.
- Analyze various options for insuring deductibles, self-insured retentions, and "no-insurance".
- Continually advise the City as to the state of the insurance market place or risk sharing groups and recommend insurance programs on at least an annual basis.
- Maintain all schedules and values for the City's properties along with assisting the City with establishing values for each. The schedules shall include Real and Personal Property, Vehicles, Mobile Equipment, and other Inland Marine Schedules as needed.

Assist the City with Claims Handling

- Submit completed claim reporting form for each claim to the risk management administration.
- On all first party claims, assist with negotiations on behalf of the City with the adjuster assigned by the insurance carrier. Advise the City as to best possible settlement the City should expect to receive from the insurance carrier. Negotiate based on the plan of settlement agreed to by the City.
- If any claim generates any need for a claims review committee the Broker shall, at the City's request, serve on such a committee as an advisor to the City.
- In the event of third party claims, Broker will, at the City's request, advise the City from an insurance point of view and serve as a coordinator with claims adjusters, attorneys, and insurance carrier claims representatives.

Miscellaneous Services

- Obtain Certificates of Insurance.
- Review contracts and lease agreements regarding insurance requirements.
- Review all coverage forms and advise the City on coverage interpretations.
- Review any building plans for new or remodel construction and advise the City of changes needed to bring about the best possible insurance rate while also minimizing potential loss.
- Advise the City in coverage determinations.
- Perform any additional reasonable, related services and/or duties as may be needed during the term of this contract.

EXHIBIT B
COMPENSATION

Exhibit B

Compensation:

The City shall pay the Contractor a fixed sum of Thirty-Five Hundred Dollars a year (\$3,500.00).

EXHIBIT C
REIMBURSABLE EXPENSES

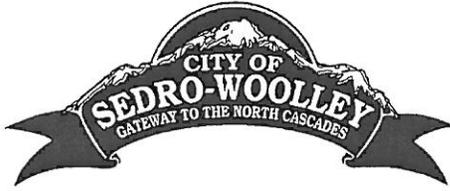
Exhibit C

Eligible Expenses:

No reimbursable expenses are allowed.

CITY COUNCIL AGENDA
REGULAR MEETING

SEP 26 2012



7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 3e

CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-9922
Fax (360) 855-9923

Eron M. Berg
City Supervisor/City Attorney

MEMO TO: City Council
FROM: Eron Berg
RE: Skate Park
FOR MEETING: September 26, 2012

ISSUE: Should the Council adopt the attached ordinances including the Skate Park as a no smoking park and establishing rules for the use of the Skate Park?

BACKGROUND: This item was discussed at the last meeting and final action is requested tonight.

Two ordinances are attached which add the following provisions to the code:

1. Includes the Skate Park in SWMC 9.45.020 as a non-smoking park.
2. Prohibits foreign objects from the Skate Park.
3. Prohibits bicycles from the Skate Park.
4. Establishes the closing time for the Skate Park as 8:00 P.M. from September 16th to May 31st and 10:00 P.M. from June 1st to September 15th.

The Skate Park is nearing completion and with the establishment of these rules and regulations, the Rotary will be able to order needed signs to post in advance of opening day.

RECOMMENDATIONS:

Motion to adopt Ordinance _____-12, an ordinance prohibiting smoking at the Skate Park.

Motion to adopt Ordinance _____-12 an ordinance establishing rules for the Skate Park.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY,
WASHINGTON, AMENDING SWMC 9.45.020 TO DESIGNATE THE SKATE
PARK AS A NO SMOKING PARK**

WHEREAS, the City is an optional municipal code city, organized under Title 35A RCW, with all powers possible for a city or town to have under the Constitution and laws of the State; and

WHEREAS, the City Council finds that smoking in certain public parks has resulted in increased litter in the parks and parks facilities and damage to the grounds and facilities; and

WHEREAS, the City Council finds that medical and scientific studies generally indicate that exposure to smoke, even from a second or third hand sources, can have adverse health consequences; and

WHEREAS, citizens have complained and requested that certain parks and play areas be designated as no smoking, particularly to protect children from tobacco smoke; and

WHEREAS, the City Council adopted SWMC 9.45 and no intends to amend this chapter to add the Skate Park as a designated no smoking park; and

WHEREAS, the City Council finds that it is in the interests of the public health, safety and welfare to adopt the policies set forth below, now therefore;

THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY,
WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Section 9.45.020 of the Sedro-Woolley Municipal Code is hereby amended to read as follows:

9.45.020 Unlawful acts designated.

It is unlawful for any person to smoke or light cigars, cigarettes, tobacco or other smoking material within Memorial Park, including the walkways and parking lots around the Library, Senior Center, Community Center and shelter, Hammer Heritage Square, the Skate Park and within twenty five (25) feet of any city owned playground. The parks department shall post signs in appropriate locations notifying the public of these restrictions.

SECTION 2. If any of the provisions of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected, and to this end, the provisions of this chapter are declared to be severable.

SECTION 3. This ordinance shall be effective five (5) days after passage and publication as provided by law.

PASSED by majority vote of the members of the Sedro-Woolley City Council this ____ day of _____, 2012, and signed in authentication of its passage this ____ day of _____, 2012.

Mike Anderson, Mayor

Attest:

Patsy Nelson, Finance Director

Approved as to form:

Eron Berg, City Attorney

First Reading by City Council: September 26, 2012
Second Reading by City Council: n/a
Approval by City Council:
Published:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON, ENACTING SPECIFIC RULES AND REGULATIONS FOR THE USE OF THE SKATE PARK

WHEREAS, the City is an optional municipal code city, organized under Title 35A RCW, with all powers possible for a city or town to have under the Constitution and laws of the State; and

WHEREAS, the Sedro-Woolley Rotary is nearing completion of a new Skate Park for the City with the opening scheduled to occur in early October; and

WHEREAS, the City Council finds that additional rules and regulations are necessary to allow for the free and fair use of the new park facility; and

WHEREAS, the City Council finds that it is in the interests of the public health, safety and welfare to adopt the policies set forth below, now therefore;

THE CITY COUNCIL OF THE CITY OF SEDRO-WOOLLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Sedro-Woolley Municipal Code section 12.36.010 is amended to read as follows:

12.36.010 City parks and facilities—General regulations.

The following regulations shall apply to the use of city parks and facilities (“premises”):

- A. No person shall possess, display or consume any alcoholic beverages or intoxicating liquors while in any city park unless with a valid liquor permit.
- B. No person shall throw, drop, deposit, discard or otherwise dispose of litter in any city park except in a designated litter container.
- C. No person shall permit an animal in a city park except when contained by a leash, and animal waste must be picked up and properly disposed; provided, that the leash requirement in this subsection does not apply to dogs within the fenced perimeter of the S-W Bark Park when the dog is attended and under the control of the owner or of an authorized person over twelve years of age.

The mayor is authorized to promulgate rules and regulations for the use of the S-W Bark Park; the same shall be posted at the S-W Bark Park.

D. No person shall enter the Skagit River from Riverfront Park, except when launching boats from the boat ramp, nor otherwise cross over the fence at the Riverfront Park.

E. No person shall remove or relocate any tables, garbage cans, or other equipment in any city park.

F. No person shall operate or park a vehicle in any city park except in designated traffic and parking areas, and in conformance with posted traffic regulations.

G. No person shall use city park facilities without prior payment when such payment is required by ordinance.

H. No person shall commit any felony while on the premises.

I. No person shall commit any violation of the Sedro-Woolley Municipal Code while on the premises.

J. All persons shall comply with any departmental rule or regulation for use of the premises.

K. No person shall use profane and/or inappropriate language that is likely to offend, intimidate, harass, discriminate against or inflame others.

L. No person shall conduct himself/herself in a manner that unreasonably interferes with the use and enjoyment of the premises by other members of the public or the work environment of city staff.

M. No person shall either cause damage to or act in a manner likely to cause damage to city property or the property of any other person.

N. Foreign objects, including but not limited to ramps and rails, are not allowed in the Skate Park and will be removed and discarded without notice.

O. Bicycles are prohibited in the Skate Park at all times and are subject to impound for a period of time not to exceed thirty days.

P. The Skate Park is closed to any and all users from 10:00 P.M. to 8:00 A.M. from June 1st to September 15th. From September 16th to May 31st, the Skate Park is closed from 8:00 P.M. to 8:00 A.M. There is no trespassing allowing during these hours.

SECTION 2. If any of the provisions of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected, and to this end, the provisions of this chapter are declared to be severable.

SECTION 3. This ordinance shall be effective five (5) days after passage and publication as provided by law.

PASSED by majority vote of the members of the Sedro-Woolley City Council this ____ day of _____, 2012, and signed in authentication of its passage this ____ day of _____, 2012.

Mike Anderson, Mayor

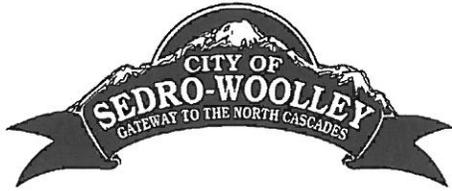
Attest:

Patsy Nelson, Finance Director

Approved as to form:

Eron Berg, City Attorney

First Reading by City Council: September 26, 2012
Second Reading by City Council: n/a
Approval by City Council:
Published:



CITY COUNCIL AGENDA
REGULAR MEETING

SEP 26 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 35

CITY OF SEDRO-WOOLLEY
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

Mark A. Freiberger, PE
Director of Public Works

MEMO TO: City Council and Mayor Mike Anderson
FROM: Mark A. Freiberger, PE
RE: **Amendment – 2012-PW-03 Aaction Excavating, Inc. On-Call Construction Services Contract Total and Task Order #3 Total**
DATE: September 18, 2012 (for Council action September 26, 2012)

ISSUE

Should Mayor Anderson execute the attached 2012-PW-03 On-Call Construction Services Contract and Task Order #3 Amendments for sanitary sewer installation and related work with Aaction Excavating Inc. of Bow, WA in the amount of \$56,202.93 (Contract total) and \$48,815.67 (Task Order #3 Total)? Should council grant final acceptance of the completed contract?

BACKGROUND/DISCUSSION

On February 15, 2012, the City awarded On-Call Construction Services Contract 2012-PW-03 to Aaction Excavating Inc. of Bow after a competitive bid process. Task Order #3 for sewer main line and services replacement in a portion of Greenstreet Boulevard was issued to Aaction Excavating on August 24, 2012 with a not to exceed total of \$27,600.

As work progressed on Task Order #3 the ground conditions were such that the trench walls would collapse during excavation essentially doubling the width of the trenchline. This required more gravel backfill material and more time to place and compact the backfill material. This condition occurred in the trench for most of the excavation. In addition, one of the replaced services did not follow the expected path and a portion of the initial excavation was abandoned for a new more direct route.

The unexpected ground conditions and errant line locations required more time and materials than originally estimated and subsequently resulted in a final cost for the Task Order of \$48,815.67. This total does not include pavement restoration work which was removed from the Task Order. Repaving will be completed separately.

Aaction Excavating also performed two Task Orders for improvements related to Memorial Park totaling \$7,387.26.

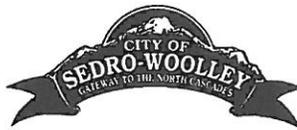
FINANCE

The work is funded as follows:

101.000.076.596.76.63.14 Enhancement Project – Memorial Park Task Order #1,	\$5,795.08
101.000.076.596.76.63.14 Enhancement Project – Memorial Park Task Order #2,	\$1,592.18
401.000.035.596.35.63.00 Other Improvements – Task Order #3	\$23,815.67
401.000.035.535.50.48.10 Maintenance of Lines – Task Order #3	\$25,000.00

MOTION:

Move to authorize Mayor Anderson to execute the attached 2012-PW-03 On-Call Construction Services Contract and Task Order #3 Amendments for sanitary sewer installation and related work with Aaction Excavating Inc. of Bow, WA in the amount of \$56,202.93 (Contract total) and \$48,815.67 (Task Order #3 Total). Move final acceptance of the completed contract.



AMENDMENT NO. 1

To the PUBLIC WORKS AGREEMENT No. 2012-PW-03
Dated September 18, 2012
Between The City of Sedro-Woolley, Washington
And Aaction Excavating Inc.

This Amendment revises the above contract as follows:

Section III. PAYMENT is revised as follows:

- A. The maximum payable hereunder is **\$56,202.93**
- B. Individual Task Orders will specify the method of compensation, which will be on a Time & Expense Not to Exceed basis per rates established in **Exhibit A**, Labor and Equipment Rate Sheet, or agreed Lump Sum Price.
- C. The Contractor will be paid on the basis of invoices for work satisfactorily completed. Invoices are submitted to the Project Manager for approval prior to payment. No final payment shall be made until the project is accepted by the City.
- D. Prior to any payment hereunder, contractor is responsible for complying with applicable Department of Labor and Industries and Department of Revenue requirements and procedures. (General conditions section 1-07.9. If Federal Funds, Davis-Bacon Act and U. S. Department of Labor requirements.) This includes obtaining and timely filing of Intent to Pay Prevailing Wages, Affidavit of Wages paid, Notice of Completion of Public Works Contract, and any other required documents.
- E. Retainage will be administered in accordance with RCW 60.28.010(1).

All other terms and conditions remain as per the original agreement.

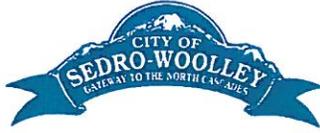
DATED this _____ day of September, 2012.

CITY OF SEDRO-WOOLLEY
A Washington municipal corporation

By: _____
Mayor

CONTRACTOR:
Aaction Excavating Inc.

By: *Shayne Paak*



Public Works Agreement 2012-PW-03 Task Order 3 - AMENDED

Task Title: **Sanitary Sewer Main and Service Replacement in Greenstreet Blvd.**

Date Issued: **September 18, 2012**

Contractor Name: **Aaction Excavating Inc.**

Contractor Contact: **Ian Pocock, Owner**

Phone: **360-661-6271**

City Contact: **Debra Allen, Wastewater Superintendent** Phone: **360-661-6448**

BARS No: 401.000.035.596.35.63.00 Other Improvements

All work under this Task Order is to be constructed as per the terms and conditions of Public Works Agreement 2012-PW-03 - On-Call Construction Services Agreement dated February 15, 2012 as modified herein.

SCOPE OF WORK

Contractor will perform work in accordance with City of Sedro-Woolley Public Works Department Standards and the current edition of the State of Washington Department of Transportation Standard Specifications for Road, Bridge and Municipal Construction.

Replace the existing concrete sanitary sewer line in Greenstreet Blvd north of Dean Drive. Install approximately 427 156LF new 8" PVC sewer pipe from SSHM C-11 north and install new Type 1, 48" diameter manhole as shown in the Plans. Replace 4 existing side sewers as indicated and install cleanout assemblies at the right of way, or just behind the sidewalk, at the end of each one. The main is approximately 7' deep. Groundwater may be encountered but is not expected. Backfill all trenches and around structures with gravel base. All excavated material to be disposed of off site. Repair trench lines in the roadway with HMA as noted in the Plans. Replace concrete sidewalk sections removed for service installations as noted in the Plans.

Special Conditions:

- Call for locates.
- Notify affected property owners when services will be disrupted. Minimize service disruptions to the maximum extent possible.
- Excavate and haul off existing trench spoils and pipe sections. Properly dispose of excavated materials.
- Replace existing sewer main line with 8" DR35 PVC pipe.
- Replace existing side sewer with 6" DR35 PVC sewer pipe, connect to new main using 8"x6" PVC WYE fittings.
- Install new manhole as shown. Channel manhole.
- Bed pipe 6 inches under and 6 inches over with pea gravel or buck shot
- Backfill & compact trench section with approved pit run or crushed surfacing base course to obtain 95% compaction per ASTM D 1557
- Restore ~~roadway~~ and sidewalks as noted.

PAYMENT

Time & Material – Actual Project Cost \$48,815.67 (including sales tax)

Lump Sum \$_____.

SCHEDULE

Work under this Task Order shall commence within 10-days of its execution and be completed as quickly as possible.

BONDING REQUIREMENTS

Contract Bond in the form made a part of this agreement.

The estimated value of this work is under \$35,000. Contractor agrees to withholding of 50% of the contract amount in lieu of the Contract Bond requirement in accordance with RCW 39.08.010.

APPROVED

CITY OF SEDRO-WOOLLEY

By: _____

Signature: _____

Date: _____

CONTRACTOR

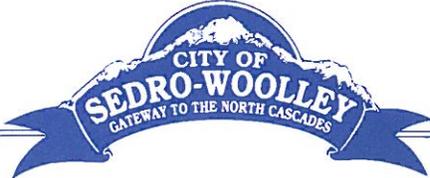
By: Shalyce Pocar

Signature: Shalyce Pocar

Date: 9/18/12

SEP 26 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 4

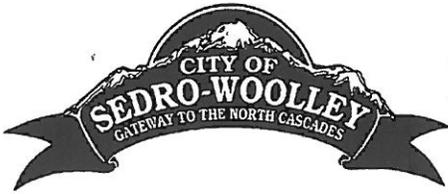


SUBJECT: PUBLIC COMMENT

Name:
Address:
Narrative:

CITY COUNCIL AGENDA
REGULAR MEETING

SEP 26 2012



7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 5

CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-9922
Fax (360) 855-9923

Eron M. Berg
City Supervisor/City Attorney

MEMO TO: City Council
FROM: Eron Berg & John Coleman
RE: CUP 1-11/Swett, closed record appeal of HEX
DATE: September 26, 2012

PROCEDURAL HISTORY: CUP 1-11 was denied by the hearing examiner, approved by the hearing examiner upon reconsideration, appealed to the city council where the hearing examiner's decision was reversed and appealed to superior court where Judge Cook remanded it back to the city council for reconsideration. This item comes to you tonight for a closed record appeal consistent with SWMC 2.90.090 and Judge Cook's order (Exhibit R-1, REMAND 4-7).

ISSUE BEFORE THE COUNCIL: Two appeals of the hearing examiner's decision on reconsideration were timely filed. SWMC 2.90.090 requires the party(ies) making the appeal to identify the issues being raised and places the burden of proof on the appellant(s). Judge Cook has remanded this case to the City Council for further proceedings consistent with her opinion dated August 13, 2012. In that opinion, she makes clear that the issues raised by the appellants are limited to two issues:

1. Whether the proposed marijuana gardening is "low intensity agriculture," and;
2. Whether the proposed use would be an asset to the community.

CLOSED RECORD PROCESS: SWMC 2.90.090(E) establishes the process for appeals of hearing examiner decisions. Once an appeal is timely filed (appeals are Exhibits 12 and 13, P213-230), the applicant and other parties of record are allowed to provide letters in support of their positions (Exhibits 14 and 15, P231-237). Because Judge Cook clarified the scope of the appeals in her opinion, the city accepted an additional response from the applicant (Exhibit R-2, REMAND 8-14). The portions of the applicant's response that are lined were lined out by counsel as they appear to present new evidence or testimony which is not part of the record and therefore may not be the basis for your decision-making. Attorney Pat Hayden submitted additional comments which counsel also advises should not be the basis for decision-making as were submitted outside of the timeframe for consideration (Exhibit R-3, REMAND 15-17).

The city council's review and decision on the appeals which raised the two issues identified above, is limited to the record developed at the open public hearing held by the hearing examiner on December 2, 2011, any written submittals, the applicant's application and related submittals, and other information in the attached exhibits (Exhibits 1-15, P1-237). See. SWMC 2.90.090(E)(6).

After reviewing the record and considering the issues raised by the appeals, the city council has the following options:

1. Find that there were no substantial errors in fact or law in the record and **deny the appeals**;
2. Find that there were substantial errors in fact or law in the record and **remand the decision** to the hearing examiner for reconsideration;
3. Find that there were substantial errors in fact or law in the record and **modify the decision** of the hearing examiner; or
4. Find that there were substantial errors in fact or law in the record and **reverse the decision** of the hearing examiner.

The Council's decision must be in writing and shall specify any modified or amended findings and conclusions other than those set forth in the report of the hearing examiner. Each material finding by the City Council must be supported by substantial evidence in the record. SWMC 2.90.090(E)(9).

Tonight, I am recommending that the Council review the appeals as interpreted by Judge Cook. Discuss the issues raised in the context of the record and provide staff with direction to develop a written decision consistent with the Council's discussion for possible action at the October 10, 2012 meeting.

DISCUSSION:

Is the proposed marijuana gardening "low intensity agriculture"?

The hearing examiner found in his reconsideration (Finding 4, P205-206) that, "...indoor cultivation of plants does fall within the low-intensity agriculture use category."

The examiner's finding references SWMC 17.04.030 and the definition reads as follows: "'Low-intensity agriculture' means the production, raising or keeping of any form of crops, ornamental plants or animals; provided, that any animal, excluding household pets such as dogs and cats, such as horses, cattle, hogs, pigs, goats, sheep, bovine animals, chickens, fowl or any other animals, poultry or fowl, shall not be raised, kept or maintained on a lot or ownership of less than forty thousand square feet, except as permitted under Chapter 6.20."

There is no definition of "high intensity agriculture" or "medium intensity agriculture" in the code. The question of whether indoor hydroponic marijuana gardening in individual rented storage units or group rental lockers falls within the definition of "low-intensity agriculture" is a legal conclusion for the Council to consider on appeal.

Is the proposed use an asset to the community?

The hearing examiner found that the proposal is compatible with the surrounding area, has no unreasonable adverse impacts and is well planned (Findings 5 & 6, P206-207). In Finding 5, the examiner found, "that the other potential impacts identified by staff can be adequately mitigated, and that the primary issue came down to traffic."

In Finding 6, the examiner accepted the applicant's statements in his reconsideration that he was substantially compliant with the requirements with the prior CUP 2569. He further found that any remaining issues could be adequately mitigated. In his original decision, (Finding 8.C., P173), the examiner found, "In that there is much of that still not in place it is difficult to find that the facility is currently an asset to the community."

In his appeal, Mr. Shewmaker raised this issue of impacts including, "burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of any and all marijuana grow operations." (Record at P216). In his appeal, Rev. Coursen states, "We already have a large marijuana concern in our city. In fact, our church borders property that regularly spills over into our parking lot with illegal marijuana activity." (Record at P229).

The record contains many statements regarding the proposed use that address the issue of whether the proposed use is an asset to the community. For example:

Chief Wood (P153) states that the "bigger amounts... may be problematic for us", talking about the security risks of the larger collective grow rooms versus the smaller, individual grow cabinets.

Mr. Schumaker (P154) addresses security concerns and related issues of drug use and violence. "Is Mr. Swett going to guarantee 24 hour armed guard against these gangs? Is he going to provide cameras? Is he going to provide entry/exit laws[,] is he going to provide extra lighting or security fencing?" He asks several times, who is going to pay for the extra costs of this proposal, will it be the community or the applicant?

Mr. Thornton (P155) talks about the risks of home invasions and the need to protect children from marijuana in homes.

Ms. Wellborn (P157) expressed concern about the impacts of marijuana use on neighbors, "There was a pot drug party a half mile from our home that led to thievery and fear for senior women in our neighborhood several months ago. This resulted in stolen property from many neighbors, a stolen vehicle that was driven into a tree..."

Mr. Castilleja (P159) stated the he and his wife live and operate a licensed daycare facility less than 100 feet from the proposal and that "...the parents that bring their child to our day care are talking about leaving because they don't want their children near this."

None of this information would appear to support a finding that the proposal would be an asset to the community. There are additional statements in the record that allowing a safe place for medical marijuana users to grow would be a benefit (P155-156, 161-162 for example). The examiner did not appear to reference specific details of the record in making his findings on this issue; he appears to have focused on the exterior of the building rather than the concerns raised about the new use.

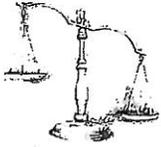
RECOMMENDATION: The planning department's recommendation is a reversal of the hearing examiner's reconsideration upon the finding that substantial errors in fact or law in the record.

REQUESTED ACTION: Motion to reverse the decision of the hearing examiner in CUP 1-11 and to task staff with preparing findings and conclusions consistent with our decision for our review at the next meeting.

REMAND Closed Record Appeal Exhibits

Exhibit # R-1

Exhibit # R-1
To REMAND Closed Record Appeal



Skagit County Superior Court

Skagit County Courthouse
205 West Kincaid Street, Room 202
Mount Vernon, WA 98273

Phone: (360)336-9320
Fax: (360)336-9340
E-mail: superiorcourt@co.skagit.wa.us

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SKAGIT COUNTY CLERK
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2012 AUG 14 PM 4:24

JOHN M. MEYER
JUDGE, DEPARTMENT NO. 1

MICHAEL E. RICKERT
JUDGE, DEPARTMENT NO. 2

SUSAN K. COOK
JUDGE, DEPARTMENT NO. 3

DAVE NEEDY
JUDGE, DEPARTMENT NO. 4

C. BRIAN PAXTON
COURT COMMISSIONER

DELILAH M. GEORGE
COURT ADMINISTRATOR

August 13, 2012

AUG 16 2012

Mr. Michael Tierney, Esq.
Tierney and Blakney, PC
2955 – 80th Ave SE, Suite 102
Mercer Island, WA 98040

Law Offices of
Michael B. Tierney, PC

Mr. Andrew S. Lane, Esq.
Cairncross and Hemplemann
525 – 2nd Avenue, Suite 500
Seattle, WA 98104

Mr. Patrick M. Hayden, Esq.
Post Office Box 454
Sedro-Woolley, WA 98284

Mr. B. Karl Shewmaker
9694 Gladsjo Lane
Sedro-Woolley, WA 98284

Re: Thomas R. Swett vs. City of Sedro-Woolley and B. Karl Shewmaker
Cause No. 12-2-00619-1

Dear Counsel and Mr. Shewmaker,

I have now reviewed the record from the City of Sedro-Woolley pertaining to the City Council's land use decision on Petitioner Thomas Swett's CUP application. The City Council reversed the Hearing Examiner's approval of Swett's CUP application to convert some units in his self storage facility to allow hydroponic gardening of marijuana.

The City Council identified four errors by the Hearing Examiner. First, the Council said the Hearing Examiner erred in finding that the proposed hydroponic gardening was "low-intensity agriculture" within the meaning of Sedro-Woolley Municipal Code 17.04.030. Second, the City Council found the Hearing Examiner erred in finding the proposed use would be an asset to the community. Third, the City Council decided the Hearing Examiner was wrong when he concluded the traffic impacts of the proposed use were no greater than those associated with the self-storage facility over the last six years. Finally, the City Council concluded that the Hearing Examiner erred in combining an analysis of permitted uses in the zone with activities allowed as a conditional use.

Swett has appealed the City Council's decision to this Court alleging the Council, a) decided issues not raised in the appeals, b) improperly shifted the burden of proof, c) deprived Swett of

due process, and d) made a decision based on facts not contained in the record and erroneously applied the law to the facts.

A. Issues Not Properly Before the City Council

Swett argues that the City Council considered issues not raised in the appeal paperwork. Swett cites SWMC 2.90.090 which provides that Notices of Appeal must “fully, clearly and thoroughly specify the substantial error(s) in fact or law which exist in the record of the proceedings from which the appellant seeks relief.”

The two appeals accepted by the City Council were filed by Reverend Richard Coursen and Mr. Karl Shewmaker. Although their letters may not meet the standards expected of an appellate attorney, they fairly raise two of the issues discussed and decided by the City Council, whether the proposed marijuana gardening is “low-intensity agriculture” and whether the proposed use would be an asset to the community. They do not, however, even arguably raise the issue of increased traffic or the issue of combining an analysis of permitted land uses with conditional uses.

The SWMC clearly requires the issues on appeal to be identified by the appellants. And a reading of the code provisions as a whole makes it clear the issues to be addressed in the appeal process are the issues so identified. When the City Council considered and decided issues not raised by appellants, they engaged in an unlawful procedure and failed to follow the process set out in the SWMC.

B. Shifting the Burden of Proof

Swett also argues the City Council improperly shifted the burden of proof to him. The Council’s Findings and Conclusions state “(t)he burden is on the applicant to demonstrate that the permit should be granted.” However, SWMC 2.90.090 provides that the burden of proof “shall rest with the appellant.” By shifting the burden of proof to Swett the City Council engaged in an unlawful procedure and failed to follow the process set out in the SWMC.

C. Due Process

Swett argues that the City Council deprived him of due process by the actions described in the two preceding sections as well as by considering facts outside the record. Certainly the example cited by Swett (council Member Lemley’s speculation that the hydroponic gardening units would require “once or twice a day attendance”) was consideration of facts not supported by the record. Overall, it appears that the City Council blurred the distinction between policy making and quasi-judicial decision-making and in so doing deprived Swett of due process on this appeal.

D. Substantive Error

Swett also argues that the City Council made factual errors and misapplied the law to the facts. On this record it is difficult to evaluate this claim. The proceeding addressed issues not properly raised on appeal. The decision-maker improperly shifted the burden of proof. And factual matters were discussed which do not appear in the record. All in all, I cannot tell how these procedural errors affected the substantive analysis by the City Council or what decision would have been reached without those errors.

Therefore, I am remanding this case to the City council for further proceedings consistent with this opinion.

Sincerely,

A handwritten signature in cursive script that reads "Susan K. Cook".

SUSAN K. COOK
Superior Court Judge

SKC/mc

REMAND Closed Record Appeal Exhibits

Exhibit # R-2

Exhibit # R-2
To REMAND Closed Record Appeal

ATTN: city of Sedro Woolley, city council

Thank you for the opportunity, to address the issues!

How did we get here?

I first contacted the city planner with the idea, that I would be creating smaller units within the existing units. He said that would not be an issue, as long as I did not go over the approved occupancy for the existing C.U.P.

I then contacted the city of Sedro Woolley police chief about my specific proposed business plan. I was very open as to the exact type of growing I was considering let take place on the property. He sent me to the Skagit County Drug Task Force, after talking with the head of the skagit county drug task force, they took my idea to their advisors, and several weeks later, I was called by the chief of the drug task force and told that this plan could work and that this could address several issues. Including home invasion, fire, and most of all, homes found to be overgrowing for illegal sales!

It was my thought that Law Enforcement must spend a very large amount of man hours on enforcing over growing and other problems like this, as they are discovered in the city. by allowing those who grow their medicine, and are willing to stay under the amount of plants the state has approved, in a monitored facility. you could save law enforcement and the community time and money!

The Drug Task Force, asked that when I opened, they would like to come see this plan in action!

The operation has and always will have an open door too law enforcement. All paper work is up to date and posted properly, Sight holes for viewing have been provided to insure that no patient is overgrowing.

The Drug Task Force, was called with the loading of the first unit, and have visited and inspected the site on several occasions, as have law enforcement and drug task force leaders from other counties and cities. other's have opened the door to this idea, such as Snohomish County, King County, and the City of Anacortes, just a few of examples.

All who have taken the time to come and see this facility for themselves, (excluding the city of sedro woolley city supervisor), have seen and agreed that this is a good idea. I have been in business for over 12yr's., the last 2.5 yrs. with this new business idea, and to date no added cost to community has taken place!

I invited the city planner and city advisor, herel ,(it was then that this all began)! The concept that I needed to add (Indoor Gardening) to the C.U.P. and go thru the application process.

This administration, has said from the beginning, (verbally and in a letter), recieved by mariann of skagit surveyors. as well as in the 2011 facts and conclusions

That the issue of what was being grown here, would not be a part of, nor would it influence the approval or disapproval of the conditional use permit process! The quote is in writing from your own

~~planning dept.!~~

This was an approval for indoor gardening. it seems the marijuana language is all the city supervisors doing! please ask yourself, If I was growing indoor ,tomatoes would we still have an issue here.

Can we agree that medical marijuana patients, do live in the city of Sedro-Woolley?

The State of Washington Law only has provisions for the patient to grow their own Medicine. It has none for the legal purchase or sale!

By giving all patients a safe, out of the public eye, and most of all, legal way to obtain their medicine, will reduce the customer base of the illegal growing operations!

This can stop damage to rental homes!

As air and power are needed. Non- inspected home wiring and holes for air in the sides of homes will result in a loss to the land lords. without proper filtering the smell could be offensive to neighbors!

This could also lead to home invasions.

We can reduce home invasions, as home growers tend to make easy targets for theft, very few have proper security in place. and as many of them are overgrowing they are reluctant to call for help when robbed!

The trauma of a home invasion on a child could be life altering! Such as having a gun held to their head. With this option patients can obtain medicine in a legal way and not endanger their families and or alter their children's lives.

Giving the patient an option, to keep the marijuana out of the HOME and away from CHILDREN, in a secure protected facility, can only be good for all in the community.

If only one child's home life is not endangered or altered by the medical need of a parent, then this is an asset to the community.

imagine a child you know, that spends the night with a friend, and that parent is growing in the home, what if that is the night someone try's to rob them! Enters the home with weapons! imagine!

The Proposal Is Well-Planned In All Respects So As to be An Asset to the Community

The City Code requires the Hearing Examiner to consider the extent to which the proposal is well-planned in all respects so as to be an asset to the community. SWMC 17.56.060.C. The Hearing Examiner found that the proposal is well-planned in all respects so as

to be an asset to the community because the existing use is in “substantial compliance with the conditions of [the 2005] conditional use permit” and “there are no changes proposed to the exterior of the existing buildings or the property as a whole.” (Record at 206-07 (HE Findings of Fact and Conclusions 6.)) In addition, “[t]hose items identified by staff and neighbors that may have deteriorated or not been completed (e.g. glare from lights, landscaping) can be adequately mitigated to meet this criterion.” *Id.* Thus, “[t]he proposed use modification can be conditioned to comply with Conditional Use criteria 17.56.060.C.” *Id.*

As with previous CUP approvals, the Hearing Examiner’s consideration of this criterion focused on landscaping and the general appearance of the site. The 2002 CUP approval stated: “The facility planned by the applicant, as shown on Exhibit 5 of the documents submitted at the public hearing, is well-planned and will be an asset to the community.” (Record at 88.) The staff report for the 2005 CUP approval stated: “C. Is well-planned in all respects so as to be an asset to the community. The location of the office within the existing, adjacent residence eliminates the need to construct a new office for the storage facility.” (Record at 101.) The current proposal does not change anything related to the landscaping and general appearance of the site – the changes will occur indoors. The City’s previous review of this CUP condition clearly focused on the appearance of the facility, not the nature of the use. The City Council’s decision changes that analysis without notice to the CUP Applicant

the Hearing Examiner found that hydroponic gardening was similar to low-intensity agriculture, which is permitted outright in residential zones. (Record at 205-06 (HE Findings of Fact and Conclusions 4); *see also*, SWMC 17.08.010.A.2. “‘Low-intensity agriculture’ means the production, raising or keeping of any form of crops, ornamental plants or animals; provided, that any animal, excluding household pets such as dogs and cats, ... shall not be raised, kept or maintained on a lot or ownership of less than forty thousand square feet, except as permitted under Chapter 6.20.” SWMC 17.04.030. The Hearing Examiner reviewed this City Code definition and noted “there are no limitations placed on the type or how many plants are allowed, or the manner in which they are cultivated; i.e. no distinction is made between indoor versus outdoor cultivation.” (Record at 205 (HE Findings of Fact and Conclusions 4.)) The Hearing Examiner also noted that “there is no code provision that would prevent an otherwise conforming

use to be undertaken in the same facility as a nonconforming use [sic – use approved by a conditional use permit, like the storage unit use permitted under the CUP].” *Id.* at 206. Thus, “[t]he proposed modification of use complies with Conditional Use criteria 17.56.060.A.” *Id.* Simply put, if the use is permitted in residential zones, it is permitted within a facility with a CUP in a residential zone. *See Norco Construction v. King County*, 97 Wn.2d 680, 685, 649 P.2d 103 (1982) (“The basic rule in land use law is still that, absent more, an individual should be able to utilize his own land as he sees fit”).

The Hearing Examiner’s rationale is supported by Washington land use law. The Growth Management Act requires that zoning regulations implement the City’s comprehensive plan. Cities planning under the Growth Management Act must adopt “development regulations that are consistent with and implement the comprehensive plan.” RCW 36.70A.040(2). This means that the City’s development regulations, including its zoning and use regulations, must be consistent with and implement the City’s comprehensive plan. A use that is a permitted use or is analogous to a permitted use is therefore consistent with the City’s comprehensive plan. Because low-intensity agriculture is a permitted use in residential zones, low-intensity agriculture (or a use analogous to low-intensity agriculture) is consistent with and conforms to the comprehensive plan.

nothing in the Record suggests indoor hydroponic growing of medical marijuana is like growing a field of corn or wheat. Although there is evidence in the Record that it is difficult for individuals to successfully grow medical marijuana, there is nothing that suggests intensive monitoring of water, lights, or anything else that would require multiple daily trips. (*See Record* at 223-26.) The only evidence in the Record regarding the intensity of hydroponic gardening is that the activity is hydroponic (which leads to the conclusion that no soil maintenance such as tilling or the application of fertilizer is required), the activity is conducted indoors with air filters (which leads to the conclusion that any plant growing or maintenance will not be discernible to the outside viewer), and there are limits to the number of plants that can be grown in each unit both in terms of physical space limitations and in terms of possession limits imposed by RCW

69.51A.040 (which leads to the conclusion that plant production will be limited). (Record at 223-26.) The Record also shows that renters of the hydroponic units are expected to visit units only "once every 3 to 4 days." (Record at 150.)

The City Council had no basis in the Record to overturn the Hearing Examiner's findings and conclusion that "the indoor cultivation of plants does fall within the low-intensity agriculture.

In compliance with the SWMC 2.90.090 the new Interpretation of low intensity agriculture, adopted 8-20-12 by the city of sedro woolley, was not available, and is not applicable, As it is not a part of the 2011 information, and as it does revolve around marijuana, This would have no influence on this case.

The Court has ruled, that the burdon of proof is on the appealing parties, thru appeals recieved by the city of Sedro Woolley, do they present fact or law?

~~I would not have started this C.U.P., had the city planner not put in writing, that the issue of marijuana would not be a part of the approval process for the C.U.P.,~~

~~I do not spend money on bad investments, this is why i asked questions up front, before spending the money to go thru the C.U.P. process!~~

There was no behind the back, or misleading, done on my part! I dont believe the city can say the same!

~~i invested alot of money, that would not have been spent, if not for the city saying, that the issue of marijuana was not on the table,~~ the state law states that it is legal for those with certian medical conditions and the city of sedro woolley would not let the issue of marijuana factor into the approval or disapproval of this C.U.P.

If this was not to be allowed because of the type of growing in the city of sedro woolley then the planning dept., and city supervisor should have been honest, in the beggining. Before i paid monies to the city, and to the surveyors, I Invested alot of my time to go thru the C. U. P. process. and alot more money since. It is important to note, right after the application was turned in to the city this case went from, Indoor Gardening, too marijuana grow show, as reported to the herald by the city advisor.

i ask that you come see, just how harmless this is, and that if the law allows this, Is it better to have them growing in individual homes thru-out the city unmonitored possibly over growing or in one facility that can be easily monitored to know that no one is over-growing!

i would ask that you evaluate the good it can do, vrs the over growing in homes that lead to sales ! By giving those willing to stay under the state approved amount of plants, a safe monitored place, you could and will save the city law enforcement monies!

sincerely

Thomas swett

REMAND Closed Record Appeal Exhibits

Exhibit # R-3

Exhibit # R-3
To REMAND Closed Record Appeal

COPY

Patrick M. Hayden
Lawyer
109 Warner Street / PO Box 454
Sedro-Woolley, WA 98284-0454
Phone (360) 855-1811
pmhayden@gmail.com

September 19, 2012

Sedro-Woolley Planning Department
and Sedro-Woolley City Council
325 Metcalf Street
Sedro-Woolley, WA 98284

Re: CUP Application of Thomas Swett, CUP 1-11, Hearing Date No. September 29, 2012, 7:00 PM

Dear Sirs:

I represent Pastor Richard Coursen and the First Baptist Church of Sedro-Woolley. The purpose of this letter is to comment on the legal issues in this hearing. These parties participated in the hearing below, and therefore have a right to comment in this proceeding. My comments are written only, and I will not make an oral presentation. I ask that this letter be included in the record of this hearing, should this matter go back to court.

I understand that this hearing is a closed record hearing, and nothing in this statement is intended to submit new evidence into the record. It is only a legal argument as to how the law should be applied to the record below.

~~Pre-existing non-conforming uses are governed by SWMC Sec. 17.04.050, which reads as follows:~~

~~**17.04.050 Nonconforming uses, structures, and lots.**~~

~~Uses, structures and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:~~

- ~~A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;~~
- ~~B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;~~
- ~~C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;~~
- ~~D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements; and~~
- ~~E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. (Ord. 1013 § 1.05, 1985)~~

~~This ordinance was retained when the zoning code had a comprehensive update. As was then explained to the Planning Commission and City Council, Sedro-Woolley evolved with a number of commercial and industrial businesses located in residential areas prior to the adoption of the original zoning code. This section of the code was designed to allow these businesses to continue, and be “enlarged, altered or expanded” through a process that mitigated the impacts on the surrounding residential uses. It allowed some flexibility in use without allowing new non-conforming uses to be created.~~

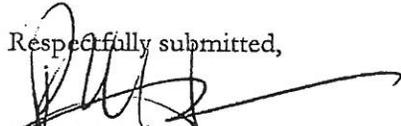
~~This ordinance only allows for existing non-conforming uses to be modified, but does not allow for a new non-conforming use to be substituted for the former non-conforming use. Thus, this property was originally a shop for the repair of logging equipment, then became a place for the storage of logging equipment, and then became a storage place for other things. The last change was processed as a conditional use permit, and represented only an incremental change. The conversion of a storage space to a marijuana grow facility represents a totally new use, outside the scope of SWMC Sec. 17.04.050. It is more than a mere enlargement, alteration or modification of the existing use. It represents a totally new use that is not within the scope of SWMC Sec. 17.04.050~~

~~If this ordinance could be interpreted to allow for any existing non-conforming use to be “enlarged, altered or expanded” to allow any other use not permitted in a particular zone, then it could be used to allow a non-conforming use to be changed to any other use of *any kind*, whether or not permitted in the zone. It would be a basis for putting a rendering plant in a residential area if the original use was a non-conforming use. The only precedential condition would be for the use to be not permitted – that is, if it was otherwise illegal but for SWMC Sec. 17.04.050, it could legally morph into any other use. That is not what this ordinance permits. It permits enlargements, modifications, and alterations of existing uses which continue in some altered fashion but still retains its essential identity. In this case, the change from passive storage units to intense production of marijuana is not a continuation of the existing use, is outside the scope of SWMC Sec. 17.04.050, and should not be permitted by a conditional use permit under that ordinance.~~

~~It should be noted that the original conditional use permit does not make the storage units a legal use. They are still not a permitted or even conditional use in the residential zone, but continue only as a legal non-conforming use. Thus, this application for a marijuana grow facility is not a standard conditional use application for a conditionally permitted use, but continues within the limitations of SWMC Sec. 17.04.050 as a non-conforming use.~~

~~In conclusion, the Hearing Examiner made a substantial error in law in misapplying SWMC Sec. 17.04.050, and his decision should be reversed.~~

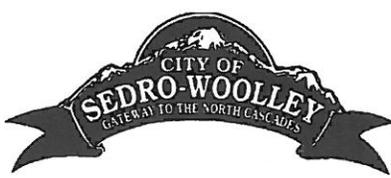
Respectfully submitted,


Patrick M. Hayden

cc: other parties by mail and email

Original Closed Record Appeal Documents

P1 – P237



FEB 22 2012

7:00 P.M. COUNCIL CHAMBERS
AGENDA NO. 5

Planning Department
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-9929
Fax (360) 855-0733

MEMO:

To: City Council
Mayor Anderson

From: Jack Moore 
Planning Director/ Building Official

Date: February 22, 2012

Subject: Appeal of hearing examiner's decision on CUP-1-11/Tom Swett

ISSUE

Sedro-Woolley Municipal Code (SWMC) 2.90.090(E) requires the City Council to hear all appeals of a hearing examiner's decision and to affirm, deny, modify or remand the decision.

HISTORY

Thomas Swett applied for a Conditional Use Permit (CUP) to change the use of a mini-storage facility to offering spaces for indoor cultivation of medical cannabis. The following is the progress of the review to this point:

10-24-11	Complete application
12-2-11	Hearing examiner held required public hearing
12-23-11	Published Notice of Decision for hearing examiner's <i>denial</i> of the application
12-27-11	Applicant submitted reconsideration request per SWMC 2.90.090(G)(4)
1-20-12	Published Notice of Decision for hearing examiner's <i>approval</i> of the application
1-27-12	An appeal of the decision was received by the planning department
2-3-12	A second appeal of the decision was received by the planning department

CLOSED RECORD APPEAL PROCESS

Per SWMC 2.90.090(E)(5) through (10):

- No public hearing shall be held by the city council.
- No new or additional evidence or testimony shall be accepted by the city council unless a showing is made by the party offering the evidence that the evidence could not reasonably have been available at the time of the hearing before the examiner.
- If the council determines that additional evidence is required, the council shall remand the matter to the examiner for reconsideration and receipt of additional evidence.
- In the absence of an entry upon the record of an order by the city council authorizing new or additional evidence or testimony, and a remand to the hearing examiner for receipt of such evidence or testimony, it shall be presumed that no new or additional evidence or testimony

has been accepted by the city council, and that the record before the city council is identical to the hearing record before the hearing examiner.

- The consideration by the city council shall be based solely upon the record, the hearing examiner's report, the notice of appeal and additional submissions by parties.
- If, upon appeal from a recommendation of the hearing examiner upon an application submitted pursuant to Section 2.90.060(F)(2), and after examination of the record, the council determines that a substantial error in fact or law exists in the record, or that a recommendation of the hearing examiner should be disregarded or modified, the city council may remand the proceeding to the examiner for reconsideration, or enter its own decision upon the application.
- The action of the council approving, modifying or rejecting a decision of the examiner shall be final and conclusive, unless appealed within the time frames established under subsection (F)(5) of this section.

EXHIBITS

1. Staff Report for hearing examiner, including:
 - A. Conditional Use Permit Application #CUP-1-11 including site plan;
 - B. Original CUP approval 1-10-02, file CUP#1-02;
 - C. Modified CUP approval 2-1-05, CUP file # 2569;
 - D. Consent letter from property owner; and
 - E. Notice of Application & Public Hearing.
2. Addendum to Staff Report, including applicant's Supplemental Clarification Memo (labeled Exhibits F & G of Staff Report)
3. Written comments received during public comment period
4. Transcript of public hearing
5. Hearing examiner's decision (Exhibits refer to Staff Report and Addendum to Staff Report)
6. Notice of Decision (12-23-11)
7. Applicant's reconsideration request
8. Staff letter forwarding hearing examiner's request for additional information
9. Applicant's response to hearing examiner's information request
10. Hearing examiner's reconsideration decision (with Exhibits)
11. Notice of Reconsideration Decision (1-20-12)
12. Appeal #1 –Shewmaker (including 2 statements from Parties of Record- D. Miller & M. Miller)
13. Appeal #2 –Coursen/First Baptist Church (with attachment)
14. Statement from Party of Record -Hawkings
15. Applicant's response to appeal

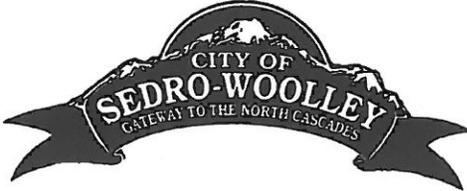
POSSIBLE ACTIONS

1. Find that no substantial error in fact or law exists and move to **affirm and uphold the hearing examiner's decision** and authorize the Mayor to sign Findings of Fact.
2. Find that no substantial error in fact or law exists but move to **modify the hearing examiner's decision** (describe modification) and authorize the Mayor to sign Findings of Fact.
3. Find that a substantial error in fact or law exists and move to **reverse the hearing examiner's decision** and authorize the Mayor to sign Findings of Fact.
4. Find that that additional evidence is required and move to **remand the matter back to the examiner** for reconsideration and receipt of additional evidence and authorize the Mayor to sign Findings of Fact.

Closed Record Appeal Exhibits

EXHIBIT # 1

Exhibit # 1
To Closed Record Appeal



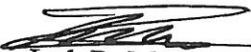
CITY OF SEDRO-WOOLLEY
PLANNING DEPARTMENT
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

TRANSMITTAL & REPORT MEMORANDUM

HEARING DATE: December 2, 2011

TO: Sedro-Woolley Hearing Examiner

RE: CUP-1-11 – Conditional Use Permit – Renting Indoor Space for Hydroponic Growing of Medical Marijuana

FROM: 
Jack R. Moore, Planning Director

APPLICATION DATE: July 12, 2011

APPLICATION COMPLETE: October 24, 2011

RECOMMENDATION: Staff recommends **Denial**

PROPERTY OWNER: Jean Swett
1230 Warner Street
Sedro-Woolley, WA 98284

PROJECT PROPONENT: Tom Swett
1230 Warner Street
Sedro-Woolley, WA 98284

DESCRIPTION OF PROPOSAL

An application for a conditional use permit (CUP) has been received from A-1 Storage to allow a portion of an existing storage building to be converted from traditional self storage units to 90 hydroponic gardening systems. Metal cabinets and rooms would be used by individuals for growing medical marijuana inside and existing building. A second building on site containing 11-self-storage units will continue to be used for its previous self-storage

STAFF REPORT WITH
COMPLETE EXHIBITS

use. The CUP, if approved as requested, will modify an existing CUP (file #2569 issued in 2005), that allows the self storage facility to operate 130 storage units in a residential zone. CUP #2569 was a modification of a 2002 CUP (#CUP-1-02) which allowed the property to be used as a self storage facility of up to 58 storage units and outside storage of 11 boats or RVs. Because hydroponic gardening requires more frequent attention than the existing use on the property (personal storage), the proposal is anticipated to generate more vehicle trips per day than the current use; a CUP must be obtained per the process in Chapter 2.90 of the Sedro-Woolley Municipal Code (SWMC) and the criteria in Title 17 SWMC.

Site Address:	1230 Warner Street	Parcel ID Nos.:	P77224
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Zoning District: Residential 5 (R-5)			
Minimum lot size:	8,400 square feet	Lot width at building line:	40 feet
Front Setback:	20 feet	Lot width at road frontage:	20 feet
Rear Setback:	10 feet	Maximum building height:	35 feet
Side Setback:	5 feet for 1-story buildings 8 feet for 2-story	Maximum building coverage:	35%

FINDINGS OF FACT

1. On July 12, 2011, the applicant Tom Swett of A-1 Storage submitted a Conditional Use Permit (CUP) application (Exhibit A) to modify the existing CUP for the property.
2. Two prior CUPs have been issued for the property; one in 2002 and a second in 2005. As a result of those CUPs, the property is allowed to operate as a self storage facility with as many as 130 individual storage units. Exhibit B, the file for the first CUP (CUP-1-02, AKA CUP #172) and Exhibit C, the file for the second CUP (CUP #2569), contain the specific details concerning what is allowed on the property.
3. The conditions of approval for the CUP as modified in 2005 by CUP #2569 are as follows:
 - Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.;
 - Completion of drainage facilities as per plan approved by city engineer;
 - All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site;
 - Signs, whether on site or off-site, are limited to a combined total of 20 square feet;
 - Applicant shall comply with all conditions of the MDNS:
 - a. Evaluate and clean up any soil or water contaminants to city standards before building permits are issued.
 - b. Provide a drainage plan and report prepared in compliance with the 1992 Department of Ecology Stormwater Management Manual for Puget Sound
 - Applicant shall install slats in the fence to screen the facility from the neighbor's property to minimize visual impacts;

- Applicant shall plant landscaping on the south side of the property as required and instructed by the Planning Department;
 - Access road standards to be approved by City Engineer; and
 - A stormwater management plan must be completed using the 1992 Stormwater Manual standards.
4. The above hours of operation are still in effect; the drainage facility has been approved; neighbors have not complained about lighting recently; the facility had adhered to the signage requirements; the soil clean-up has been completed; **slats have not been installed in the perimeter fence, landscaping has not been installed on the south perimeter**, and access road standards have been satisfied.
 5. The operator of A-1 Storage is applying for a CUP because the use of the property was found by the Planning Department to be different than the allowed use on the property.
 6. The use that is now occurring on the property is as follows: the storage units in the northern building (see site plan, Exhibit A) have been converted into smaller units (lockers) equipped with hydroponic equipment for growing indoor crops - specifically for growing medical marijuana. It is unclear how many hydroponic units exist, and the existing hydroponic units have been installed without Planning Department review. The installation of hydroponic units is not in compliance with the previously issued CUPs. Each locker/room is rented by an individual; the property owner has no affiliation with any marijuana or other crops grown in each of the lockers. The facility is not a collective garden, distribution center or any other type of facility that is regularly associated with medical marijuana cases in other communities. The operator of A-1 Storage rents out individual lockers similarly to the way self storage units are rented to an individual. A-1 Storage does provide the mechanical equipment within each locker. The smaller building at the southeast corner of the property is still used as personal storage units. There are 11 units in the southeastern building. Some outdoor storage of boats and RVs is also allowed, however CUP #2569 does not specify how many trailers and/or RVs may be stored outdoors.
 7. A code enforcement case was opened for the purpose of bringing the property into compliance with the approved CUPs and the underlying zoning of the property, which is Residential 5 (R-5). The property owner has an option to either cease the business of providing hydroponic gardening units (and resume the use as previously approved) or seek approval of the new use through the CUP process. The operator of the facility chose to seek a modification of the previously approved CUPs.
 8. The CUP application as received on July 12, 2011 was missing required materials, thus it was determined to be administratively incomplete. A letter outlining the outstanding application materials was sent to the applicant on the same day. A portion of the outstanding materials were submitted on July 18 (payment of CUP fees and the Affidavit of Correct Names and Addresses), but there were still outstanding items from the July 18 letter. A narrative explaining the proposal in detail was received on July 25, however the title report was still not submitted. A reminder letter was sent to the applicant on August 24. The applicant submitted a title report on September 8. According to the title report, the applicant is not the owner of the property; the owner is listed as Jean Swett, the mother of the applicant. Because Mr. Tom Swett is acting as agent for the property owner, Mr. Tom Swett was required to submit a letter from the property owner acknowledging that Mr. Tom Swett may act as agent for property and make modifications to the existing CUP. This requirement is on the CUP application form and

without it the application cannot be administratively complete. On September 21, a letter was sent to the applicant reminding him of the requirement for written confirmation that the property owner is aware of and supports the proposed CUP application. Written confirmation (Exhibit D) was received on October 11, and notice that the applicant was determined to be administratively complete was sent to the applicant on October 24, 2011.

9. The proposed modification is for property in the R-5 zone. According to SWMC 17.12.010, use restrictions in the residential R-5 zone shall be as follows:

A. Permitted Uses.

1. One single-family residence per lot;
2. Low-intensity agriculture;
3. Home occupations in compliance with Chapter 17.68;
4. Child day care centers meeting state requirements;
5. Adult or family day care facilities meeting state requirements.

B. Conditional Uses.

1. Planned residential developments;
2. Group homes;
3. Dependent relative cottages;
4. Mobile and manufactured home parks in compliance with Chapter 17.48;
5. Personal services;
6. Professional offices with no outside storage;
7. Outdoor recreation facilities;
8. Public utilities, excluding wireless communication facilities;
9. Quasi-public uses;
10. Public uses.

C. Prohibited Uses. All uses not listed above, including adult entertainment and wireless communication facilities.

10. Title 2 and Title 17 SWMC apply to this project.
11. SWMC section 2.90.050 regulates the procedures for the required public hearing.
12. On November 14, 2011 a Notice of Application and Public Hearing was mailed to property owners within 500 feet of the project area.
13. On November 16, 2011 the Notice of Application and Public Hearing was published in the Skagit Valley Herald and the applicant posted the notice at the entrance of the property.
14. The Notice of Application and Public Hearing also gave notice of a public comment period during which written public comments can be submitted. The comment period was open from November 16, 2011 until December 2 at 10:00 AM. Further comments will be heard at the Hearing Examiner hearing scheduled for 10:00 AM on December 2, 2011.
15. A conditional use permit application is subject to the review criteria of SWMC 17.56.060. The criteria upon which a conditional use permit application is judged shall be the extent to which it:

A. *Conforms to the Comprehensive Plan;*

- B. *Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and*
- C. *Is well planned in all respects so as to be an asset to the community.*

16. The CUP application form instructs the applicant to explain how the proposal addresses the three above questions. A Narrative (part of Exhibit A) submitted on July 25, 2011 explains the proposal, but does not specifically address the three questions in SWMC 17.56.060. A second narrative was submitted November 18, 2011. The second narrative further explains the merits of the proposal, but does not specifically address the three questions. Staff has reviewed the proposed project against the criteria outlined in Section 17.56.060 and found the following:

A. *Conforms to the Comprehensive Plan;*

The applicant does not specifically address how the proposal conforms to the Comprehensive Plan. Staff finds that there is insufficient information provided by the applicant to determine that the proposed project will be consistent with the City's Comprehensive Plan.

Policy LU5.5 of the Land Use Element of the Comprehensive Plan is to "prevent incompatible uses within residential areas." It is questionable if the large-scale growing of controlled substances is a use compatible in the residential zone.

B. *Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts;*

The applicant does not specifically address this question, but offers some answers within the two narratives submitted July 25th and November 18th (Exhibit A).

The property is in the R-5 zone. There are residences to the north, east and west of the facility. The building that contains the grow lockers/rooms is on the north property line, approximately two feet or less from the property line. To the south of the property is an assisted living facility for seniors. About six (6) residents live at the assisted living home. The storage facilities parking lot abuts the southern property. The operator of A-1 Storage currently resides in a "fifth-wheel" recreational vehicle on the west edge of the property. A house is under construction on the adjacent property to the west that is owned by the same family as A-1 Storage, and will ultimately contain the storage facility office, as well as the residence for the facility's operator. Construction on the home/office has been delayed for the last 2-3 years.

Staff believes there are six significant issues that the proposal must address to be compatible with the surrounding area and cause no unreasonable adverse affects:

1. noise
2. lighting
3. odor
4. traffic
5. security
6. legal issues

Noise, lighting and odor can likely be mitigated. The current business hours of 7:00AM to 8:00PM as approved under CUP #2569 should be strictly enforced and any new mechanical equipment should be required to be muffled if the equipment makes any more noise than a residential system. Lighting can be required to be shielded as necessary to prevent light from shining directly on the neighboring properties. Odors can be mitigated with approved filtration systems. The applicant indicates that there are already filters on the system's exhaust ports to cut down on odor. Additional filtering can be required by a CUP to assure there will be no nuisance odors should the existing filtration system be inadequate.

Traffic impacts as compared to the previous allowed use, however, are considerably higher. The previous approval was for 130 storage units, generating an expected total of four (4) trips per day according to the narrative submitted with the application (Exhibit A). The new proposal for 11 storage units and 90 hydroponic grow lockers/rooms is expected to generate twenty four (24) trips per day according to narrative submitted with the application.

Staff finds that the increased traffic amounts are significant, from four (4) trips per day prior to the proposed use up to twenty-four (24) trips per day with the new use.

If approved, the CUP conditions could require the access drive and parking area to be upgraded. The lot would need to have paved travel lanes, turn-around area and parking. Per SWMC 17.36.030, the building type specified in the application is ministorage, for which parking requirements are determined by the zoning administrator (Planning Department). Building code also requires at least one accessible parking stall. Presuming there will be a caretaker's residence incorporated, a minimum of five parking spots (including the handicapped parking space) will be required, two of which will be reserved for the residence.

The presence of marijuana on-site makes **security** a significant concern. According to regional news reports, other sites where medical marijuana is grown in western Washington have been burglarized. The applicant has indicated that there is a monitoring system in place and there is a residence on site to add security. Specific details of the security system or measures have not been provided. The presence of a controlled substance would likely increase the possibility of crime at the site.

Finally, the **legal standing** of medical marijuana is dubious. There is conflict between state and federal rules concerning medical marijuana. To avoid complicity in an illegal act, the city is judging the use upon its impacts on the neighborhood, and the other criteria for a CUP. The nature of the business is not regulated by city regulations, thus the CUP application is not being judged on that facet.

Though the impacts of the additional noise, odor and light generated by the proposed use may be mitigated, the impacts of the increased traffic cannot be easily rectified. Staff finds that the increased traffic on the dead-end residential street *would* likely cause an unreasonable adverse impact.

C. *Is well planned in all respects so as to be an asset to the community.*

The applicant does not specifically address how the proposed project has been thoughtfully planned. The site is absent of any landscaping or aesthetic improvements to soften the commercial buildings, even though it is in a residential neighborhood. The site appears more like an industrial site (as it was before the site was a storage facility) than a commercial site. Commercially zoned properties are required to have 15% total site landscaping, and must provide substantial screening when adjacent to residential zones (SWMC 17.50.120 Screening requirements). A-1 Storage has no apparent landscaping. It is not the intent to require the property to meet the current landscaping standards, however, in light of the increased impact of the proposed use, additional conditions would be necessary to bring the property closer to compliance with the current code and neighboring uses. It would also be in the interest of the neighboring properties and community in general to require improved site landscaping and screening to improve the aesthetics of the facility, if approved.

Even if the project is required to improve site screening and landscaping, staff finds that there is insufficient information provided by the applicant to determine that the proposed project has been thoughtfully planned.

STAFF RECOMMENDATION

Based on the above findings of fact, city staff recommends **DENIAL** of Conditional Use Permit #CUP-1-11. Staff finds that the applicant does not present a thorough written record in support of the proposal. The proposed use, 90 hydroponic-grow lockers/rooms and 11 traditional self storage units, has the potential to adversely affect the surrounding residential neighborhood, and the applicant has not provided compelling reasons how the potential impacts will be avoided or mitigated.

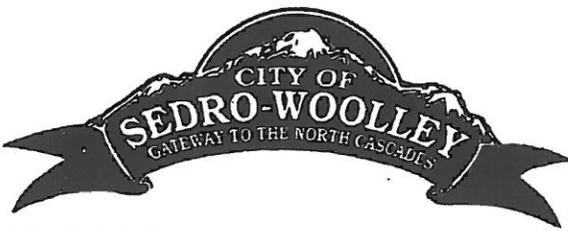
IF APPROVED, Conditional Use Permit # CUP-1-11, a modification of CUP 2569 and CUP 1-02 to allow the modification of an existing self storage facility building at 1230 Warner Street to include 11 traditional self-storage units and 90 hydroponic gardening system lockers/rooms for growing medical marijuana should be subject to the following **conditions**:

1. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site;
2. The business hours shall be limited to 7:00AM to 8:00PM;
3. Signs, whether on site or off-site, are limited to a combined total of 20 square feet;
4. Applicant shall install slats in the fence to screen the facility from the neighbor's property to minimize visual impacts;
5. Applicant shall submit a landscaping plan that includes landscaping at the entrance to the facility and on the south side of the property. The plan must be approved by the Planning Department and the landscaping shall be installed within 3 months of CUP approval;
6. Submit a parking lot plan that includes paved travel lanes, a turn-around area and parking for 5 cars (one meeting ADA requirements). After approval by the Planning and Public

- Works Departments, plans shall be submitted within 3 months and the paving and any associated drainage system shall be installed within 6 months of CUP approval; and
7. The public comment period ended after the staff report was compiled, so complete public comment was not available to staff to help address the public concerns and possible impacts of the use. Staff asks that the Hearing Examiner add necessary conditions based on the written public comments received and oral testimony at the December 2, 2011 hearing.

EXHIBITS

- A. Conditional Use Permit Application #CUP-1-11 including site plan;
- B. Original CUP approval 1-10-02, file CUP#1-02;
- C. Modified CUP approval 2-1-05, CUP file # 2569;
- D. Consent letter from property owner; and
- E. Notice of Application & Public Hearing.



Building, Planning and Engineering
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360)855-0771
Fax (360) 855-0733

CONDITIONAL USE PERMIT APPLICATION



APPLICATION NUMBER: CUP-1-11

Pre-application File #: N/A

Pre-application date: 7/11

Section 1 - Applicant Information

Applicant Name: Thomas Sweet, Jean Sweet

Applicant Address: 1230 WARNER

Applicant Phone: 360 854 9615 Cell#: _____ Fax#: _____

Applicant email: ALSTOR@COMCAST.NET

Owner: Jean Sweet

Owner Address: 24236 BRANDON LN.

Section 2 - Project Information

Location: 1230 WARNER

Assessor's Parcel number(s): 72224 Zoning Classification: _____

Describe existing use at the location and proposed use/land-use action: Storage Facility
propose to allow for manufacturing

Zoning Designation: Residential Flood zone: x

Total site size in acres: _____ Critical Areas by type and acres: _____

Describe existing conditions on and adjacent to site: To the East, Excavation Co.
to the SO. Retirement Home, N And W Residential

EXHIBIT A
TO STAFF REPORT

In reviewing a conditional use permit request, the Hearing Examiner must consider the following criteria specified in Section 17.56.060 of the Sedro-Woolley Municipal Code. Use extra sheets if needed:

1. How does the proposed use conform to the Comprehensive Plan for the City of Sedro-Woolley? _____

2. Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated). _____

3. Is the proposed development or use well planned in all respects so as to be an asset to the community? _____

4. Other applications or variances being applied for as part of project: _____

Please attach the following:

- Site plan - see site plan instructions. 7-12-11
- Written comments from City from pre-Application meeting.
- Current title report (within 6 months of application). 9-8-11
- State Environmental Policy Act (SEPA) checklist (if required).
- Three sets of pre-addressed, postage-paid envelopes. See mailing procedure.
- Fees based on current fee schedule. 7-18-11
- The terms and conditions of covenants and agreements regarding the intended development.
- Written confirmation that the property owner is aware and supportive of proposed use. 10-11-11

Site Plan Requirements: A scale drawing containing the following:

- Name of property owner, north arrow, scale
- All property lines, easements and their dimensions
- Adjacent streets and rights-of-way
- Circulation for vehicles and pedestrians
- Parking
- Location, size and shape of buildings existing and proposed
- Location of wells, creeks, lakes, rivers, waterfront, dikes, drainage ditches
- Location and dimensions of sewage systems
- Dimension and depth of any fill on the site
- Topography at appropriate contour intervals
- Structures on adjacent property (approximate location)
- Significant trees: Trees over 6" diameter at a point 5 feet above the ground. Stormwater facilities (may be part of separate stormwater report)

Section 3 – Signature

Application is hereby made for a CONDITIONAL USE PERMIT concerning the above stated activity. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the officials of the City of Sedro-Woolley the right to enter the above-described location to inspect the proposed or completed work.

Printed Name: Thomas Swett

Signature: Thomas Swett Date: 2-3-11

Section 4 – Procedure

Conditional Uses are not allowed outright, but may or may not be permitted in a given zone depending upon whether the proper conditions exist. They are also conditional in the sense that conditions may be attached to approval of such permits. Conditional use permits, as with all zoning regulations, go with the land. All aspects of the application, including site plans and design of signs and other improvements, are considered binding.

Whereas the bulk restrictions and lot size requirements of the particular zone shall generally apply to conditional uses, the City may impose greater or lesser bulk restrictions and lot size requirements as determined through the conditional use permit process.

Application Procedure:

1. **Pre-application meeting.** All applicants are required to first attend a pre-application meeting with the Planning Department and other appropriate staff in order to discuss the proposal. This meeting is held to assist the applicant understand the conditional use permit process.
2. After the pre-application meeting, submit a conditional use permit application, required documents, completed SEPA checklist (if required) and fee.
3. Application will be reviewed for completeness. Incomplete applications must be resubmitted with the requested information. The applicant must provide:
 - A. Names and addresses of property owners and residents within 500 feet of the site,
 - B. Current (past 6 months) title report,
 - C. Two (2) sets of pre-addressed, postage-paid envelopes,
 - D. A map showing the surrounding properties, and
 - E. An affidavit stating it is a true and correct list of names and addresses. **(List of names must be obtained from the County Assessor's Office.)**
4. The City reviews the completed SEPA checklist, makes a threshold determination, and determines any necessary mitigation.
5. After completion of environmental review, the Planning Department schedules a hearing before the Hearing Examiner and provides the required public notice.
6. Planning Department submits to the official newspaper (Skagit Valley Herald) a copy of Notice of Public Hearing and notifies owners of property and residents within 500 feet of the subject site a minimum of 15 days prior to the public hearing.
7. At the public hearing, the Planning Department presents the staff report and the applicant makes his/her presentation. The hearing is then opened to the general public for testimony. Within 10 working days of the hearing, the Hearing Examiner makes a decision on whether to approve, approve with conditions, or deny the application.
8. The decision of the Hearing Examiner is final unless appealed to the City Council within fourteen (14) days of the date of the decision or the date of publication of the decision, if required.

Conditional use permits shall become void if substantial progress toward construction of improvements is not made within two years or if the use has not commenced within five years, which periods may be extended by the Hearing Examiner

City of Sedro-Woolley Mailing Procedure

1. Obtain a list of names and addresses of **residents and property owners** within 500 feet of the edge of the subject property. In determining the outside edge, include all other adjacent property owned by the applicant. The source of the names and addresses must be the Skagit County Assessor's records.
2. Obtain a map showing the subject property, the 500 foot radius, and all properties on the mailing list. This is available at the Assessor's office.
3. Prepare 2 sets of postage-paid envelopes using these lists.
4. Prepare additional envelopes for residents of the property if the owner does not live on site. If the name of the resident is unknown, address the envelope to "resident".
Example: Resident, 123 State St., Sedro-Woolley, WA. 98284.
5. Fill out the affidavit below and have it notarized.
6. Bring the list, postage-paid addressed envelopes, map, and notarized affidavit to the city Planning Department.

AFFIDAVIT OF CORRECT NAMES AND ADDRESSES

I, _____, do hereby certify
Affiant

That the attached list of property owners, addresses and parcel numbers for the proposed project, _____,
Name of proposed project

Is a true and correct copy provided for me by the Skagit County Assessor's Office for land within 500 feet of the property lines of P _____.
Site parcel number

Signed: _____

Date: ____/____/____

Subscribed and sworn to before me on this ____ day of _____, 20____.

Print Name: _____

Notary for the State of Washington,

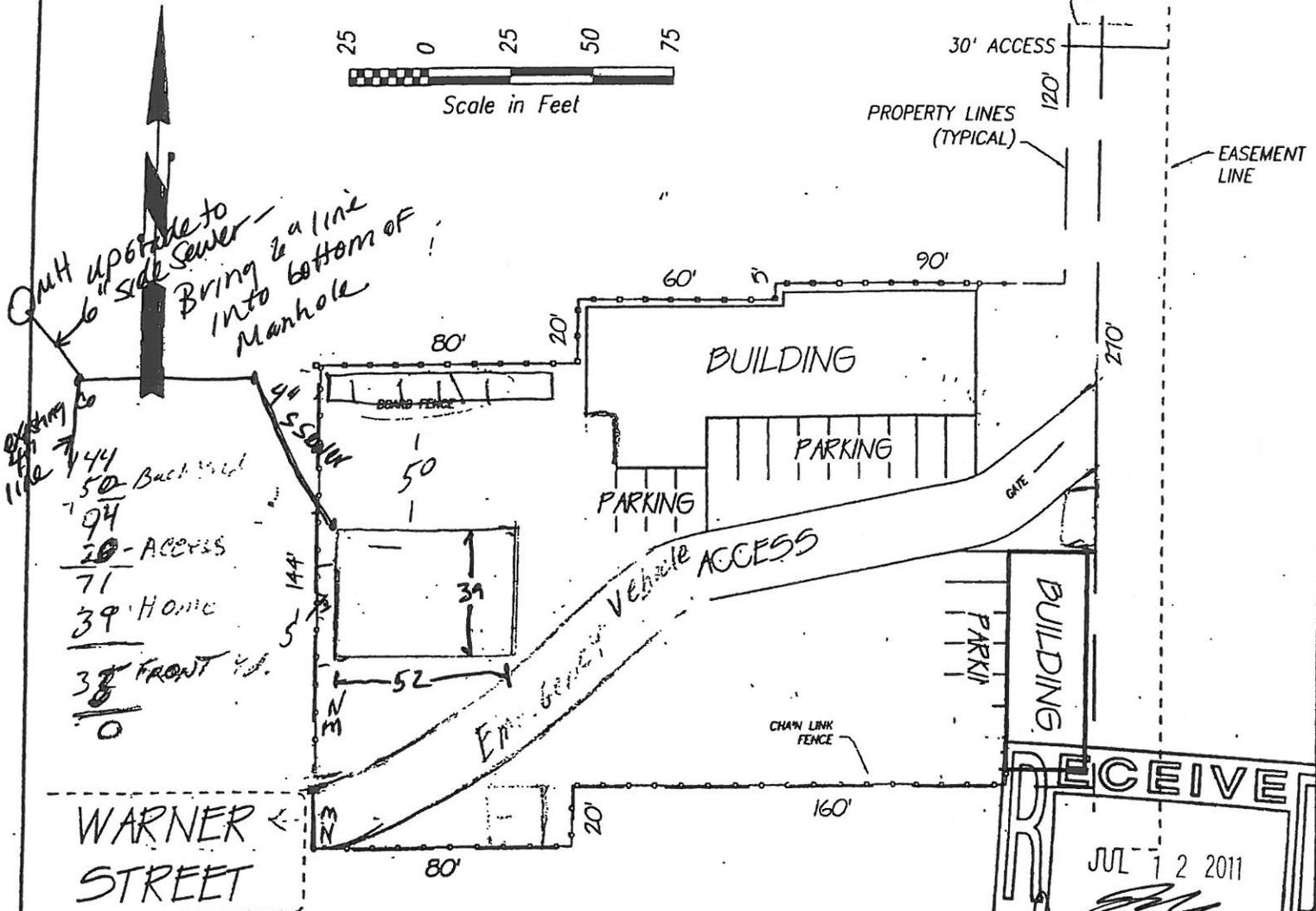
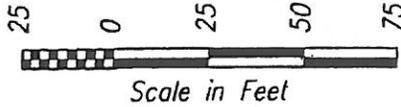
Residing at _____

My Commission expires: _____

9.13.01

Drainage

OFFICE COPY STATE
COMMERCIAL AND MUST BE ARCHIVED STREET



RECEIVED
JUL 12 2011
WPT-11

SITE PLAN

for

TOM SWETT

RECEIVED
JAN 28 2008
BY: JP-12-08

SITE PLAN APPROVED
 APPROVED BY: *[Signature]*
 DATE: 2-12-08 PERMIT # 12-08
 CITY OF SEDRO-WOOLLEY
 PLANNING DEPARTMENT

APPROVED FOR HOUSE LOCATION ONLY
 ANY NEW OR RELOCATED GARAGE BUILDINGS REQUIRE SEPARATE PERMIT.
 SKAGIT SURVEYORS & ENGINEERS 806 METCALF ST. SEDRO-WOOLLEY, WA 98284 855-2121 12SEP01

ASSETS TO THE COMMUNITY AND LAW ENFORCEMENT

Since RCW 69.51A and the subsequent changes to that code went into effect, how can law enforcement agencies know who is and who is not in compliance with that law. The first thought of registering the names and address of all the people who have the required documentation that allows personal use and growth of medical marijuana is fraught with too many pitfalls and other issues to even be considered at this time. And since law enforcement has no clear and affordable solutions at this time, we at **A1 HEATED STORAGE**, located at 1230 Warner St, Sedro Woolley, WA. have created what we believe will be something of great value to law enforcement, medical marijuana users and all members of the community.

A1 Heated Storage has been in business for 11 years renting different sized, individual units for household items. after conversation's with Law Enforcement officers in June 2010, We took all suggestions, and or recommendations, along with the RCW 69.51A , and developed a controlled program for the growth of medical marijuana.

We first verify the individual has all the proper paperwork, documentation and picture identification. One set of records is kept in our office and documentation is located on each locker.

Individual lockers are checked and designed so that no individual may grow or have more plants than allowed by RCW 69.51A

There are two types of lockers. (single or double), A single locker allows for a maximum capacity of 8 plants and a double locker has the maximum capacity of growing 16 plants. However a single locker using 6 plants or a double locker using 12 plants will give optimal result's.

We provide a secure environment with a locking entry and security alarm service in contact with local law enforcement agency.

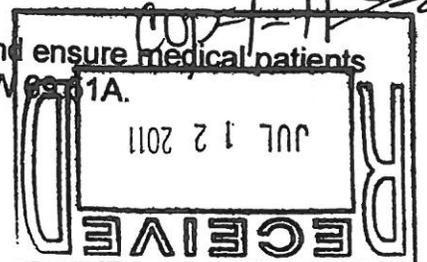
We are requesting that in the event of failure to pay, loss of, or revocation of current medical card, And or the client becomes disabled or expires, that the police work with such facilities to confiscate and destroy the contents of the locker in a safe and legal fashion.

It is **A1 Heated Storage** belief that all such facilities of this nature be located within city limits to ensure prompt responses to alarms by Local law enforcement.

And that all required documentation, records and signage , be on each locker and in each building to insure compliance with RCW 69.51A ,

And that all records be made available to law enforcement upon request.

We feel this system will allow law enforcement a way to monitor and ensure medical patients are not over growing and that all is being done to comply with RCW 69.51A.



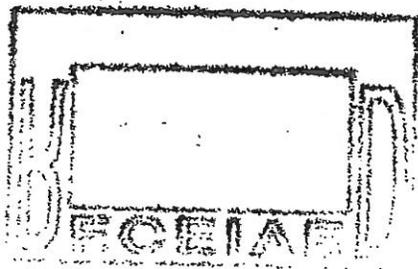
With **A1 Heated Storage** systems and plans, we believe this will lower the amount of medical marijuana grown in homes and lower the impact of possible adverse effects on patients, their families and neighbors.

We further feel this will reduce the number of home invasions of home growers and helps those with the right to grow do so in a safe place away from schools, children, pets and others.

All facilities will need to have a working and open door relationship with local Law Enforcement

Respectfully,

Thomas Swett
360-854-9615



RECEIVED
JUL 25 2011
Following CUP-1-11
SACK

In reviewing a conditional use permit request, the Hearing Examiner must consider the following criteria specified in Section 17.56.060 of the Sedro-Woolley Municipal Code. Use extra sheets if needed:

1. How does the proposed use conform to the Comprehensive Plan for the City of Sedro-Woolley? (see Attached)
2. Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated). (see Attached)
3. Is the proposed development or use well planned in all respects so as to be an asset to the community? (see Attached)
4. Other applications or variances being applied for as part of project: ~~see~~ NOT APPLICABLE

Please attach the following:

- Site plan - see site plan instructions.
- Written comments from City from Pre-Application meeting.
- Current title report (within 6 months of application).
- State Environmental Policy Act (SEPA) checklist (if required).
- Three sets of pre-addressed, postage-paid envelopes. See mailing procedure.
- Fees based on current fee schedule.
- The terms and conditions of covenants and agreements regarding the intended development.
- Written confirmation that the property owner is aware and supportive of proposed use.

Narrative

The proposal is for the modification of an existing Conditional Use Permit for A-1 storage (CUP #2569). That permit was a modification of the original Conditional Use Permit (CUP #172). The purpose of this narrative is to outline the differences between the approved use and the proposal. We have attached copies of the relevant portions of the previous applications and approvals to support this narrative.

The current proposal would modify the existing permit (#2569) to allow the use of small lockers roughly two feet by three feet by seven feet for the use of hydroponic gardening. No changes would be made to the exterior of the existing structures and only one of the two existing storage buildings has been converted for the proposed use (The large building along the northern property line as shown on the site plan). The remaining building would continue to house eleven conventional storage units. The converted building could have as many as 90 lockers for growing produce. This would result in a total of 101 storage units. The previously approved CUP allowed up to 130 units so the proposal would be a reduction in the total number of units.

The use of the hydroponic lockers differs somewhat from conventional storage. The customers typically use the lockers for a two month cycle and during that time come to the site roughly twice a week to tend their crops. The visits are brief lasting approximately ten to fifteen minutes. The proposal would require no additional parking. The hours of operation would be the same as approved in the previous permits.

The primary difference between the proposal and the approved CUP is the number of trips that would be generated. Under the proposal, the number of trips anticipated each day would be 24 as opposed to four trips per day that would be anticipated from conventional storage. The anticipated 24 daily trips would be the equivalent of roughly 2.5 single family units. While the number of trips would be increased they would not be the large moving trucks and trailers that would typically be associated with storage units (with the exception of the 11 conventional storage units—a significant reduction from the approved 130 units) but would be personal vehicles.

Other anticipated differences include the use of more water and electricity. The building where the lockers are located has been modified to accommodate the required water and electricity use. The lockers themselves are enclosed and they are further enclosed in a building so light will not escape. The security of the entire facility has been increased to discourage vandals and theft. The fencing around the facility has been upgraded and alarms have been installed.

The use is similar to storage in that the applicant is providing space to customers. The proposal would not include the sale of any produce that may be grown in the lockers. It is simply space that is being offered and like conventional storage, the use of the space is at the discretion of the customers.

This is a business opportunity, that has been designed and reviewed thru Local law enforcement and the skagit county drug task force, as well as the Snohomish county drug task force, prior to any actions being taken.

After discussions with the heads of the drug task force , it was determined that this would be considered a legal business opportunity, i was givin a list of concerns that they felt needed to be implemented and addressed.

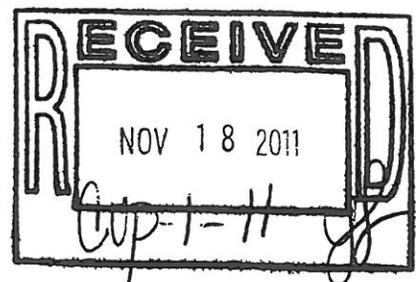
1st. was, a way to show that no one using the facility would be growing more than the amount prescribed by state law, no more than 15 plants per single card holder. This was accomplished with the use of 2' by 3' lockers that will only hold 7 plants per locker and no more than two lockers per customer, and rooms with viewing ports for the law enforcement to see in at any time, all clients have signed a wavier and agreement to meet and open any container or room that law enforcement would like to enter . And to have each clients proper papers displayed at the entrance of thier prespective spaces.

2nd. was properly installed electrical service to handle the increased power requirements.this has been completed, thru liscensed electrical contractors, and the electric inspector. New transformer and added service lines from puget power have upgraded the building to a 600 amp service.

3rd was to have a security system, we have had the evergreen security company install and monitor with a high tech system, allowing for personal alarming during working hours as well as after hours alarming direct to the city of sedro woolley police. we also have onsite living quarters for added security.

4th. is that the odor be controlled, this has been accomplished thru numerous filters on all exhaust air.

As too address city concerns it is true that there would be more visits per client than the existing use as a storage facility,



we are today approved to have up to 130 clients, using large trucks and trailers as a storage facility.

With new approval we will have a maximum 86 clients, due to power and space availability ,

today's use is estimated to be 1 visit per week, and includes several visits during move in and move out periods per customer.

new use estimates 2 visits per week. however new use would eliminate large moving trucks and trailers, coming and going through residential area, and with reduction in clients, should create a virtually silent operation of business, with no adverse impact .

i would like to note that we have been operating and growing now for over 16 mo., with no complaints of any kind.

it is important to note, we do not sell anything!

we started without cup approval 16 months ago because all we do is rent space, . With this in mind, we thought that this is the same as our existing approved use, as a storage facility, renting space.

Thomas Sweet

11-18-11

CITY OF SEDRO-WOOLLEY
CONDITIONAL USE PERMIT APPLICATION

CITY OF SEDRO-WOOLLEY
BUILDING DEPARTMENT

Name Jean Swett Phone No: 856-5394

Address: 24236 Brandon Lane Sedro-Woolley, WA 98284

Address of Property (if different) 1211 State Street Sedro-Woolley, WA 98284

Legal Description See Attached

Size of area (in acres and square feet) 26,834 square feet (0.62 acres)

Present Zoning SF-2 Comprehensive Plan Designation SF-2

What type of conditional use permit are you requesting? Alter an existing non-conforming use to allow commercial storage. 17.04.050(A) provides that a non-conforming use can be enlarged, altered or expanded through CUP process.

Applicant's Representative (if applicable) Tom Swett (360) 856-3040

Please attach the following:

1. Site plan with dimensions, showing property boundaries, existing and proposed structures, streets., other significant physical features and other applicable information depending on the nature of the proposal.
2. Completed State Environmental Policy Act (SEPA) checklist and appropriate fee (fee based on square footage of project), if applicable.
3. List of property owners located within 300 feet of the site, to be obtained from County Assessor's Office
4. Fees: \$225.00 Dependent Relative Cottage; \$300.00 Residential; \$400.00 Commercial

Dated this 21 day of March, ~~19~~ 20 01

Jean Swett
Signature (Owner or Contract Purchaser)

EXHIBIT B
TO STAFF REPORT

CITY OF SEDRO-WOOLLEY CONDITIONAL USE PERMIT SUPPLEMENTAL APPLICATION

In reviewing a conditional use permit request, the Planning commission must consider the criteria specified in Section 17.56.060 of the Sedro-Woolley Zoning Ordinance.

Please answer the following questions addressing the criteria to the best of your ability.

1. How does the proposed use conform with the Comprehensive Plan for the City of Sedro-Woolley.

The Comprehensive Plan does not specifically address the issue of non-conforming uses. However, Policy LU5.7 deals with the issue of recognizing the rights of property owners to freely use and develop their property. Allowing a conditional use for this property would be consistent with Policy LU5.7.

2. Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated).

The proposal is for a commercial storage facility to be operated within the existing buildings on the site. In addition, there would be RV/Boat storage for +/-11 vehicles/boats outside the buildings. Historically the site has been used for storage and maintenance of logging trucks. That use continues on a portion of the site that is rented to Nielson Brothers. Since 1988, the remainder of the site has been used as storage for vehicles, equipment and miscellaneous items. If the conditional use were approved, the non-conforming use would be legitimized. As part of the proposal, the applicant intends to construct fences around those portions of the property not already fenced and to limit access to the property by use of a locked gate. The fences will be 6-foot chain link with slats. If acceptable to the City the applicant would like the fences to have razor wire along the top. Access will be limited to the hours of 7 a.m. to 8 p.m. The fence would eliminate the ability for vehicles to go from the end of Warner Street through the property to State Street thereby reducing traffic impacts to the neighborhood.

Is the proposed development or use well-planned in all respects so as to be an asset to the community?

The proposal would legitimize an existing non-conforming use. The buildings are existing and no additional structures would be built. The applicant intends to eliminate all of the fueling and maintenance activities that have historically occurred on the site thus reducing the chance for oil or gas spills. The proposal would be fenced to limit access. Hours of operation would be limited to reduce conflicts with neighbors. The proposed storage would eliminate the current logging truck traffic that the neighborhood experiences and has historically experienced. The proposed use is a lower impact commercial use more compatible with residential neighbors than the historic logging truck storage/maintenance operations.

The proposal would include Landscaping consistent with City requirements to the extent possible. This would include fences (6-foot chainlike with slats) on the southern property line (existing); the western property line from the southwest corner to the existing shed; and the eastern property line from the existing building north to the proposed gate. A 7-foot landscape screen comprised of medium shrubs on 6-foot centers would be located on the western property line. There are existing trees located on the southern property line. It is not possible to include plantings in conjunction with the fence on the eastern property line. The entrance door to Existing Building 2 is located in the northeast corner and the property to the east of the building and proposed fence is ingress/egress for the neighboring property.

The applicant proposes one sign for the business. It would be attached to the north side of Existing Building 1 (see site plans). The sign would be 5 square feet in size.

The only improvements that would occur on site would be remodeling the existing buildings to accommodate the storage units (see attached drawing) and repairs to the roofs of the existing buildings. No new paving or buildings are proposed.

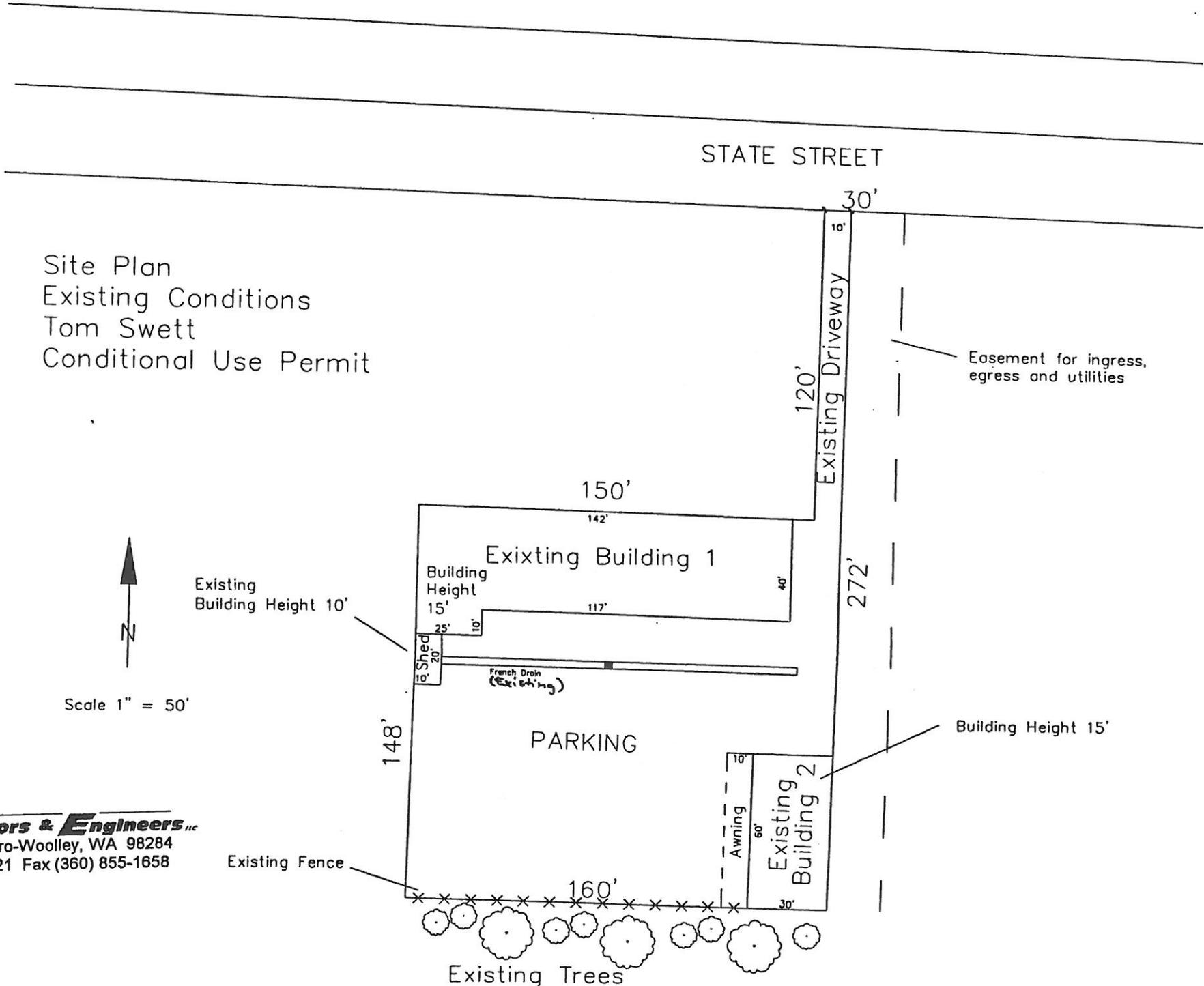
LEGAL DESCRIPTION

Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." as per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows:

1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and
2. The West 60 feet of the North 125 feet thereof; and
3. The south 18 feet thereof.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over, to, through and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH.

Situate in the City of Sedro-Woolley, County of Skagit, State of Washington.



Site Plan
 Existing Conditions
 Tom Swett
 Conditional Use Permit



Scale 1" = 50'

Skagit
Surveyors & Engineers, Inc.
 806 Metcalf, Sedro-Woolley, WA 98284
 Ph (360) 855-2121 Fax (360) 855-1658

Easement for ingress,
 egress and utilities

Existing
 Building Height 10'

Building Height 15'

Existing Fence

Existing Trees

March 20, 2001

City of Sedro-Woolley
720 Murdock Street
Sedro-Woolley, WA 98284

RE: Property Located at 1211 State Street

The purpose of this letter is to provide documentation regarding the use of the subject parcel. It is our understanding that the documentation is necessary to show that a legal non-conforming use exists on the property. In order to do that it must be demonstrated that the use existed prior to the adoption of a zoning code and that it has been in continuous operation since the zoning code was adopted.

Sometime before the 1960's, Carroll Mill built the subject buildings and used them in conjunction with their log hauling operation. For a number of years we leased space from Carroll Mill to use as storage for our log hauling operation. In 1978 or 79 Carroll Mill moved and we purchased the property. We continued to use it as storage for our log trucks until 1988. Since 1988 we have used the main building for storage of vehicles, equipment and other items. We rented the outer building to Nielsen Brothers. It is our understanding that Nielsen Brothers are still renting the outer building for storage purposes.

Carroll Mill clearly constructed the buildings and began using them before the City had a zoning code. It is our belief that the non-conforming use has been in continuous operation and meets the requirements as a legal non-conforming use.

Sincerely,


Dean Hamilton



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504-8711 • (206) 459-6000

15 JAN 93

HANSEN, RON P
ON SITE TESTING & CONSULTING
1392 MCLEAN RD
MOUNT VERNON, WA 98273-

To Applicant:

This letter is confirmation that you are registered with the Washington State Department of Ecology Underground Storage Tank Program to perform site assessments in Washington State. Your name, address and phone number will be made available to individuals or firms who may be interested in your services.

Enclosed is the Department of Ecology's "Guidance for Site Checks and Site Assessments for Underground Storage Tanks" which has been prepared to clarify Ecology's requirements for conducting UST site checks and site assessments.

Also enclosed is the Site Check/Site Assessment checklist. For each site check or site assessment performed, the checklist must be filled out and submitted along with two copies of the results to the address shown on the checklist.

If you have any questions concerning the guidance or checklist, or any other questions on UST site assessments in general, please call Leon Wilhelm at (206) 438-7162.

Sincerely,

John Bails
Licensing Coordinator
Underground Storage Tank Section
Toxics Cleanup Program

JB:sd
Enclosure



OF WASHI

DEPARTMENT OF ECOLOGY

P.O. Box 47600 Olympia, Washington 98504-7600
Toll-free 1-800-407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

December 22, 1995

Dear Site Assessor:

Enclosed is a site assessment card that can be used to verify that you have passed the Washington State Underground Storage Tank Site Assessment exam. Your name, address, and phone number will be made available to individuals or firms that may be interested in your services. Since it is required that you pass this test only once, it is extremely important that you notify the Education Department at the International Fire Code Institute at (310) 699-0541 of any changes of address or phone number.

If you have any questions pertaining to UST site assessments in general, please contact the UST staff at your Ecology regional office or me at (360) 407-7210.

Sincerely,

Charles H. Hinds, P.E.
Toxics Cleanup Program

CH:cp
Enclosure



Washington State Institute
Underground Storage Tank
Site Assessment

HANSEN, RON

has successfully completed the Washington State Competency Examination for Site Assessment of UST Petroleum Releases as required by WAC 173-360-600. Passing this exam demonstrates knowledge of regulations, standards, and practices pertaining to UST Site Assessment in Washington.

Not valid unless signed
(12/28/95)

SWETT CONDITIONAL USE PERMIT SEDRO-WOOLLEY, WASHINGTON

SEPA CHECKLIST

Prepared for:

**Tom Swett
24236 Brandon Lane
Sedro-Woolley, WA 98284
360-856-3034**

March 19, 2001

Skagit Surveyors & Engineers

806 Metcalf St., Sedro-Woolley, WA 98284 Phone (360) 855-2121 Fax (360) 855-1658

ENVIRONMENTAL CHECKLIST

Purpose of Checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about our proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply". Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for non-project proposals:

Complete this checklist for non-project proposals, even though questions may be answered "does not apply." In addition, complete the Supplemental Sheet for Non-project Actions (part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

Swett Conditional Use Permit

2. Name of applicant:

Tom Swett

3. Address and phone number of applicant and contact person:

Applicant:

*Tom Swett
24236 Brandon Lane
Sedro-Woolley, WA 98284*

Contact:

*Marianne Manville-Ailles, AICP
Skagit Surveyors and Engineers
806 Metcalf St.
Sedro-Woolley, WA 98284
(360) 855-2121*

4. Date checklist prepared:

March 19, 2001

5. Agency requesting checklist:

Sedro-Woolley Planning Department

6. Proposed timing or schedule (including phasing, if applicable):

Improvements will be made as soon as feasible after approval of the Conditional Use Permit. All improvements should be made and the business should start operating within 6 weeks of Conditional Use Permit approval.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

There are currently no plans for additions or expansion of the project as proposed.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

No information has been prepared and none is proposed.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No other applications are currently pending.

10. List any government approvals or permits that will be needed for your proposal, if known.

Conditional Use Permit

- 11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.**

The proposal is to allow the alteration of a legal non-conforming use to allow the operation of a commercial storage facility. The site is currently used for storage of vehicles, equipment and miscellaneous items on half the site and logging truck storage and maintenance on the other half. The portion of the site used for logging truck storage and maintenance is rented to a logging company. Historically the entire site has been used for logging truck storage and maintenance.

The current proposal would include 10 to 12 outdoor parking spaces for RVs and boats and 50 indoor storage units for storage of personal items. The indoor storage would occur inside the two existing buildings on the property. No maintenance or repair work would be allowed on site.

No new buildings or paving would occur as a result of the proposal. The existing buildings would be remodeled to accommodate the storage units and there would be some repair work on the roofs.

- 12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.**

The property is a portion of the Southeast ¼ of the Southwest ¼ of Section 19 Township 35 North Range 5 East W.M. It is located at 1211 State Street in Sedro-Woolley, Washington.. The tax identification number of the property is: P77224. A legal description, vicinity map and site plan are attached.

TO BE COMPLETED BY APPLICANT:

B. ENVIRONMENTAL ELEMENTS

1. EARTH

- a. **General description of the site (underline one):** Flat, rolling, hilly, steep slopes, mountainous, other.
- b. **What is the steepest slope on the site (approximate percent slope)?**

The site is a graded gravel lot that is flat.

- c. **What general types of soils are found on the site (for example, clay, sand, gravel, peat, mulch)? If you know the classification of agricultural soils, specify them and note any prime farmland.**

The Soil Survey of Skagit County Area, Washington (U.S. Department of Agriculture Soil Conservation Service) indicates that the soils present on the site are Urban Land-Mount Vernon field complex. The site is primarily composed of graded fill material.

- d. **Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.**

There are no indications or history of unstable soils in the immediate vicinity of the site.

- e. **Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.**

No additional grading will be required for the proposal.

- f. **Could erosion occur as a result of clearing, construction, or use? If so, generally describe.**

No site alteration will occur therefore the opportunity for erosion to occur does not exist.

- g. **About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

The project will result in no new impervious surfaces. The existing conditions of the site are largely impervious.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

None are necessary or proposed.

2. AIR

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.

Air quality impacts associated with the proposed development are primarily a result of traffic that would use the facility. Based on the Institute of Transportation Engineers (ITE) average daily trip rate of 2.61 trips per 1,000 feet gross floor area would generate 20 vehicle trips per day.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

There are no known sources of off-site emissions or odors that would impact the proposal.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

Since the site is currently subject to logging truck traffic and emissions, it is likely that the change of use would have a benefit in terms of emissions.

3. WATER

a. Surface

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

There are no surface water bodies in or in the immediate vicinity of the site.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

No work will occur within 200 feet of any surface waters.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**

No fill or dredge material would be placed in or removed from any surface water or wetland.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.**

No surface water withdrawals or diversions will occur.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.**

The site is not within the 100-year floodplain.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**

Stormwater is the only discharge from the site. It discharges to an existing French Drain located just south of Existing Building 1 (see site plan). Since there will be no new impervious surfaces, there will be no change in the stormwater impacts on the site.

b. Ground

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.**

There will be no groundwater withdrawn. There will be no discharges to groundwater.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

There will be no waste material discharged into the ground.

c. Water Runoff (including storm water):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

Stormwater will be the only runoff from the site. Since there is no new impervious surface associated with the proposal, there will be no new stormwater.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.**

It would be very unlikely for any waste materials to enter ground or surface waters.

- d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:**

None are necessary or proposed.

4. PLANTS

- a. Check or underline types of vegetation found on the site:**

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

The only vegetation currently on the site consists of weeds.

- b. What kind and amount of vegetation will be removed or altered?**

No vegetation will be removed as a result of the proposal.

- c. List threatened or endangered species known to be on or near the site.**

None are known.

- d. **Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:**

The proposal would include Landscaping consistent with City requirements to the extent possible. This would include fences (6-foot chainlike with slats) on the southern property line (existing); the western property line from the southwest corner to the existing shed; and the eastern property line from the existing building north to the proposed gate. A 7-foot landscape screen comprised of medium shrubs on 6-foot centers would be located on the western property line. There are existing trees located on the southern property line. It is not possible to include plantings in conjunction with the fence on the eastern property line. The entrance door to Existing Building 2 is located in the northeast corner and the property to the east of the building and proposed fence is ingress/egress for the neighboring property.

5. ANIMALS

- a. **Underline any birds and animals which have been observed on or near the site or are known to be on or near the site:**

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

Animals that might be expected to be on the site would be urban tolerant species such as small rodents and songbirds.

- b. **List any threatened or endangered species known to be on or near the site.**

None are known.

- c. **Is the site part of a migration route? If so, explain.**

Yes, in so far as that all of Western Washington is a migration route for bird species.

- d. **Proposed measures to preserve or enhance wildlife, if any:**

No specific measures are proposed.

6. ENERGY AND NATURAL RESOURCES

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Fossil fuels would be used by customers vehicles. The business would use electricity for heating and lights. Natural gas or propane could also be used for heating, cooking, hot water, etc.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

The project would not affect the potential use of solar energy by adjacent projects.

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

None are proposed.

7. ENVIRONMENTAL HEALTH

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

No environmental health hazards are anticipated.

- 1) Describe special emergency services that might be required.

No emergency services beyond what are currently provided would be required for the proposal.

- 2) Proposed measures to reduce or control environmental health hazards, if any:

The change of use would eliminate the current and historic logging truck fueling and maintenance activities that occur on the site. No maintenance or repairs to stored items would be allowed on site. This would reduce the opportunity for environmental health hazards to occur.

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?**

The site and developed areas near it create and are exposed to noise sources typical of an urban area. The primary source of noise is traffic.

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.**

The principal source of noise is traffic.

- 3) Proposed measures to reduce or control noise impacts, if any:**

It is likely that the change in use will result in a decrease in noise since regular logging truck traffic will be replaced by sporadic traffic from those renting storage space.

8. LAND AND SHORELINE USE

- a. What is the current use of the site and adjacent properties?**

The site has historically been a logging truck storage and maintenance facility. Since 1988, a portion of the property has continued to be rented for logging truck storage and maintenance. The remainder of the site has been used to store vehicles, equipment and miscellaneous items. Surrounding uses are largely residential.

- b. Has the site been used for agriculture? If so, describe.**

The site has not been used for agricultural purposes in the recent past.

- c. Describe any structures on the site.**

There are two large buildings and a smaller shed located on the property (see attached site plan).

- d. Will any structures be demolished? If so, what?**

No structures will be demolished.

e. What is the current zoning classification of the site?

The existing zoning is SF-2.

f. What is the current comprehensive plan designation of the site?

The Comprehensive Plan designation is SF-2.1

g. If applicable, what is the current shoreline master program designation of the site?

Not Applicable.

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

No part of the site has been designated as environmentally sensitive.

i. Approximately how many people would reside or work in the completed project?

Approximately 2 to 3 people would be employed by the storage facility.

j. Approximately how many people would the completed project displace?

The existing tenants would be displaced.

k. Proposed measures to avoid or reduce displacement impacts, if any:

No measures are proposed.

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

The proposal is to legitimize and existing non-conforming use.

9. HOUSING

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

No housing would result from the proposal.

- b. **Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**

No housing would be eliminated by the proposal.

- c. **Proposed measures to reduce or control housing impacts, if any:**

No measures are proposed.

10. AESTHETICS

- a. **What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?**

There are no new buildings proposed. The portions of the site not already fenced would be fenced. The fence would consist of 6-foot chainlink with slats. A screen of shrubs would be planted along the western fence line.

- b. **What views in the immediate vicinity would be altered or obstructed?**

The view would be unchanged.

- c. **Proposed measures to reduce or control aesthetic impacts, if any:**

No measures are proposed.

11. LIGHT AND GLARE

- a. **What type of light or glare will the proposal produce? What time of day would it mainly occur?**

Light and glare from the project would be of the type typically associated with commercial development. It would include lights in and around the business, street lights and lights from vehicles traveling to and from the facility. The restaurants would likely have some type of lighted signage. Light and glare would occur in the hours after dark.

- b. **Could light or glare from the finished project be a safety hazard or interfere with views?**

Lighting associated with the proposal would not pose a safety hazard nor interfere with views.

c. What existing off-site sources of light or glare may affect your proposal?

There are no sources of light or glare that would affect the proposal.

d. Proposed measures to reduce or control light and glare impacts, if any:

The lighting for the proposal would be compatible with lighting associated with the residential uses that surround the site.

12. RECREATION

a. What designated and informal recreational opportunities are in the immediate vicinity?

There are no recreational opportunities in the immediate vicinity of the site.

b. Would the proposed displace any existing recreational uses? If so, describe.

No recreational uses would be displaced.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

No measures are proposed or necessary.

13. HISTORIC AND CULTURAL PRESERVATION

a. Are there any places or objects listed on, or proposed for, nation, state, or local preservation registers known to be on or next to the site? If so, generally describe.

None are known.

b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

None are known.

c. Proposed measures to reduce or control impacts, if any:

None are proposed or necessary.

14. TRANSPORTATION

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

Access to the site is from State Street. The property includes a 10 foot panhandle and a 20 foot easement on the property to the east for purposes of ingress, egress and utilities. The proposal would include a locked gate at the entrance to the facility.

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Sedro-Woolley is served by SKAT transit..

- c. How many parking spaces would the completed project have? How many would the project eliminate?

Parking for those using the storage facilities would be in front of the building where the individuals storage unit was located. The entire center of the site is open and would be more than adequate to accommodate any parking needs of customers.

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

No new roadways .are required to serve the proposal.

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

The project will not use nor is it in the immediate vicinity of water, rail or air transportation.

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

The table that follows shows the number of trips and distribution for the p.m. peak hours. These numbers were calculated using the Institute of Transportation Engineers (ITE) Trip Generation (5th edition) manual. The Mini-Warehouse (151) land use category was used. Trips were generated on 1,000 square feet gross floor area using the p.m. peak hour of the adjacent street traffic.

	PM Peak Hour	Average Daily Trips Weekday	Average Daily Trips Saturday	Average Daily Trips Sunday
Trips In	1			
Trips Out	1			
Total Trips	2	20	18	14

Based on the ITE Manual, most trips would occur between 2:00 p.m. and 5:00 p.m. on weekdays, noon and 1:00 p.m. on Saturdays and 1:00 p.m. and 4:00 p.m. on Sundays.

g. Proposed measures to reduce or control transportation impacts, if any:

The amount of traffic generated by this use is roughly equivalent to two single family homes. If the property were developed as single family home sites, it could be divided into three lots. Therefore the traffic impacts of the proposal would be less than if the site were developed consistent with zoning. In addition, the type of traffic will be different than currently exists. Instead of logging trucks traffic will be primarily automobiles. The ITE Trip Generation Manual indicates that only 2 to 15 percent of all traffic would result from trucks.

15. PUBLIC SERVICES

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

Fire Protection

The Sedro-Woolley Fire Department provides service to the site. No additional fire protection would be necessary.

Police Protection

Police protection is provided by the City of Sedro-Woolley Police Department. As with fire protection the new use would require no additional police protection.

Schools

The proposal would generate no impacts to schools.

b. Proposed measures to reduce or control direct impacts on public services, if any.

Tax revenues from the businesses would contribute to the provision of necessary public services.

16. UTILITIES

- a. **Underline utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**

The site is currently developed and all utilities are available.

- b. **Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.**

Water

Domestic water would be provided to the site by the Skagit County Public Utility District No. 1 (PUD). Water is currently available to the site.

Storm Drainage

Stormwater management is provided by a series of French drains..

Sewage Disposal

Sewage disposal for the proposal will be provided by the City of Sedro-Woolley wastewater system.

Solid Waste

Solid waste management would be provided by the City of Sedro-Woolley.

Other

Purveyors of other services for the site would include; Cascade Natural Gas -- Gas; Puget Sound Energy -- Electricity; Verizon -- Phone.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:

Marianne Mansilla-Ailles

Date Submitted: 3-23-01

Site Plan
 Proposed Conditions
 Tom Swett
 Conditional Use Permit



Scale 1" = 50'

STATE STREET

30'

Existing Driveway

Easement for ingress
 egress and utilities

Existing Building
 Height 15'

Existing Building
 Height 10'

Proposed
 Fence &
 Shrubs

Proposed
 Emergency
 Break Away
 Gate

Proposed
 Fence &
 Shrubs

Existing Fence

150.07

Existing Building 1

119.93

272.44

148.00

Shed

Proposed
 RV/
 Boat
 Storage

French Drain
 (Existing)

Proposed
 RV/
 Boat
 Storage

Awning
 60'

Existing
 Building
 2

Existing Building Height
 15'

Existing Trees

Tom Swett Conditional Use Permit.txt

From: RHOANDGREG@aol.com
Sent: Wednesday, July 10, 2002 10:24 AM
To: Jeroldine Hallberg
Cc: Douglas Barnet; Sharon Dillon; Patrick Hayden
Subject: Tom Swett Conditional Use Permit

Greg & Rhonda Morgan
1205 State Street
Sedro Woolley, WA 98284
Home Phone (360) 856-6580

July 10, 2002

City of Sedro Woolley, Planning Department
720 Murdock Street
Sedro Woolley, WA 98284

Dear Jeroldine Hallberg,

We are writing this letter because we feel Tom Swett is not complying with his conditions of his conditional use permit. The hours are to be 7 a.m. to 8 p.m. The gate is often open past 8:00 p.m. The signs, whether on site or off-site, are limited to a combined total of 20 square feet. The signs are defiantly over 20 square feet. Applicant shall install slats in the fence to screen the facility from the neighbors property to minimize visual impacts. The slats were placed in the south side and the west side months ago. The east and north side has no slats. We can see right into his yard. Applicant shall plant landscaping on the south side of the property as required and instructed by the planning department. We do not see any new landscaping planted. This conditional use permit has not been welcome in our neighborhood. All the surrounding neighbors have not been supportive of this business in our front and back yards. We would like to see the conditions be meet in a very timely fashion or the conditional use be taken away.

Sincerely,

Greg & Rhonda Morgan

cc: Sharon Dillon, Pat Hayden, Doug Barnet

CITY OF SEDRO-WOOLLEY PLANNING DEPARTMENT

720 Murdock Street
Sedro-Woolley, WA 98284

NOTICE OF APPLICATION

Dear Interested Parties:

The following application has been received by the City of Sedro-Woolley. A hearing by the Sedro-Woolley Planning Commission was continued from April 24 to May 22, 2001

Application: CUP #01-02 Conditional Use Permit

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1209 State Street. Records also show this is one of two properties addressed as 1211 State Street. It is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington. Complete legal description and a copy of the application is available for review at the Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, Washington 98284, or by calling (360)855-0771.

Request: The applicant wishes to apply for a conditional use permit to alter an existing nonconforming use to allow commercial storage.

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment

Environmental Documents: SEPA checklist, mitigated determination of non-significance.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written or oral testimony may be submitted to: City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284 (Phone: (360) 855-0771), until 4:30 p.m. May 22.

Public Hearing: The Sedro-Woolley Planning Commission will continue the public hearing on the Conditional Use Permit application at 7:30 p.m. May 22 at the Sedro-Woolley Community Center, 700 Pacific Street, Sedro-Woolley, Washington 98284.

Notice Published: April 4, 2001

MITIGATED
DETERMINATION OF NON-SIGNIFICANCE

Description of proposal: Alter an existing nonconforming use (logging truck storage and maintenance) to allow commercial storage.

Proponent: Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98283

Location of Property, including street address if any. 1209 State Street, Sedro-Woolley, WA 98284, NOTE: There is a discrepancy in the street number for this location. Some records show two parcels addressed as 1211. The parcel in question is described as Lot 2, "State Street Addition to Sedro, Skagit Co., Wash." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington with exceptions. A more detailed legal description is available for review in the office of the City Planner.

Lead Agency: City of Sedro Woolley, WA. 98284

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This determination is based upon the following mitigation being provided by the applicant.

1. Evaluate and clean up any soil or water contaminants to city standards before building permits are issued.
2. Provide a drainage plan and report prepared in compliance with the 1992 Department of Ecology Stormwater Management Manual for Puget Sound.

Responsible Official/Title: Jeroldine Hallberg, City Planner

Address: 720 Murdock Street, Sedro-Woolley, WA. 98284

Date of Issue: April 27, 2001

Date of Publication: May 2, 2001

Signature:

City of Sedro-Woolley
Planning Department
720 Murdock Street
Sedro-Woolley, WA 98284
(360) 855-0771
jhallberg@ci.sedro-woolley.wa.us

Conditional Use Permit #172 Tom Swett Mini-Storage
Staff Report
For Re-hearing of Conditional Use Permit #-02-01

Application: CUP #172 Conditional Use Permit for conversion of legal non-conforming use to mini-storage

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1209 State. The first CUP application was for property in question is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington. This application adds about 10,000 square feet to the west that is the easterly half of Tract 1 of State Street Addition.

Request: The applicant wishes to apply for a conditional use permit to alter an existing nonconforming use to allow commercial storage.

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment and soil clean up completed.

Environmental Documents: SEPA checklist, mitigated determination of non-significance.

BACKGROUND

History of nonconforming use from Dean Hamilton letter and city records

Pre-1960 Carroll Mill built the existing buildings for a log hauling operation
Hamilton Brothers leased this facility as log hauling operation storage.
1967 – 1970 Sedro-Woolley adopts first zoning code.
1978 or 79 Carroll Mill moved; Hamilton Brothers purchased site.
1988 forward Hamilton Brothers rented the outer building to Nielsen Brothers.

Comprehensive Plan and Zoning Code Designations

The Comprehensive Plan and Zoning Code designation for this property is SF-2, single family, 3 – 5 units per acre, the most restrictive residential zone.

Adjacent Uses

The adjacent property use is residential.

PROPOSED FINDINGS

1. Fire Access

The enclosed site plan revision shows a fire access approved by the Sedro-Woolley Fire Department.

2. Soil Clean-up

Contamination from petroleum products and solvents was identified on the site. Soil testing and contaminant removal were completed.

3. Conditional Use Permit Criteria

The application is subject to the criteria of SWMC 17.56.060. The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- Conforms to the Comprehensive Plan;
- Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts;
- Is well planned in all respects so as to be an asset to the community.

3. Non-conforming Use Criteria

A nonconforming use by definition is different than what the community envisions through the comprehensive planning process. City codes allow nonconforming uses to be modified through the conditional use procedure. The rules about nonconforming uses are in the Sedro-Woolley Municipal Code as follow:

17.04. 050 Nonconforming uses, structures and lots.

Uses, structures, and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements;
- E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. (Ord. 1013 1.05, 1985).

4. Proposed Use

The proposed use would have less impact than the current use as a maintenance and storage site for logging trucks. Clean up of the soil has been completed following decades of exposure to petrochemicals. The proposal would eliminate cross traffic except for emergencies. The proposed access is via Warner, on the west end of the site.

RECOMMENDATION

Staff recommendation is to approve this request subject to the following conditions:

- A. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.
- B. Completion of drainage facilities as per plan approved by city engineer.

CITY OF SEDRO-WOOLLEY PLANNING DEPARTMENT
720 Murdock Street
Sedro-Woolley, WA 98284

STAFF REPORT UPDATED

Application: CUP #01-02 Conditional Use Permit

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1211 State Street (some records show two parcels addressed as 1211). The property in question is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington. A copy of the application is available for review at the Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, Washington 98284, or by calling (360) 855-0771.

Request: The applicant wishes to apply for a conditional use permit to alter an existing nonconforming use to allow commercial storage.

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment

Environmental Documents: SEPA checklist, determination of non-significance.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written or oral testimony may be submitted to: City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284 (Phone: (360) 855-0771), until 4:30 the date of the public hearing.

Public Hearing: The Sedro-Woolley Planning Commission will hold a public hearing on the Conditional Use Permit application 7:30 p.m. April 24 at the Sedro-Woolley Community Center, 700 Pacific Street, Sedro-Woolley, Washington 98284.

Notice Published: April 4, 2001

BACKGROUND

History of nonconforming use from Dean Hamilton letter and city records

Pre-1960 Carroll Mill built the existing buildings for a log hauling operation
Hamilton Brothers leased this facility as log hauling operation storage.
1967 – 1970 Sedro-Woolley adopts first zoning code.
1978 or 79 Carroll Mill moved; Hamilton Brothers purchased site.
1988 forward Hamilton Brothers rented the outer building to Nielsen Brothers.

Comprehensive Plan and Zoning Code Designations

The Comprehensive Plan and Zoning Code designation for this property is SF-2, single family, 3 – 5 units per acre, the most restrictive residential zone.

Adjacent Uses

The adjacent property use is residential.

PROPOSED FINDINGS

1. Fire Access

The enclosed site plan revision shows a fire access approved by the Sedro-Woolley Fire Department.

2. Soil Clean-up

Since the findings were prepared for the April Planning Commission meeting, the applicant began the process of soil testing and contaminant removal. That process is underway.

3. Conditional Use Permit Criteria

The application is subject to the criteria of SWMC 17.56.060. The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- Conforms to the Comprehensive Plan;
- Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts;
- Is well planned in all respects so as to be an asset to the community.

3. Non-conforming Use Criteria

A nonconforming use by definition is different than what the community envisions through the comprehensive planning process. City codes allow nonconforming uses to be modified through the conditional use procedure. The rules about nonconforming uses are in the Sedro-Woolley Municipal Code as follow:

17.04. 050 Nonconforming uses, structures, and lots.

Uses, structures, and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;

- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements;
- E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. (Ord. 1013 1.05, 1985).

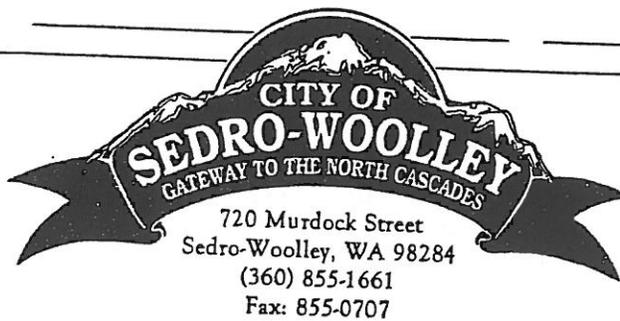
4. Proposed Use

The proposed use would have less impact than the current use as a maintenance and storage site for logging trucks. Clean-up of the soil has been initiated following decades of exposure to petrochemicals. The proposal would eliminate cross traffic using the western access point on Warner.

RECOMMENDATION

Staff recommendation is to approve this request subject to the following conditions:

- A. Access road standards to be approved by City Engineer.
- B. A stormwater management plan must be completed using the 1992 Stormwater Manual standards.
- C. Completion of soil clean-up as per the standards of Skagit County Health Department.
- D. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.



TO: Members of the Planning Commission

FROM: Jeroldine Hallberg

RE: Swett Conditional Use Permit

I am postponing the hearing for this CUP on recommendation from other city staff. We are asking the applicant to submit a stormwater plan, revised access design, and a level one environmental site assessment for soil and groundwater contaminants before bringing the application back to you for your consideration. We feel this is better than approving the application subject to the conditions.

During the transition to a new planner, this application was not circulated to the city engineering, building, and fire staff until late in the process, so the applicant did not have sufficient opportunity to respond. Our concerns are reflected in the recommendations below and in the memo from the city engineer.

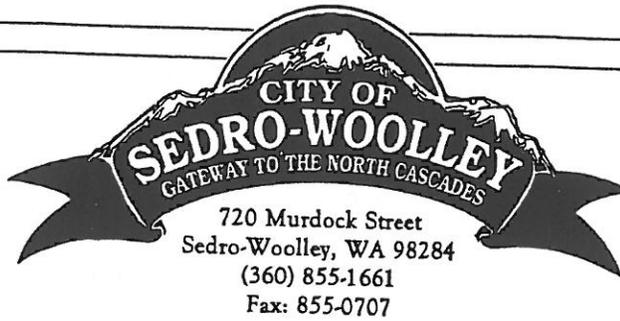
We do feel the proposed use should have less impact on the neighborhood, but are obligated to make sure that safety and health issues are addressed.

Following is the full staff report.

Application: CUP #01-02 Conditional Use Permit

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1211 State Street, and is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington. A copy of the application is available for review at the Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, Washington 98284, or by calling (360) 855-0771.



MEMORANDUM

TO: Jeroldine Hallberg
 City Planner

FROM: Douglas Barnet PE *[Signature]*

DATE: April 19, 2001

RE: 4/19/01 Meeting regarding Tom Sweet Conditional Use Permit
 1211 State Street

Per your request I have reviewed the application for the Conditional Use Permit. Following are my comments as well as a recap of what I told the proponent a the time of our meeting.

A Storm water report completed by a qualified professional shall be completed for the site.

An engineered drawing showing turning movements and traffic patterns shall be completed for the site to see how traffic, parking, and emergency equipment will move through the site per commercial applications. This will include long term rental parking, short term visitor parking, fire lanes, fire access both off of State Street and any fire turn arounds.

A level one environmental study should be completed of the site. The owner represented to City Staff that he had identified contaminants and he had hauled the contaminated materials off site in a truck and dumped them on a roadway somewhere. A review should be made to see if all hazardous material have been removed.

Ingress and egress from the site should be paved a minimum 30' from edge of existing adjacent paving.

Need greater access off of State Street than the 10' width shown on the sketch. Owner has represented that there is an additional 20' to the east for a total of 30' available to this

commercial use. Proponent should include sufficient width of access to allow for two vehicles to pass side by side.

The drawings prepared by proponent were conceptual in nature. Engineered drawings will allow for City Staff to review the project to see if it complies with current codes. Engineered drawing will allow for the proponent to identify on the site how the various issues of parking, stormwater and access will be addressed.

Until staff has an opportunity to review engineered drawing and review the two reports required by staff (Stormwater and Environmental) all comments are of a general nature and could change when the specific proposal along with the reports, are presented for review.

Engineering Recommendations to be added to the Staff Report:

Storm water report be completed
Engineered drawing be prepared

These reports should be submitted to the City and reviewed prior to final approval of the proposal.

Granting a Conditional Use Permit does not relieve the developer of meeting all of the City Development codes. No work is allowed on site until all issues are resolved.

BEFORE THE CITY OF SEDRO-WOOLLEY PLANNING COMMISSION

In re: the Application of)	
)	No. CUP - #1-02
)	
JEAN SWETT)	
Re: Modification of Non-Conforming Use)	RESOLUTION: FINDINGS OF FACT AND ORDER
)	

THIS MATTER coming on before the Sedro-Woolley Planning Commission on May 22, 2001, on the application of Jean Swett pursuant to SWMC 17.04.050 and SWMC 17.56.060, for a modification of a non-conforming use, now therefore,

The Planning Commission hereby makes the following FINDINGS OF FACT:

1. The following members of the commission were present at a regularly scheduled meeting of the Sedro-Woolley Planning Commission on May 22, 2001: Jack Bryant, Chair, Dennis Klinger, Don Van Etten, June Johnson, Steve Massey, Frank Martin, and Carl Shewmaker,
2. Proper notices were mailed, posted and published by the Sedro-Woolley Planning Department as required by ordinance.
3. The criteria for a modification of a non-conforming use is set forth in SWMC Section 17.60.050, which reads as follows:

17.04.050 Nonconforming uses, structures, and lots.

Uses, structures and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements; and

E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. *[Emphasis added.]*

4 The conditional use permit criteria are set forth in SWMC 17.56.070 as follows:

17.56.060 Criteria.

The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- A. Conforms to the comprehensive plan;
- B. Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and
- C. Is well-planned in all respects so as to be an asset to the community.

- 5. The applicant seeks approval to modify a pre-existing non-conforming use allow for commercial storage in a residential zoned district.
- 5. The proposed findings set forth in the attached Staff Report, MDNS, Application, and Supplemental Application are hereby adopted as findings of fact, and incorporated herein by reference.
- 6. Based on the evidence submitted, the Planning Commission finds that the criteria in SWMC Section 17.56.060 are satisfied, and the approval should issue as requested, subject to the conditions recommended in the staff report.

Based on the foregoing FINDINGS OF FACT, the Sedro-Woolley Planning Commission now makes the following ORDER:

IT IS HEREBY ORDERED that request for a approval of a Conditional Use Permit to modify an existing non-conforming use is hereby granted to allow a commercial storage operation in a residential SF2 zone, subject to the following conditions:

- a. Construction of an access road and easement to standards approved by the City Engineer.
- b. A stormwater management plan must be completed using the 1992 Stormwater Manual standards.
- c. Completion of soil contamination clean-up to standards approved by the Skagit County Health Department.
- d. Hours of operation shall be limited to 7:00 AM to 8:00 PM.

Dated: _____, 2001

SEDRO-WOOLLEY PLANNING COMMISSION

Signed: May ____, 2001

Jack Bryant, Chairperson

Dennis Klinger Signed: May ____, 2001

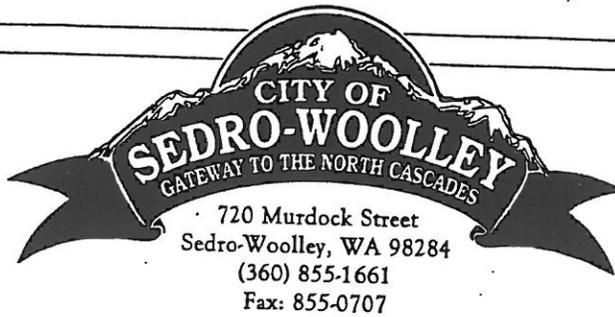
Don Van Etten Signed: May ____, 2001

June Johnson Signed: May ____, 2001

Steve Massey Signed: May ____, 2001

Frank Martin Signed: May ____, 2001

Karl Shewmaker Signed: May ____, 2001



September 11, 2001

Tom Swett
1211 E State St.
Sedro-Woolley, WA 98284

RE: Conditional Use Permit

Dear Mr. Swett:

Per our discussion today, we are confirming that you have agreed to re-apply for a Conditional Use Permit for your property at 1211 E. State St.

Furthermore, it is agreed that you will not do any construction work requiring a permit on your site until the permit has been approved and issued.

We expect the hearing will be held at the October 23rd Planning Commission meeting. Appropriate notices will be sent out next week after the return of the City Planner

Sincerely,

Erin Klinger, Secretary
Building, Planning & Engineering

**CITY OF SEDRO-WOOLLEY
CONDITIONAL USE PERMIT
SUPPLEMENTAL APPLICATION**

In reviewing a conditional use permit request, the Planning commission must consider the criteria specified in Section 17.56.060 of the Sedro-Woolley Zoning Ordinance.

Please answer the following questions addressing the criteria to the best of your ability.

1. How does the proposed use conform with the Comprehensive Plan for the City of Sedro-Woolley.

The Comprehensive Plan does not specifically address the issue of non-conforming uses. However, Policy LU5.7 deals with the issue of recognizing the rights of property owners to freely use and develop their property. Allowing a conditional use for this property would be consistent with Policy LU5.7.

2. Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated).

The proposal is for a commercial storage facility to be operated within the existing buildings on the site. In addition, there would be RV/Boat storage for +/-11 vehicles/boats outside the buildings. Historically the site has been used for storage and maintenance of logging trucks. That use continues on a portion of the site that is rented to Nielson Brothers. Since 1988, the remainder of the site has been used as storage for vehicles, equipment and miscellaneous items. If the conditional use were approved, the non-conforming use would be legitimized. As part of the proposal, the applicant intends to construct fences around those portions of the property not already fenced and to limit access to the property by use of a locked gate. The fences will be 6-foot chain link with slats. If acceptable to the City the applicant would like the fences to have razor wire along the top. Access will be limited to the hours of 7 a.m. to 8 p.m. The fence would eliminate the ability for vehicles to go from the end of Warner Street through the property to State Street thereby reducing traffic impacts to the neighborhood.

Is the proposed development or use well-planned in all respects so as to be an asset to the community?

The proposal would legitimize an existing non-conforming use. The buildings are existing and no additional structures would be built. The applicant intends to eliminate all of the fueling and maintenance activities that have historically occurred on the site thus reducing the chance for oil or gas spills. The proposal would be fenced to limit access. Hours of operation would be limited to reduce conflicts with neighbors. The proposed storage would eliminate the current logging truck traffic that the neighborhood experiences and has historically experienced. The proposed use is a lower impact commercial use more compatible with residential neighbors than the historic logging truck storage/maintenance operations.

The proposal would include Landscaping consistent with City requirements to the extent possible. This would include fences (6-foot chainlike with slats) on the southern property line (existing); the western property line from the southwest corner to the existing shed; and the eastern property line from the existing building north to the proposed gate. A 7-foot landscape screen comprised of medium shrubs on 6-foot centers would be located on the western property line. There are existing trees located on the southern property line. It is not possible to include plantings in conjunction with the fence on the eastern property line. The entrance door to Existing Building 2 is located in the northeast corner and the property to the east of the building and proposed fence is ingress/egress for the neighboring property.

The applicant proposes one sign for the business. It would be attached to the north side of Existing Building 1 (see site plans). The sign would be 5 square feet in size.

The only improvements that would occur on site would be remodeling the existing buildings to accommodate the storage units (see attached drawing) and repairs to the roofs of the existing buildings. No new paving or buildings are proposed.

Notice of Application And Public Hearing

The following application is being re-heard by the City of Sedro-Woolley because of a defect in notice for the prior hearing. The application is for a conditional use permit to alter an existing non-conforming use to allow commercial storage.

Application: CUP #01-02 Conditional Use Permit

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1209 and 1211 State Street. It is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." as per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington. This revised application also includes about 11,520 square feet of the vacant parcel described as Tract 1 Plat of State Street Addition to Sedro (see attached site plan).

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment completed; removal of contaminated soil completed.

Environmental Documents: SEPA checklist, mitigated determination of non-significance issued April 27, 2001.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written or electronic testimony may be submitted to City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284, or e-mailed to jhallberg@ci.sedro-woolley.wa.us until 4:30 p.m. November 27, 2001.

Public Hearing: The Sedro-Woolley Planning Commission will conduct the public hearing on the Conditional Use Permit application at 7:30 p.m. November 27 at the Sedro-Woolley Community Center, 700 Pacific Street, Sedro-Woolley, WA 98284.

Notice Published: November 14, 2001

Notice of Public Hearing
7:30 p.m. Thursday, Jan. 10, 2002
Sedro-Woolley Community Center, 700 Pacific St.

The following application is being re-heard for the second time because of a malfunction in the tape recording of the previous hearing. All hearings must be recorded to preserve all parties' rights of appeal. The application is for a conditional use permit to alter an existing non-conforming use to allow commercial storage.

Application: CUP #01-02 Conditional Use Permit

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1209 State Street. It is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." as per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington. This revised application also includes about 11,520 square feet of the vacant parcel described as Tract 1 Plat of State Street Addition to Sedro (see attached site plan).

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment completed; removal of contaminated soil completed.

Environmental Documents: SEPA checklist, mitigated determination of non-significance issued April 27, 2001.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written or electronic testimony may be submitted to City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284, or e-mailed to jhallberg@ci.sedro-woolley.wa.us until 4:30 p.m. the date of the hearing.

Notice Published: December 26, 2001

City of Sedro-Woolley
Planning Department
720 Murdock Street
Sedro-Woolley, WA 98284
(360) 855-0771
jhallberg@ci.sedro-woolley.wa.us

Conditional Use Permit #172 Tom Swett Mini-Storage
Staff Report
For Re-hearing of Conditional Use Permit #-02-01
Special Meeting [REDACTED]

Application: CUP #172 Conditional Use Permit for conversion of legal non-conforming use to mini-storage. This is a re-hearing of this application due to a tape recording malfunction at the November 27, 2002. /

Applicant The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett.

Address/Legal Description: The property is addressed as 1209 State. The first CUP application was for property in question is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington. This application adds about 10,000 square feet to the west that is the easterly half of Tract 1 of State Street Addition.

Request: The applicant wishes to apply for a conditional use permit to alter an existing nonconforming use to allow commercial storage.

Project Permits Required: Building Permit

Studies Required or Requested: Level one site assessment and soil clean up completed.

Environmental Documents: SEPA checklist, mitigated determination of non-significance.

BACKGROUND

History of nonconforming use from Dean Hamilton letter and city records

Pre-1960 Carroll Mill built the existing buildings for a log hauling operation
Hamilton Brothers leased this facility as log hauling operation storage.
1967 - 1970 Sedro-Woolley adopts first zoning code.
1978 or 79 Carroll Mill moved; Hamilton Brothers purchased site.

1988 forward Hamilton Brothers rented the outer building to Nielsen Brothers.

Comprehensive Plan and Zoning Code Designations

The Comprehensive Plan and Zoning Code designation for this property is SF-2, single family, 3 – 5 units per acre, the most restrictive residential zone.

Adjacent Uses

The adjacent property use is residential.

PROPOSED FINDINGS

1. Fire Access

The enclosed site plan revision shows a fire access and after-hours turn-around on Warner Street approved by the Sedro-Woolley Fire Marshall.

2. Soil Clean-up.

Contamination from petroleum products and solvents was identified on the site. Soil testing and contaminant removal were completed.

3. Conditional Use Permit Criteria

The application is subject to the criteria of SWMC 17.56.060. The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- Conforms to the Comprehensive Plan;
- Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts;
- Is well planned in all respects so as to be an asset to the community.

4. Non-conforming Use Criteria

By definition, a nonconforming use is different than what the community envisions through the comprehensive planning process. City codes allow nonconforming uses to be modified through the conditional use procedure. The rules about nonconforming uses follow:

17.04. 050 Nonconforming uses, structures and lots.

Uses, structures, and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements;

The applicant is required to meet all current regulations, including, but not limited to stormwater management, parking, signs. This permit specifically acknowledges the historic placement of the existing structures close to the property lines.

E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. (Ord. 1013 1.05, 1985).

A letter from Dean Hamilton, a previous property owner was submitted clarifying the history of use.

5. Proposed Use

The proposed use would have less impact than the current use as a maintenance and storage site for logging trucks. Clean up of soil contamination has been completed following decades of exposure to petrochemicals. The proposal would eliminate cross traffic except for emergencies. The proposed access is via Warner Street, on the west end of the site.

6. Lighting

All lights will be directed downward and away from neighboring properties. Omit proposed light pole shown on east side of site, illustrated on site plan dated Nov. 6, 2001.

7. Signs

The size limits for signs from the underlying SF2 zone apply. "In the SF1, SF2, and MF zones, signs shall be limited to a total combined size of five square feet or one percent of the gross floor area of buildings, whichever is greater." Sedro-Woolley Municipal Code 17.40.020
The combined size of the two buildings on site is over 5,000 square feet, so the combined sign area maximum is 50 square feet. Given the site location, staff recommends the sign area be reduced to a combined total of 20 square feet.

RECOMMENDATION

Staff recommendation is to approve this request subject to the following conditions:

- A. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.
- B. Completion of drainage facilities as per plan approved by city engineer.
- C. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.
- D. Signs are limited to a combined total of 20 square feet.

BEFORE THE CITY OF SEDRO-WOOLLEY PLANNING COMMISSION

In re: the Application of)	
)	No. CUP - #1-02 and
)	
JEAN SWETT)	
Re: Modification of Non-Conforming Use)	RESOLUTION: FINDINGS OF FACT AND ORDER

THIS MATTER coming on before the Sedro-Woolley Planning Commission on Jan. 10, 2002, on the application of Jean Swett pursuant to SWMC 17.04.050 and SWMC 17.56.060, for a modification of a non-conforming use, now therefore,

The Planning Commission hereby makes the following FINDINGS OF FACT:

1. The following members of the commission were present at a regularly scheduled meeting of the Sedro-Woolley Planning Commission on Jan. 10, 2002: Jack Bryant, Chair, Dennis Klinger, Don Van Etten, June Johnson, Steve Massey, Frank Martin, and Carl Shewmaker,
2. Proper notices were mailed, posted and published by the Sedro-Woolley Planning Department as required by ordinance.
3. The property at issue is located at 1209 East State Street, Sedro-Woolley, Skagit County, Washington, and is legally described as follows:

The property is addressed as 1209 State. The first CUP application was for property in question is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington. This application adds about 10,000 square feet to the west that is the easterly half of Tract 1 of State Street Addition.

This description may be approximate, and the records of the Sedro-Woolley Planning Commission should be consulted for a complete legal description of the real property subject to this decision. Tax Parcel Number(s): 77224.

4. The owner of the property is: Jean Swett

5. The criteria for a modification of a non-conforming use is set forth in SWMC Section 17.60.050, which reads as follows:

17.04.050 Nonconforming uses, structures, and lots.

Uses, structures and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements; and
- E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. [*Emphasis added.*]

6. The conditional use permit criteria are set forth in SWMC 17.56.070 as follows:

17.56.060 Criteria.

The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- A. Conforms to the comprehensive plan;
- B. Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and
- C. Is well-planned in all respects so as to be an asset to the community.

7. The applicant seeks approval to modify a pre-existing non-conforming use allow for commercial storage in a residential zoned district.
8. The proposed findings set forth in the attached Staff Report, MDNS, Application, and Supplemental Application are hereby adopted as findings of fact, and incorporated herein by reference.
9. Based on the evidence submitted, the Planning Commission finds that the criteria in SWMC Section 17.56.060 are satisfied, and the approval should issue as requested, subject to the conditions recommended in the staff report.

Based on the foregoing FINDINGS OF FACT, the Sedro-Woolley Planning Commission now makes the following ORDER:

IT IS HEREBY ORDERED that request for a approval of a Conditional Use Permit to modify an existing non-conforming use is hereby granted to allow a commercial storage operation in a residential SF2 zone, subject to the following conditions:

- a. Approval of stormwater and traffic circulation design by the city engineer;
- b. Hours of operation shall be limited to 7:00 AM to 8:00 PM.
- c. Compliance with the recommendations in the attached staff report and the conditions of the MDNS incorporated by reference

Dated: January _____, 2002

SEDRO-WOOLLEY PLANNING COMMISSION

Jack Bryant, Chairperson

Signed: Jan. ____, 2002

Dennis Klinger

Signed: Jan. ____, 2002

Don Van Etten

Signed: Jan. ____, 2002

June Johnson

Signed: Jan. ____, 2002

Steve Massey

Signed: Jan. ____, 2002

Frank Martin

Signed: Jan. ____, 2002

Karl Shewmaker

Signed: Jan. ____, 2002

SIR'S

JAN 10 2002

WE LIVE AT 1100 WARNER ST, AND
HAVE NOT RECIEVED ANY NOTICE OF
A CHANGE OF PROPERTY USE AT THE
END OF WARNER ST.

WE WOULD PREFER TO SEE A
STORAGE UNIT IN PLACE OF THE OLD
TRUCK SHOP. NOISE REDUCTION BEING OUR
REASON.

Mr. Robert Barnes
Pat Barnes

MIKE BREWER
901 11TH
SEARD WOLLEY

DEAR SIRS - MADAMS

RE. THE LOT ON STATE ONES
USED FOR A LOGGING TRACK
LOT, I WOULD PREFER MINI STORAGE.
I ALSO THINK THE OWNER SHOULD
DO WHAT HE WANTS WITH IT.
IT IS HIS AND HE PAYS THE TAXES -
I WOULD GUESS -

Thank you for listening

MIKE BREWER -

January 10, 2000

In response to the question of whether I would prefer a storage facility or a logging company in my neighborhood, I would prefer a storage facility

The logging trucks that use our neighborhood road are quite disturbing. The trucks that run early in the morning frequently interrupt our families' sleep and shake our home. They also spit rocks and debris on our vehicles and possessions.

We are also concerned about the safety of neighborhood children. Due to the high volume of traffic on State Street, children have to play on the side roads. When trucks return early in the evening, several children are playing and riding bikes on the back roads. Trucks have poor visibility of small children and they can't stop fast enough to prevent accidents.

I appreciate your consideration in this matter.

Sincerely,

D. Ronald Shupe
Ronald Shupe

1045 State St.
Sedro-Woolley Wa.

To Whom It May Concern:

Listed below are the reasons that we the Hovanec Family are in favor of 1209 East State Street becoming commercial storage.

We live at 1213 East State Street, Sedro Woolley. We purchased our home in April of 2000. At that time Neilson logging was doing truck repair at 1209 E. State Street.

Logging trucks were being worked on late into the night. There were times that it was 2 am in the morning that we would here them fixing the trucks during there busy season.

Truck traffic was always a concern due to the fact that there are so many children that live in the adjacent area.

- At 1205 E. State St. there are 3 children grade school and younger
- 24277 E. State there are at least 3 young children
- 1213 E. State St. 1 child 5 yrs old
- 1215 E. State St. 2 children 5 & 1 ½ yrs old
- 1219 E. State St. 1 toddler
- 1221 E State St. 2 grade school children
- 1223 E State St. 2 grade school children
- 24303 E. State St 3 grade school children
- The house to the right of 24303 E. State St 3 Jr. High & High school children

Now that the logging trucks are not being repaired on the property the concern has been lifted.

- Just by the improvements that have been made to the property it has increased our property value.
- Truck traffic has stopped
- Noise level has decreased
- Dust from the trucks using the driveway has been decreased.
- Ground vibration from them doing repairs on the hydraulic booms has stopped. At times they would drop the booms on the ground causing noise and a vibration.
- The new siding and the new roof has made the building a nice sight instead of looking at old barns.
- The trash has been removed from the lot and a new fence has been added.

Shortly after we moved in to our property we had signs of having rats. Bio Bug Pest Control came out and told us that we should talk to the people that had the barns because most likely they lived in the barns and the trash that surrounded them. He told us that it would be hard to control the population because rats liked to live and breed in places like that.

Since August when Mr. Swett cleaned up the property we have had no evidence of rats.

I want to thank you for your time and hope that you decide in favor of commercial storage. It will benefit many people, and cuts down the dangerous heavy equipment traffic.

Sincerely,

Ted Hovanec

Della Hovanec

Greg & Rhonda Morgan

1205 State Street
Sedro Woolley, WA 98284
Home Phone (360) 856-6580

November 27, 2001

Members of the Planning Commission
City of Sedro Woolley
720 Murdock Street
Sedro Woolley, WA 98284

This letter is in regards to Tom Swett's Conditional Use Permit Proposal. We were very upset to hear that there may be a major business going in behind our house. We were not notified about the first hearing and now he has completed a lot of work on his buildings. We hope that all the work he has done does not factor into your decision process. We never really felt that Hamilton's shop was a business. There was no advertisement and no real customers. It felt more like a neighbors garage & shop. At times it was noisy and busy, but it never affected or impacted our lives the way that Mr. Swett's business has already impacted us.

In the information that your office sent us, we found a question on the page CITY OF SEDRO WOOLLEY CONDITIONAL USE PERMIT SUPPLEMENTAL APPLICATION #2 Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity?

We live in the immediate vicinity & this letter is our testimony of the impact that this business has on us.

For starters I am home during the day and have witnessed many instances of trespassing. The first instance was before Mr. Swett took possession of the buildings. I watched Mr. Swett and another gentleman break into building #2. The reason I say break in is because he did not use a key to open the door of the building. They pulled the large sliding door out and squeezed into the building. This happened on a Sunday so there was no one there from Nielson's company.

The next instance was my own yard. In early July, I was on the phone with my sister, Kelly Benham and was out cleaning our pool when I noticed two men trying to break my fence. I asked them what they thought they were doing? They stated that they wanted to look at the foundation. I told them that they had no business breaking my fence and to please fix it. A few minutes later Mr. Swett and the two men came to the fence to talk to me. Mr. Swett introduced himself and told me that they were doing some renovations to the buildings. They were hoping to do some work on the foundation. I told them verbatim "You may only come into my yard, if I am home, and you knock on my door, and let me know that you need to work on the building. I will let my dog into the house and you may use the gate next to the house. I must be home for you to be in my yard!" They said no problem. A week went by and no workers had knocked on my door. On the days of July 11th to July 15th my children and I went out of town. My husband was home in the evenings. He came home the evening of July

11th to find our dog out of our backyard. He simply put him back into the yard and went into the house. The next night he came home and again our dog was out. This time he checked the gates and found that they were locked. Then he took a quick walk around the yard to see if there were any holes in the fence. That is when he noticed the large ditch in our back flower bed. This ditch was not dug by us. We assume it was dug by Mr. Swett and his men for the foundation work. They not only trespassed on our property without permission, they let out our dog. Which could have been a serious problem had something happened to the dog. We feel that this was not very respectful to us at all. We didn't call the police at the time because we were dumb mostly. Hindsight!

The third instance happened a very short time ago. There was a man working on the waterline next door in the neighbors backyard. I just happened to be laying my daughter down for her nap and went to close the blinds when I saw the worker approach the garage. He peered in for a minute and then ran his hand over the top of the door jam. I can only assume that he was looking for a key. I did not see him enter the garage. I do know that the water line does not run next to or in front of the garage door. I alerted the owner of the house just in case something came up missing. Next time I will call 911!

The next instances happen all the time. I have seen many people turn around in Jim Hawkings driveway @ 1211 State Street. I also have seen many people block Ed & Stephanie Boone's driveway @ 1231 Warner Street.

Trespassing did not happen with Nielson's or Hamilton's. Trespassing is an unreasonable impact on all of the surrounding properties. If the owner of this property and his workers feels it is ok to trespass, perhaps his customers will too!

In reference to CITY OF SEDRO-WOLLEY CONDITIONAL USE PERMIT SUPPLEMENTAL APPLICATION QUESTION #2 Is the proposed development or use well-planned in all respects so as to be an asset to the community? ANSWER: The applicant proposes one sign for the business. It would be attached to the north side of Existing Building 1 (see site plans). The sign would be 5 square feet in size.

If we are understanding this correctly the sign will be posted directly above our house. We most certainly oppose putting up a sign in our backyard. First of all we have had three people approach our door already since Mr. Swett has taken possession of the buildings. They knock and ask if we own the property behind our house. One of them was a Snelson worker, one of them was a delivery truck driver, and one was a man that did not identify himself. All strangers to our home and all brought in by the business going in behind our home. How often is it going to happen that our houses around the business will be interpreted as the office for this building?

Also in the application on page 11. Question #11 LIGHT AND GLARE a. What type of light or glare will the proposal produce? What time of day would it mainly occur? ANSWER: Light and glare would occur in the hours after dark. If this sign is allowed to be placed where Mr. Swett wants it to be placed it will glare into the windows of our house. There is a bedroom on the back of our house that will be affected by the light and glare! We have talked many times about adding a rec. room to the back of our house. The light and glare from the sign would certainly come into those windows.

Whether it is day or night the sign will be a nuisance to our household. You do not expect to have these kind of issues in a residential neighborhood.

The next item is traffic. Our main concern is our children, our homes and the safety of all of us in this neighborhood. This business is going to bring more traffic into our neighborhood. These people will not only be driving by they will be stopping in our front and backyards! They will be strangers to us. Do we feel safe? NO! When Nielson's & Hamilton's were using the shop we knew the people coming in and out of the buildings. They knew that there may be children riding bikes on the gravel driveway next to our houses, or outside

playing catch, or kick the can. Nielson's knew to use caution when pulling in. Our children did not need to worry about them either because they were not strangers. In this society it is not fair to ask our residential neighborhood to feel more cautious about our children than we already do. As it is now, my husband and I will not even let our children go out into our fenced backyard and play without us. There are too many strangers around!

According to Mrs. Swett's traffic statistics, the amount of traffic is said to be less than the log shop traffic. With the average trips during week days being 20 a day. That is probably comparable to the log shop. However, on the weekend when children are out of school, and outside playing, there is an average of 32 trips per weekend. That is considerably more than the shop had. There was no traffic on Sunday at the shop! The questionnaire also states that the traffic is equivalent to two single family homes. If the property were developed as single family homes, it could be divided into three lots. We feel, if Mr. Swett's property were to be residential, at least the traffic would be neighbors that we were acquainted with.

Our next subject is security of this business. Since Mr. Swett wants to bring customers valuables into the neighborhood how is he going to protect them and us? If it is known around town that Mr. Swett's mini storage has no security system then what will stop the criminals from coming into his business and then into our homes? I understand that razor wire on the fences was mentioned. Razor wire in a residential neighborhood is absolutely not acceptable. Small children live directly around this fence. What other security measures will be taken?

Looking at Mr. Swett's site plan. We noticed that he is adding to the property. What we would like to know is how does that change the proposal? Our notice of public hearing did not include any information of the conditions of the new proposal or the old one for that matter. We feel that our neighborhood was not given adequate information about what is going on in all of our front and backyards. If the neighborhood doesn't know the conditions then how can they decide how they feel about the project? When we have received notice from the city on any other issue around us, we received some details and conditions of the project. All we received on this matter was a site plan and a very basic description of the goal for the project and the date and time for the public hearing. We don't feel that is enough information to the neighbors for them to make an educated decision on how to handle this proposal.

It has been very hard to get a good feeling about this project because we feel that Mr. Swett has no respect for us or the impact that this will have on our neighborhood and our property. In the past Mr. Swett has presented himself to our faces as a caring neighbor then he turns around and stabs us in the back. My husband and I thought this was only happening to us. After speaking at length with my neighbors Jim Hawkings & Stephanie Boone, we now know that he has been lying and taking advantage of them too. We all feel he is trying to steam roll the neighborhood and the City of Sedro Woolley.

Last, but certainly not least, what is this going to do to our property value. Who is going to want to buy a home with a major business in the back yard?

We purchased our home 10 years ago and we knew about Hamilton's Shop behind the house. It never felt like a major business. It never posed a major problem. Mr. Swett has only been in the building for a short time and it feels like a major business and it has made a definite unreasonable impact on us!

Thank you for taking the time to listen to our concerns. We truly appreciate the job that you do! If you have any questions please feel free to call us. Have a great day!

Sincerely,

Greg & Rhonda Morgan

Stephanie Munk Boone
1231 Warner St
Sedro Woolley WA 98284
(360) 856-0336

November 27th 2001

Members of the Planning Commission
City of Sedro Woolley
720 Murdock Street
Sedro Woolley, WA 98284

I am handwriting this letter as I can not be present at tonight's Public Hearing. I find it disturbing that a Conditional Use Permit Application is being heard on a project that is well under way, having already caused major disturbances in the surrounding neighborhood. My understanding of "applications" is that they precede the use. I didn't receive prior notification of this proposal or the original hearing.

I wish to share a few of my experiences with Tom Sweet. He introduced himself to me months ago and told me his plans for the property adjacent to mine. At that time, and on several occasions since, Tom presented himself as friendly, interested in preserving harmony in our residential neighborhood. As I said, he presented as friendly and concerned — then turned around and his actions did not reflect his words.

On one particular incident, Geraldine Halberg was present. I had called her concerning a fence that Tom Sweet had ^{erected} breaching my driveway. I questioned him because the driveway and shrubs and mature tree he had chopped branches off of (and enclosed on his side) had been planted and

2

maintained by us since 1994 and by the previous owners for fourteen years prior. Geraldine Halberg was good enough to come and see for herself the fence and its route. Tom, Geraldine, and I stood on Warner Street and "eye balled" the fence and Tom, as if seeing it for the first time said "Oh, it does look off" - and asked one of his workers to re-measure from the back fence he was using as a boundary line. The finding was that the measurement was off and Tom assured me his workers would change the fence line in my favor "on their time the following weekend since they mis-measured". When the promised change did not happen, I questioned Tom and he told me he had bought a new longer tape since they had been using two shorter tapes prior to that (interestingly, the fence was completed using two shorter tapes), and they had re-measured finding the original fence in the right place. Tom has maintained all along that he had his property surveyed but I never saw survey spikes.

The fence in question did prevent passage on my existing driveway till I cut back the level hedge on the opposite side. Also, Tom's crew trespassed and blocked the driveway with their equipment while erecting the fence.

In the proposal, a 7-foot landscape screen was promised as were slots on the wire fence. While Geraldine was here, she asked Tom about landscaping and he replied that shrubs take maintenance and maintenance costs money and he wasn't going to create another expense. There is another promise that I believe Tom does not mean to keep.

The proposal mentions also that less use decreases the chance for oil and gas spills, thus acknowledging these occurrences in previous years. I do not feel one truckload of dirt taken from who knows where on the property could possibly accurately test the ground that has been for many years draining oil and gasoline.

Decreased traffic is not a reality. My driveway is now a large portion of the only access between Warner and State streets. Increased traffic is an issue already and the proposed business is not open yet. I imagine the people looking for the storage facility driving through from both directions.

Razor wire is not acceptable in a residential neighborhood. Tom also mentioned the possibility of using a card lock system, allowing renters access 24 hours. Imagine the impact on a residential neighborhood when someone decides, in the middle of the night they need something from storage.

When we purchased this property, we were well aware of the logging / truck yard. We also believed that when the owners of the yard sold his property that the area would revert to residential use.

I believe that Tom Swett's proposed use for 1209 & 1211 State Street is not compatible to the surrounding area and adversely impacts the properties in the immediate vicinity.

I hope this is readable. Thank you for your consideration. I hope that Tom Swett's manner will not continue to steamroll the city and our community. He is not a very desirable neighbor, I have not felt he holds any

**CITY OF SEDRO-WOOLLEY HEARING EXAMINER
STATE OF WASHINGTON**

In the Matter of: Conditional Use Permit
Application of Jean Swett

Application No. CUP #172

**FINDINGS OF FACT
CONCLUSIONS AND ORDER
No. CUP #172**

This matter having come regularly before the City of Sedro-Woolley Hearing Examiner for a public hearing on January 29, 2002 under an application filed with the City of Sedro-Woolley Planning Department by the applicant requesting a Conditional User Permit as described and located in the Staff Report of the City of Sedro-Woolley Planning Department, which property is located at 1211 State Street (some records show two parcels addressed as 1211). The property in question is described as Lot 2, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the North 125 feet thereof; and 3. The south 18 feet thereof. Together with a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington.

Notice having been given to all property owners within 300 feet of said property and all matters submitted at the public hearing having been considered together with the testimony, evidence and exhibits in open hearing and made a part of the record in this matter, the hearing examiner makes the following:

FINDINGS OF FACT

1. The Comprehensive Plan and Zoning Code designation for this property is SF-2, single family, 3 – 5 units per acre, the most restrictive residential zone.
2. The public hearing has been advertised in accordance with the requirements of Chapter 17.56.030 of the City of Sedro-Woolley Municipal Code (SWMC).
3. The City takes the position that the current use of the property is a pre-existing non-conforming use under the current Comprehensive Plan and Zoning Code designation. The site has been used for storage and maintenance of logging trucks. There are several existing buildings on the property and the current proposal would not increase the number of buildings on the property. The history of the use of the property is as follow:

Pre-1960: Carroll Mill built the existing buildings for a log hauling operation
unknown: Hamilton Brothers leased this facility as log hauling operation
storage.
1967-1970: Sedro-Woolley adopts first zoning code.
1978 or 79: Carroll Mill moved; Hamilton Brothers purchased site.
1988 forward: Hamilton Brothers rented the outer building to Nielsen Brothers.

4. The City Planning Department issued a Mitigated Determination of Non-Significance for this project on April 27, 2001, which was published on May 2, 2001. There was no appeal of the MDNS.
5. The applicant proposes to use existing buildings on the property for a heated mini-storage facility. There will be 58 units within a fenced, secured area. There will also be outside storage for about 11 boats and recreational vehicles. Adjacent to the fenced portion of the facility is a house that will be used for an employee who will work at the facility.
6. The conditional use permit criteria are set forth in SWMC 17.56.060 states as follows:
The criteria upon which a conditional use permit application is judged shall be the extent to which it:
 - A. *Conforms to the comprehensive plan;*
 - B. *Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and*
 - C. *Is well-planned in all respects so as to be an asset to the community.*
7. The proposed use requested by the applicant is much more compatible with the existing neighborhood than the pre-existing non-conforming use of the property.
8. The facility planned by the applicant, as shown on Exhibit 5 of the documents submitted at the public hearing, is well-planned and will be an asset to the community.
9. The MDNS requires that the applicant clean up soil contamination following decades of exposure to petrochemicals. The planning staff reports that this clean up has been completed. This is an asset to the community.
10. The applicant has agreed to limit hours of operation of the facility to the hours of 7:00 a.m. to 8:00 p.m., and has agreed to make the primary entrance to the facility from Warner Street.
11. The proposed use is more compatible with the list of conditional uses in SWMC 17.08.010, than the prior non-conforming use that has existed without restriction or conditions for decades.

CONCLUSIONS

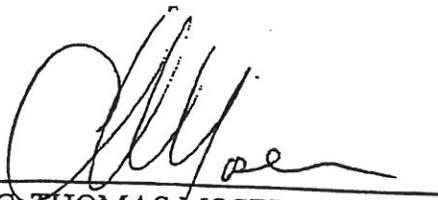
The hearing examiner, having duly considered the matter and all testimony and evidence presented at the public hearing and submitted while the record was open, and having conducted a site visit, makes the following conclusions:

1. The provisions of Chapter 17.56.060 of the City of Sedro-Woolley Code apply to this application.
2. The burden is on the applicant to demonstrate that the permit should be granted.
3. The applicant has demonstrated that the conditional use permit should be granted, with conditions
4. Granting this CUP will terminate the pre-existing non-conforming use of the property.

DECISION

The hearing examiner **APPROVES** the application for a conditional use permit subject to the following conditions:

1. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.
2. Completion of drainage facilities as per plan approved by city engineer.
3. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.
4. Signs, whether on site or off-site, are limited to a combined total of 20 square feet.
5. Applicant shall comply with all conditions of the MDNS.
6. Applicant shall install slats in the fence to screen the facility from the neighbors property to minimize visual impacts.
7. Applicant shall plant landscaping on the south side of the property as required and instructed by the planning department.
8. Access road standards to be approved by City Engineer.
9. A stormwater management plan must be completed using the 1992 Stormwater Manual standards


C. THOMAS MOSER,
City of Sedro-Woolley Hearing Examiner

Signed February 14, 2002

City of Sedro-Woolley
Planning Department
720 Murdock St.
Sedro-Woolley, WA 98284
(360) 855-0771
jhallberg@ci.sedro-woolley.wa.us

March 4, 2002

Tom Swett
24236 Brandon Lane
Sedro-Woolley, WA 98284

Dear Mr. Swett:

RE: Landscaping along south fence line

Enclosed is a list of shrubs that tolerate shade for you to consider for the south fence line landscaping. Please note that this is a list generated for the entire region and not all species listed will work for your setting. There are many varieties of some plants on the list, for example, rhododendrons. Please check with your supplier to get the best selection for this location. In addition to those on this list, ferns also do well in shade. A nursery may have others to suggest.

To make the plantings look more natural, you may vary the spacing and the distance from the fence. In other words, they don't have to be planted in a precisely straight line.

I will look for the following plant density:

- Medium and large-sized shrubs (over 3 feet at maturity): an average of 6 feet on center.
- Small shrubs and ground covers (under 3 feet): "Enough plants to form an effective barrier to cover 85% of the ground surface within two years." (Sedro-Woolley Municipal Code 17.50.080)

Some of these shrubs are available at the annual native plant sale at the Skagit County Conservation District. The plant sale starts Friday, March 15. Their web site is <http://www.skagitcd.org/> or you can call them at 428-4313. These plants are not nursery-grade, so you must plant more of them to make up for lower survival rates. The prices are very reasonable. Nurseries have more variety and higher quality plants.

Sincerely,



Jeroldine Hallberg
Planning Director

cc: Tom Moser, Hearing Examiner

Shrubs that Tolerate Shade

Botanical Name	Common Name	NW Native
<i>Amelanchier</i>	Shadbush	
<i>Azalea</i>	<u>Azaleas</u>	
<i>Aronia melanocarpa</i>	Chokeberry	
<i>Clethra alnifolia</i>	Summersweet	
<i>Cornus florida</i>	Flowering dogwood	
<i>Cornus racemosa</i>	Gray dogwood	
<i>Euonymus alatus</i>	Winged euonymus	
<i>Dictamnus albus</i>	<u>Burning bush</u>	
<i>Forsythia suspensa</i>	<u>Weeping forsythia</u>	
<i>Gaultheria shallon</i>	Salal	
<i>Hamamelis</i>	Witch hazel	
<i>Hydrangea arborescens grandiflora</i>	<u>Snowhill hydrangea</u>	
<i>Hydrangea quercifolia</i>	Oak leaf hydrangea	
<i>Ilex verticillata</i>	Winterberry	
<i>Kalmia latifolia</i>	Mountain laurel	
<i>Ligustrum</i>	Privet	
<i>Lonicera</i>	<u>Honeysuckle</u>	
<i>Mahonia aquifolium</i>	Oregon grape	
<i>Myrica pensylvanica</i>	Bayberry	
<i>Pittosporum tobira</i>	Japanese pittosporum	
<i>Rhamnus frangula</i>	Buckthorn	
<i>Rhododendron</i>	<u>Rhododendrons</u>	
<i>Rhodotypos kerrioides</i>	Jetbead	
<i>Rhus canadensis</i>	Fragrant sumac	
<i>Ribes odoratum</i>	Flowering currant	
<i>Symphoricarpos</i>	Snowberry	
<i>Viburnum</i>	Viburnum	

NOTICE OF APPLICATION & PUBLIC HEARING

Conditional Use Permit application #2569
Tuesday, November 30th, 2004 6:30 pm
Sedro-Woolley Municipal Court room
220 West Woodworth, Sedro-Woolley

The City of Sedro-Woolley has received a Conditional Use Permit application to amend a previously approved conditional use permit (no. 172) which altered an existing nonconforming use to allow commercial storage.

Application: CUP # 2569 Amended Conditional Use Permit

Applicant: The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett of 1200 Warner Street, Sedro-Woolley, WA 98284.

Address: The subject property is located at 1230 Warner St, Sedro-Woolley, WA.

Legal Description

Parcel A:

Lot 2, "STATE STREET ADDITION TO SEDRO< SKAGIT CO. WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington, EXCEPT described as follows: 1. The West 90 feet of the East 100 feet of the North 120 feet thereof; and 2. The West 60 feet of the north 125 feet thereof; and 3. the South 18 feet thereof. TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over, to, and across the West 20 feet of Lot 3 of said STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH. Situate in the City of Sedro-Woolley, County of Skagit County, Washington.

Parcel B:

The West 80 feet of the South ½ of Lot 1, "STATE STREET ADDITION TO SEDRO, SKAGIT CO., WASH." As per plat recorded in Volume 3 of Plats, page 61, records of Skagit County, Washington.

The complete application, all documents and evidence relied upon by the applicant, and applicable criteria are available for review at no cost at the Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, Washington 98284, or by calling (360) 855-0771. Copies may be provided at the requestor's cost. Planning Department office hours are Monday through Friday, 7:30 a.m. to 5:00 p.m. The city staff report will be available for review at least 7 days prior to the hearing.

Request: The applicant wishes to modify conditional use permit no. 172 to allow the addition of portable storage units, increasing the number of total storage spaces available and eliminate most of the outside storage. The application also includes the addition of an adjacent property that is owned by the applicant and was not previously included in the original conditional use permit. There is a residence on the parcel and is used as an office for the storage facility. No additional storage units will be placed on this property.

EXHIBIT C
TO STAFF REPORT

Project Permits Required: Approval to modify the original CUP, building permit.

Studies Required or Requested: A level one site assessment was completed as part of the original conditional use permit approval, including the removal of contaminated soils.

Environmental Documents: A SEPA checklist and Mitigated Determination of Nonsignificance was issued April 27, 2001 for the original conditional use permit.

Applicable Development Regulations: SWMC 2.88, SWMC 2.90, SWMC 17.04, SWMC 17.08, SWMC 17.56.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written testimony may be submitted to the City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284 until **5:00 pm November 30, 2004**. Additional information may be obtained by contacting Erin Klinger at the City Planning Department: (360) 855-0771.

Public Hearing: The Sedro-Woolley Planning Commission will hold a public hearing on the application **November 30, 2004 at 6:30 pm** at the Sedro-Woolley Municipal Court room located at 220 Woodworth Street.

The courtroom is located on the second floor of the city hall building and is not wheelchair accessible. Please contact the Planning Department 24 hours prior to the hearing if accommodations are needed.

Application submitted: September 29, 2004

Application complete: October 25, 2004

Date of Notice: November 10, 2004

Notice Published: November 10, 2004 in the Courier Times.

CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
Building, Planning & Engineering
720 Murdock Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733
llahr@ci.sedro-woolley.wa.us

Staff Report

Conditional Use Permit #2569 A-1 Mini-Storage
Planning Commission Public Hearing: November 30, 2004 6:30 pm

Application: CUP #2569 Conditional Use Permit application to amend a previously approved conditional use permit (no. 172) which altered an existing nonconforming use to allow commercial storage.

Request: The applicant wishes to modify conditional use permit no. 172 to allow the addition of portable storage units, increasing the number of total storage spaces available and eliminate most of the outside storage. The application also includes the addition of an adjacent property that is owned by the applicant and was not previously included in the original conditional use permit. There is a residence on the parcel and is used as an office for the storage facility. No additional storage units will be placed on this property.

Applicant: The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett of 1200 Warner Street, Sedro-Woolley, WA 98284.

Address: The subject property is located at 1230 Warner St, Sedro-Woolley, WA.

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Project Permits Required: Approval to modify the original CUP, building permit.

Studies Required or Requested: A level one site assessment was completed as part of the original conditional use permit approval, including the removal of contaminated soils.

Environmental Documents: A SEPA checklist and Mitigated Determination of Nonsignificance was issued April 27, 2001 for the original conditional use permit.

Applicable Development Regulations: SWMC 2.88, SWMC 2.90, SWMC 17.04, SWMC 17.08, SWMC 17.56.

Public Comment Period: Interested persons may comment on the application, receive notice, and participate in any hearings, request a copy of the decision, and appeal the decision. Written testimony may be submitted to the City Planner, City of Sedro-Woolley, 720 Murdock Street, Sedro-Woolley, Washington, 98284 until **5:00 pm November 30, 2004**. Additional information may be obtained by contacting Erin Klinger at the City Planning Department: (360) 855-0771.

Public Hearing: The Sedro-Woolley Planning Commission will hold a public hearing on the application **November 30, 2004 at 6:30 pm** at the Sedro-Woolley Municipal Court room located at 220 Woodworth Street.

The courtroom is located on the second floor of the city hall building and is not wheelchair accessible. Please contact the Planning Department 24 hours prior to the hearing if accommodations are needed.

Notice Published: November 10, 2004 in the Courier Times.

BACKGROUND

History of nonconforming use from Dean Hamilton letter and city records

Pre-1960	Carroll Mill built the existing buildings for a log hauling operation
	Hamilton Brothers leased this facility as log hauling operation storage.
1967 – 1970	Sedro-Woolley adopts first zoning code.
1978 or 79	Carroll Mill moved; Hamilton Brothers purchased site.
1988 forward	Hamilton Brothers rented the outer building to Nielsen Brothers.

Comprehensive Plan and Zoning Code Designations

The Comprehensive Plan and Zoning Code designation for this property is Residential – 5 (R-5), single family, 3 – 5 units per acre, the most restrictive residential zone.

Adjacent Uses

The adjacent property uses are residential.

STAFF REPORT INFORMATION - ORIGINAL PERMIT

1. Fire Access

The enclosed site plan revision shows a fire access and after-hours turn-around on Warner Street approved by the Sedro-Woolley Fire Chief.

2. Soil Clean-up.

Contamination from petroleum products and solvents was identified on the site. Soil testing and contaminant removal were completed.

3. Conditional Use Permit Criteria

The application is subject to the criteria of SWMC 17.56.060. The criteria upon which a conditional use permit application is judged shall be the extent to which it:

- Conforms to the Comprehensive Plan;
- Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts;
- Is well planned in all respects so as to be an asset to the community.

4. Non-conforming Use Criteria

By definition, a nonconforming use is different than what the community envisions through the comprehensive planning process. City codes allow nonconforming uses to be modified through the conditional use procedure. The rules about nonconforming uses follow:

17.04.050 Nonconforming uses, structures and lots.

Uses, structures, and lots not conforming to the provisions of this title may continue if legally existing at time of adoption of the ordinance codified in this title or at time of annexation to the city if annexed subsequent to adoption, provided that:

- A. Legal nonconforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use permit process;
- B. Legal nonconforming uses shall lose such status if abandoned for a period of six months or more;
- C. Legal nonconforming structures may be maintained and repaired unless destroyed or damaged so as to have their fair market value reduced by seventy-five percent or more, in which case they shall lose legal nonconforming status;
- D. Use and development of legal nonconforming lots shall be in accordance with all current regulations, including setback requirements;
The applicant is required to meet all current regulations, including, but not limited to stormwater management, parking, signs. This permit specifically acknowledges the historic placement of the existing structures close to the property lines.
- E. If question arises as to whether a use, structure or lot enjoys legal nonconforming status, the burden of proof shall be on the property owner to provide the necessary documentation. (Ord. 1013 1.05, 1985).

A letter from Dean Hamilton, a previous property owner was submitted clarifying the history of use.

5. Proposed Use

The proposed use would have less impact than the current use as a maintenance and storage site for logging trucks. Clean up of soil contamination has been completed following decades of exposure to petrochemicals. The proposal would eliminate cross traffic except for emergencies. The proposed access is via Warner Street, on the west end of the site.

6. Lighting

All lights will be directed downward and away from neighboring properties. Omit proposed light pole shown on east side of site, illustrated on site plan dated Nov. 6, 2001.

7. Signs

The size limits for signs from the underlying SF2 zone apply. "In the SF1, SF2, and MF zones, signs shall be limited to a total combined size of five square feet or one percent of the gross floor area of buildings, whichever is greater." Sedro-Woolley Municipal Code 17.40.020
The combined size of the two buildings on site is over 5,000 square feet, so the combined sign area maximum is 50 square feet. Given the site location, staff recommends the sign area be reduced to a combined total of 20 square feet. (This total signage amount includes all signs, temporary and permanent which are visible from any adjacent property not in the same ownership.)

HEARING EXAMINER FINDINGS OF FACT

1. The Comprehensive Plan and Zoning Code designation for this property is SF-2, single family, 3 – 5 units per acre, the most restrictive residential zone.
2. The public hearing has been advertised in accordance with the requirements of Chapter 17.56.030 of the City of Sedro-Woolley Municipal Code (SWMC).
3. The City takes the position that the current use of the property is a pre-existing non-conforming use under the current Comprehensive Plan and Zoning Code designation. The site has been used for storage and maintenance of logging trucks. There are several existing buildings on the property and the current proposal would not increase the number of buildings on the property. The history of the use of the property is as follow:

Pre-1960: Carroll Mill built the existing buildings for a log hauling operation
unknown: Hamilton Brothers leased this facility as log hauling operation storage.
1967-1970: Sedro-Woolley adopts first zoning code.
1978 or 79: Carroll Mill moved; Hamilton Brothers purchased site.
1988 forward: Hamilton Brothers rented the outer building to Nielsen Brothers.

4. The City Planning Department issued a Mitigated Determination of Non-Significance for this project on April 27, 2001, which was published on May 2, 2001. There was no appeal of the MDNS.
5. The applicant proposes to use existing buildings on the property for a heated mini-storage facility. There will be 58 units within a fenced, secured area. There will also be outside storage for about 11 boats and recreational vehicles. Adjacent to the fenced portion of the facility is a house that will be used for an employee who will work at the facility.
6. The conditional use permit criteria are set forth in SWMC 17.56.060 states as follows:
The criteria upon which a conditional use permit application is judged shall be the extent to which it:
 - A. *Conforms to the comprehensive plan;*
 - B. *Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and*
 - C. *Is well-planned in all respects so as to be an asset to the community.*
7. The proposed use requested by the applicant is much more compatible with the existing neighborhood than the pre-existing non-conforming use of the property.
8. The facility planned by the applicant, as shown on Exhibit 5 of the documents submitted at the public hearing, is well-planned and will be an asset to the community.
9. The MDNS requires that the applicant clean up soil contamination following decades of exposure to petrochemicals. The planning staff reports that this clean up has been completed. This is an asset to the community.
10. The applicant has agreed to limit hours of operation of the facility to the hours of 7:00 a.m. to 8:00 p.m., and has agreed to make the primary entrance to the facility from Warner Street.
11. The proposed use is more compatible with the list of conditional uses in SWMC 17.08.010, than the prior non-conforming use that has existed without restriction or conditions for decades.

HEARING EXAMINER DECISION

The Sedro-Woolley Hearing Examiner heard this application on January 29, 2003 and issued approval of the application subject to the following conditions:

1. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.
2. Completion of drainage facilities as per plan approved by city engineer.
3. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.
4. Signs, whether on site or off-site, are limited to a combined total of 20 square feet.

5. Applicant shall comply with all conditions of the MDNS:
 - a. Evaluate and clean up any soil or water contaminants to city standards before building permits are issued.
 - b. Provide a drainage plan and report prepared in compliance with the 1992 Department of Ecology Stormwater Management Manual for Puget Sound.
6. Applicant shall install slats in the fence to screen the facility from the neighbor's property to minimize visual impacts.
7. Applicant shall plant landscaping on the south side of the property as required and instructed by the planning department.
8. Access road standards to be approved by City Engineer.
9. A stormwater management plan must be completed using the 1992 Stormwater Manual standards

COMPLIANCE WITH ORIGINAL PERMIT CONDITIONS

1. Hours of operation must be limited to only 7 a.m. to 8 p.m.
2. Drainage facilities have been approved by the City Engineer. Any additional drainage problems identified on the property must be remedied in compliance with the 1992 Stormwater Management Manual.
3. Lighting has been installed so as not to shine on adjacent parcels.
4. There are currently slats in the southern-most fence to screen neighbors to the south, but there are no slats in the fence along the eastern property line.
5. The landscaping requirement was administratively modified to require landscaping along the northern property line.
6. The access road has been approved by the City Engineer.

MODIFICATION OF EXISTING CONDITIONAL USE PERMIT

1. The applicant is proposing to eliminate most of the approved outside storage area and replace it with 22 enclosed storage units (measuring 20' x 10') which provide up to 4 storage spaces each. Such additional storage units will be portable and easily removable.
2. The original permit approval included up to 58 storage units, and outside storage for 11 boats and recreational vehicles. The applicant states that he currently has 42 storage units on site. The maximum number of storage spaces available would be 130 spaces (42 existing units; 22 portable units with up to 4 spaces each = 88 spaces).
3. The current use of the home (1200 Warner Street) to the west of the existing property as an office was mentioned in the Hearing Examiner findings, but not included in the original permit approval. The Zoning Code allows professional offices as a conditional use as defined in SWMC 17.04.030 – Definitions.

The criteria upon which a conditional use permit application is judged shall be the extent to which it:

A. Conforms to the comprehensive plan;

The current zoning designation (Residential) allows for professional offices as conditional uses.

B. Is compatible with the surrounding area, that is, causes no unreasonable adverse impacts; and

The office will be located within an existing residence which is also used for living quarters. The surrounding area is also residences and the use is compatible.

C. Is well-planned in all respects so as to be an asset to the community.

The location of the office within the existing, adjacent residence eliminates the need to construct a new office for the storage facility.

4. The applicant has placed "temporary" signs at the Warner Street entrance and on the eastern edge of the emergency vehicle turnaround. The signs have not been temporary in nature and exceed the amount of signage allowed under the original approval.

RECOMMENDATION

Staff recommendation is to **approve** this request subject to the following conditions:

- A. The applicant shall comply with all conditions of the original permit approval (no. 172).
- B. The applicant shall maintain the minimum required 20 foot emergency vehicle access at all times.
- C. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.
- D. There shall be no outside storage of vehicles, recreational vehicles, boats, etc. Three outside storage tents are currently located in the southwest portion of the site. No additional outside storage tents shall be placed on the subject property.
- E. Traffic impact fees may be assessed for the additional storage units as required by ordinance, and as determined by the City Engineer.
- F. Completion and maintenance of drainage facilities as per plans approved by city engineer, if required.
- G. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.
- H. All signs, including temporary signage, are limited to a combined total of 20 square feet. Any existing signs which exceed this amount shall be removed as a condition of this approval.
- I. The applicant shall install slats in the fence along the eastern property line and the northern property line as required in the original permit, and as approved by the City Planner.
- J. The facility shall comply with the City of Sedro-Woolley Solid Waste Enclosure Standards as approved by the Solid Waste Division, and provide access for commercial service.
- K. Submit a landscaping plan for approval by the City Planner which satisfies the landscaping requirement of the original approval. (Hearing Examiner decision item #7)
- L. Applicant must post signs "FIRE LANE – KEEP CLEAR" as indicated in the site plan, and as approved by city staff.
- M. Primary access to the facility shall be from Warner Street only.
- N. The residence located 1200 Warner Street (P77223) shall not be used for purposes of commercial storage. It may be used for office purposes and living quarters only.
- O. Comply with all local, state, and federal regulations, including but not limited to the City of Sedro-Woolley Municipal Code, Comprehensive Plan, and Public Works Design Standards; International Fire Code, and International Building Code.

EXHIBITS

- A. Application to amend conditional use permit no. 172
- B. Narrative description
- C. Site plan for amended application
- D. Letter of complete application (10/25/04)
- E. Staff comments
- F. Hearing Examiner decision dated February 14, 2003
- G. Site plan for original application
- H. Notice of Application & Public Hearing
- I. Affidavit of mailing
- J. Mailing list of property owners within 500 feet
- K. Mailing procedure affidavit
- L. Affidavit of posting
- M. Mitigated Determination of Nonsignificance dated April 27, 2001
- N. Letter to Tom Swett dated October 14, 2002 (temporary signage)
- O. Letter to Tom Swett dated August 8, 2002 (CUP conditions)
- P. Letter to Tom Swett dated July 8, 2002 (signage and fence slats)
- Q. Letter to Tom Swett dated March 4, 2002 (landscaping)

PROPERTY LINES
(TYPICAL)

AMENDMENT C.U.P. - SWETT



Scale in Feet

EASEMENT

80'

793'

20'

60'

90'

6'

270'

BUILDING

DOOR AND LIGHT (TYP.)

PARKING

9' - (TYPICAL)

PARKING

19'

GATE

PARKING

BUILDING

GRAVEL ACCESS GRAVEL

20' EMERGENCY VEHICLE ACCESS

144'

CONTIGUOUS PROPERTY,
(NOT IN PROJECT)

P103

ESMT. TO CITY FOR STREET, SEE
AF#9411230113

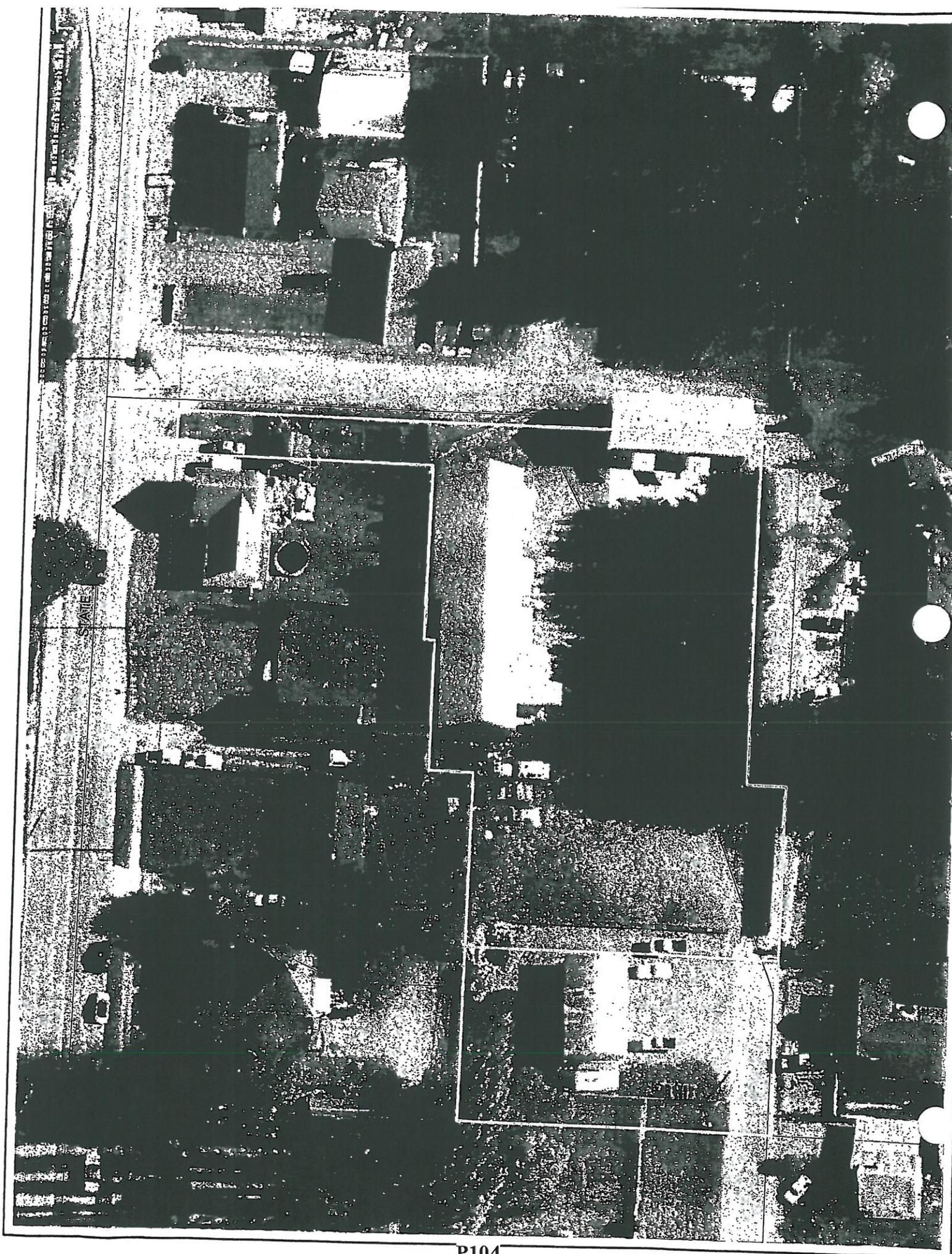
ESMT. TO CITY FOR STREET, SEE
AF#9412090106

793'

18'

160'

SITE D1 AX 1



CITY OF SEDRO-WOOLLEY PLANNING COMMISSION

In Re: the Application of:

Tom Swett

A-1 Mini Storage

1200 Warner Street

Sedro-Woolley, WA 98284

Amended Conditional Use Permit.

Application No. 2569

FINDINGS OF FACT AND ORDER/DECISION

This matter having come before the Sedro-Woolley Planning Commission on November 30, 2004, in the above referenced matter, the Planning Commission having considered the testimony of the applicant and witness, and having reviewed the files and records, now therefore, the Planning Commission hereby enters the following

1.0 FINDINGS OF FACT

1.1 The applicant, Tom Swett, filed a complete application to amend conditional use permit no. 172, in order to allow the addition of portable storage units, increase the number of total storage spaces available and eliminate most of the outside storage. The application also included the addition of an adjacent property that is owned by the applicant and was not previously included in the original conditional use permit. There is currently a residence on the parcel and is used as an office for the storage facility. No additional storage units were proposed on this property.

b) The proposed increase in the number of storage units, without adequate provisions in place, will adversely impact the surrounding residents.

c) The applicant provided no testimony in support of the application.

1.10 Notice of a public hearing was published in the Courier Times on November 10, 2004 and mailed to all appropriate parties.

1.11 The applicant bears the burden of proving the application should be approved.

Based on the forgoing findings of fact, the Planning Commission makes the following:

2.0 Order and Decision:

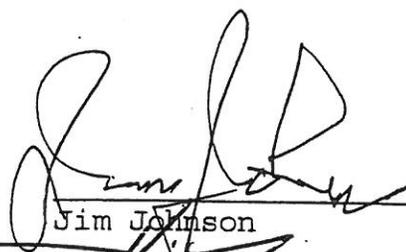
2.1 The applicant failed to meet the burden of proving that the application should be granted.

2.2 The application of Tom Swett for Conditional Use Permit #2569 is hereby DENIED.

Dated: 12-7-04

Sedro-Woolley Planning Commission

Pat Huggins



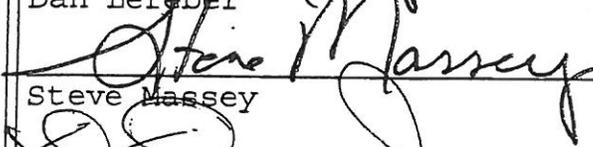
Jim Johnson



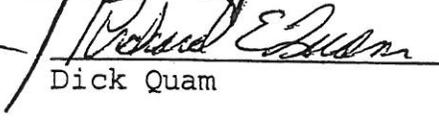
Dan Lefebber



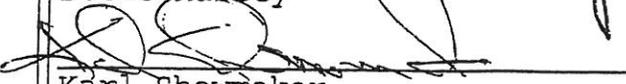
Kevin Boy



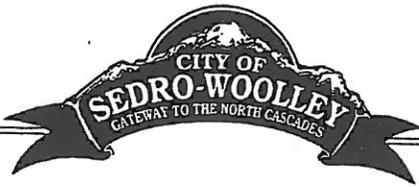
Steve Massey



Dick Quam



Karl Shewmaker



Sedro-Woolley Municipal Building
Building, Planning & Engineering
720 Murdock Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733
llahr@ci.sedro-woolley.wa.us

Notice of Decision

Conditional Use Permit application #2569

Notice is hereby given that on November 30, 2004 the Sedro-Woolley Planning Commission held a public hearing on conditional use permit application #2569 for Tom Swett of 1200 Warner Street, Sedro-Woolley, and voted to **deny** the application. The decision was passed by Resolution on December 7, 2004.

Application: Application to modify conditional use permit no. 172 to allow the addition of portable storage units, increase the number of total storage spaces available and eliminate most of the outside storage. The application also included the addition of an adjacent property that is owned by the applicant and was not previously included in the original conditional use permit.

Application: CUP # 2569 Amended Conditional Use Permit

Applicant: The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett of 1200 Warner Street, Sedro-Woolley, WA 98284.

Address: The subject property is located at 1230 Warner St, Sedro-Woolley, WA.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Appeal period: Parties of record may appeal file an appeal of this decision by **4:30 pm Tuesday, December 21, 2004**. Appeals shall be delivered to the director by mail, by personal delivery or by fax before 4:30 p.m. on the last business day of the appeal period. Appeals shall be in writing, and shall be accompanied by the required appeal fee.

Request for Reconsideration: Parties of record with standing to file an appeal may make a written request for a reconsideration of the final decision. Such request must be made within 10 days of the issuance of the final decision.

Appeals and Requests for Reconsideration shall contain the following information:

- A. Appellant's name, address and phone number;
- B. A statement describing appellant's standing to appeal;
- C. Identification of the application that is the subject of the appeal;
- D. Appellant's statement of grounds for appeal and the facts upon which the

- appeal is based with specific references to the facts in the record;
- E. The specific relief sought;
 - F. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

Fees: Appeals – Applicant \$200; property owners within 500 feet \$30; other parties of record \$100. Request for Reconsideration – all costs associated with holding an additional public hearing.

CC: Applicant, Parties of record, Skagit County Assessor's Office, File.

DATE RECEIVED 12-6-04

I am asking for re-consideration of application , 2569:

should be noted that the property was used as a service and repair of log trucks and equipment, and operated 24 hrs a day, with tire changes, and oil change, on logging trucks, during the night hrs, and repair of large equipment during the day.

I ask that Mr Shewmaker abstain from comment:

J. garbage, we had come to agreement with the city upon original approval, that the need for a commercial type container was not necessary and that the residential container was sufficient , we will not be creating more garbage with the changes, property has allowed for commercial garbage turn around this however should not be a condition of use.

H. signage , I am asking for a variance to extend the existing 20 sq ft of signage, too, 24 sq ft. of signage used for advertizing, this will allow the existing sign, located on the property @ 1230 warner, 4.5ft wide by 5ft high and allow for what ever sq. ft total, the other signs such as, fire lane, keep clear, no parking, ect.. will require. however this has a cost effective answer i can cut 3" from each side of the wood sign and meet requirement.

{B- C- F- G- J- K- M-} have all been met in A, and should state that all conditions of {no 172} have been met with exception of,

I- { install fence slats or new fence with slats} on the East 40' section, with new survey, we wish to install new fence with slats as soon as funds allow or within the next 6- months.

I thought the city should say that all requirements of the original conditional use have been met, with exception of the East 40' of fence, needs slats installed, or new preslated fencing .

impact fees? neighbors have 10 times the traffic i have on any day! surrounded by the trucking, assisted living, Tri-plex, these have far more traffic that the 3 to 4 vehicles a day using the storage.

I would like to asphalt so the drianage is a concern of mine , how ever has been signed off by the city as condition met, In fact there is no water from the lot drianing unto any others property thus no violation.

these new conditions to be added, as new conditions , should be all that is listed for the board to review :

D-
E-
N-
O-

as too popen past hrs., only in times of duress have coustomers been allowed to finish unloading , and never more than an hour past, leaving long before noise ordinance hours.

I did not feel represented as to my compliance, and efforts to clean-up the property, and to create a viable use for said property. showing how much of a getto this area was

*All New Lighting , has Been installed under
EVE'S OF Bid as to Light door ways*

DATE RECEIVED 12-13-04

Jean Swett
Thomas Swett

WE are asking for re-consideration of application , 2569:

should be noted that the property was used as a service and repair of log trucks and equipment, and operated 24 hrs a day, with tire changes, and oil change on logging trucks, during the night hrs, and repair of large equipment during the day.

I ask that Mr Shewmaker abstain from comment:

ask that the city state that all conditions of {no 172} have been met with exception of,

I- { install fence slats or new fence with slats} on the East 40' section, with new survey, we wish to install new fence with slats as soon as funds allow or within the next 6- months and are willing to have this as a condition to remain.

I would like to asphalt, so the drianage is a concern of mine , how ever, this issue has been signed off by the city as condition met, In fact there is no water from the lot drianing unto any others property, thus no violation.

these new conditions to be added, as new conditions , should be all that is listed for the board to review as new conditions to be met:

D-

E-

N-

O-

reply to statments made, open past hrs., only in times of duress have coustomers been allowed to finish unloading , and never more than an hour past, leaving long before city noise ordinance hours.

H. signage , I am asking for a variance to extend the existing 20 sq ft of signage, too, 24 sq ft. of signage used for advertizing, this will allow the existing sign, seen in pic. located on the property @ 1230 warner, 4.5ft wide by 5ft high and allow for what ever sq. ft total, the other signs such as, fire lane, keep clear, no parking ,ect..will require.

however this has a cost effective ansewer, i can remove the boarder of the wood sign of 3" from each side and meet requirement as is.

it has been stated by the complaintant that the lights installed shine into her window, I have photos from below the most easterly light, and the home can not be seen, as shown in pic. however her home is under a city street light, all lighting has been installed under the eve's of the building to provide lighting for saftey and security,

I did not feel represented as to my compliance, and efforts to clean-up the property with contaminated soil removal, and to create a viable use for said property. showing how much of a getto this area was prior to the change of use. , The complaintant can not see in the property from her home and is in no way affected by the operation of this new use, she could however before the change, see every night, a row of log trucks lining her fence waiting to be serviced. trucks being moved at all hours. vehicles bringing parts and supplies to the trucking company, coming and going all day, all this traffic at her front door has stopped

with the change , and she says she liked it the way it was.
,Next taking a statment of complaint, from someone who does not live in the town of Sedro Woolley, complaining on behalf of her sister who's property is not effected in any way, no lighting, traffic, visibility.

Mr hawking what can i say, he is allowed a conditional use with no conditions, no fencing, lanscape and last of all he has a storage container on his property , I have removed the truck traffic , and stopped the thru traffic that occured regularly over his driveway. with the installation of the gate
the nieghbors who actually see the daily operation of business from their front room ,and who live on Warner St., have signed a paper, showing that these nieghbors have voiced their opinion of approval. and would prefer inside storage as to outside vehicle storage.

We have over 30 homes notified and 2 complaints, if you took the time to make a site visit, you would see how the change has only helped to quiet and clean the enviroment of East Warner, City of Sedro Woolley

I would ask that you review the pictures provided, prior to changes.

These changes will allow us to continue to upgrade this property and keep good relations with those directly affected by the daily operation.
We have met all the requirements for this change and this should be granted approval.

Thomas Sweet
Jean Sweett

CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
Building, Planning & Engineering
720 Murdock Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733
llahr@ci.sedro-woolley.wa.us

Notice of Decision

Conditional Use Permit application #2569

Notice is hereby given that on February 1, 2005 the Sedro-Woolley Planning Commission held a public hearing on a reconsideration request for conditional use permit application #2569 for Tom Swett of 1200 Warner Street, Sedro-Woolley, and voted to **approve** the application with conditions.

A public hearing was previously held on November 30, 2004 and the Planning Commission voted to deny the amended application until such time as the applicant demonstrated that all conditions of the original conditional use permit approval were complied with.

The applicant submitted a written request for reconsideration consistent with SWMC 2.90.055. The Planning Commission held the reconsideration hearing on February 1, 2005.

Application: Application to modify conditional use permit no. 172 to allow the addition of portable storage units, increase the number of total storage spaces available and eliminate most of the outside storage. The application also included the addition of an adjacent property that is owned by the applicant and was not previously included in the original conditional use permit.

Application: CUP # 2569 Amended Conditional Use Permit

Applicant: The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett of 1200 Warner Street, Sedro-Woolley, WA 98284.

Address: The subject property is located at 1230 Warner St, Sedro-Woolley, WA.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Appeal period: Parties of record may file an appeal of this decision by **4:30 pm Tuesday, February 15, 2005**. Appeals shall be delivered to the director by mail, by personal delivery or by fax before 4:30 p.m. on the last business day of the appeal period. Appeals shall be in writing, and shall be accompanied by the required appeal fee.

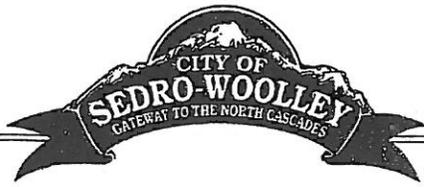
Request for Reconsideration: Parties of record with standing to file an appeal may make a written request for a reconsideration of the final decision. Such request must be made within 10 days of the issuance of the final decision.

Appeals and Requests for Reconsideration shall contain the following information:

- A. Appellant's name, address and phone number;
- B. A statement describing appellant's standing to appeal;
- C. Identification of the application that is the subject of the appeal;
- D. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
- E. The specific relief sought;
- F. A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

Fees: Appeals – Applicant \$200; property owners within 500 feet \$30; other parties of record \$100. Request for Reconsideration – all costs associated with holding an additional public hearing.

CC: Applicant, Parties of record, Skagit County Assessor's Office, File.



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**Notice of Closed Record Appeal Hearing
Amended Conditional Use Permit #2569 A-1 Mini Storage**

Application: CUP #2569 Conditional Use Permit application to amend a previously approved conditional use permit (no. 172) which altered an existing nonconforming use to allow commercial storage.

The City of Sedro-Woolley Planning Commission held a public hearing on the application November 30, 2004 and denied the application. Following a written Request for Reconsideration by the applicant, the Commission held a public hearing on [REDACTED]

Applicant: The applicant is Jean Swett, 24236 Brandon Lane, Sedro-Woolley, WA 98284, represented by Tom Swett of 1200 Warner Street, Sedro-Woolley, WA 98284.

Property Location: The subject property is located at 1230 Warner St, Sedro-Woolley, WA.

A copy of the application is available for review at the Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, Washington 98284, or by calling (360) 855-0771.

Appellant: James Hawkings of 1211 State Street filed a written appeal of the Planning Commission decision to approve the application.

The closed record appeal hearing before the Sedro-Woolley City Council is set for **7:00 pm, March 9, 2005** at the Sedro-Woolley Community Center located at 703 Pacific Street, Sedro-Woolley, WA 98284.

Further information on this matter can be obtained by contacting the City of Sedro-Woolley Planning Department located at 720 Murdock Street, Sedro-Woolley, WA 98284.
(360) 855-0771

Date of Notice: February 28, 2005

A
James Hawkings
1211 State Street
Sedro-Woolley, WA 98284
360 856-0643

B
I am a property owner adjoining the applicants property.

C
Conditional use permit application #2569 amending conditional use Permit # 172.

D
A public hearing was held November 30, 2004 and the planning commission voted to deny the amended application until such time as the applicant demonstrated that all conditions of the original conditional use permit approval were complied with.

At this hearing there was public testimony as to the lack of compliance.

The original decision dating February 14, 2002 states: The hearing examiner approves the application for a conditional use permit subject to the following conditions:

- 1. Since the site is in a residential area, operating hours shall be limited to 7a.m. to 8 p.m.**
- 2. completion of a drainage facilities as per plan approved by city engineer .**
- 3. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at the eastern end of site.**
- 4. Signs, whether on site or off-site, are limited to a combined total of 20 square feet.**
- 5. Applicant shall comply with all conditions of the MDNS.**
- 6. Applicant shall install slats in the fence to screen the facility from the neighbors property to minimize visual impacts.**
- 7. Applicant shall plant landscaping on the south side of the property as required and instructed by the planning department.**
- 8. Access road standards to be approved by City Engineer.**
- 9. A stormwater management plan must be completed using the 1992 Stormwater Manual standards.**

City staff and the applicant imply that all these conditions have been met. Both these statements are false.

Condition 5 states applicant shall comply with all conditions of the MDNS.

City of Sedro-Woolley Conditional Use Procedure and Application states: All aspects of the application, including site plans and design of signs and other improvements, are considered binding. And site plan requirements show all property lines, easements and their dimensions.

Non-Conforming Use Criteria A. states: Legal conforming uses and structures shall not be enlarged, altered or expanded unless such modification is approved through the conditional use process.

Now, where to start. My testimony read at the November 30, 2004 meeting is included.

In reference to:

- #1 testimony was giving by myself and another neighboring property owner.**
- #2 according to city ordinance, a drainage facilities must be approved and implemented and maintained. This facility still has flooding during heavy rains.**
- #3 I complained about lights from the facility shining onto my property inhibiting the use of my property and making it difficult to back in to park with three mercury vapor lights shining into my eyes. This was addressed at the reconsideration hearing as the other neighbor can't even see these lights from her house. This is correct. I can and it is not in compliance, and is a safety issue and a major inconvenience.**
- #4 Signs have not yet to be in compliance in the facilities 3 years of operation. And yes, staff has complaints on file.**
- #5 Drainage, this site still drains its roof water onto neighboring properties.**
- #6 Slats have yet to be installed in east fence.**
- #7 applicant has yet to plant landscaping per city ordinances and his proposal in his MDNS. Some screening was waved as to accommodate a doorway in building two which is no longer a doorway. So much for binding site plans.**
- #8 Access road to the east is proposed to be used as fire truck exit only, and access from Warner street was to eliminate cross traffic. The gate being open before, during and after business hours does not very well represent his proposal.**
- #9 Storm water, just having a plan does not mitigate the problem. Having a working plan might help.**
- #10 A utility rite of way has been deleted from the property description. Staff spent money to hire First American Title to investigate this. Records show the rite of way, still not part of the**

binding site plan. Applicants proposal showed property now being added to site as living quarters for management, not to be part of the first cup. Adding this property along with other half of lot 1 added in first cup was never part of the Hamilton property the applicant was representing as a down zone.

#11 The use of parcel B as an office for the facility before this new proposal is not compliant.

#12 The addition of the portable buildings before the CUP is applied for is not in compliance.

I feel the city is misrepresented by the staff in supporting this application to amend when they can't seem to bring the existing CUP into compliance. The city can find no time line to impose to these non-compliant conditions. If they need some suggestions, I'll quote a few someone else has made:

Nothing should be serviced or stored until he has first been approved, and then met all conditions of the approval. Then and only then should he be allowed to operate. Letter to staff dated 3/31/03.

Their conclusion was that the construction could be completed, yet nothing would be signed off until the conditional use permit was obtained. (The actual use of the property would not be allowed until the application had been approved and all the conditions of the application were met).

Until he meets the requirements to do so, Nothing should be brought back until he has first applied, been approved, and met all the conditions of the approval.

Letter to Mayor, not dated but refers to a city attorney letter dated September 23, 2002.

Thomas Swett is the author of these letters.

E
I believe the amended application was rightfully denied on November 30, 2004 and I think it is wrong that staff returned to support this reconsideration on February 1, 2005. I do not think there is any evidence to support approval and all kinds of evidence that show non-compliance. I believe the applicant should be shut down till he is in compliance with the original CUP # 172 . Due to staff errors an appeal filed for the original CUP #172 was not heard. We asked for clarification then, and we want it now and a realistic timeline to comply. Not being in compliance for 3 years and approving an

amendment to expand, extending his time to come into compliance for CUP #172 an additional 6 months is unexceptable.

Commissioners were told at the November 30, 2004 meeting that their packets did not include all the information pertaining to this CUP, but only after a commissioner questioned staff why a copy of the information Mrs. Morgan was referring to was not in his packet. Again, unexceptable.

A commissioner in the February 1, 2005 meeting implied that code enforcement should be the one to enforce compliance and since he has had no complaints he was approve the expansion.

Code enforcement can not enforce something staff can't even explain.

F I James Hawkings have read this appeal and believe the contents to be true and accurate.


2-13-05

Planning commission members.

I am quite puzzled why this proposal is even before us. The existing CUP for this facility has never been brought into compliance in its three years of operation. Now staff recommends this new proposal for expansion be approved with conditions. I thought conditional use meant just that, you meet the conditions or you don't get the use. Staff is passing the burden by sending this to the planning commission, and is impacting the neighbors again for something that staff should have handled. I recommend that this is sent back to staff, they bring the original CUP into compliance, then after three years of compliance it might be more appropriate to submit something new. But surely not after three years of non compliance with the history we have going here.

Conditions of the original CUP still not in compliance are:

- 1. limited hours of operations are constantly disregarded. Gates open and customers in facilities before and after operating hours. Gate on east end intended for fire exit only is left open for extended periods of time.**
- 2. completion of a drainage facilities is an open book, applicant still has drainage issues and has resorted to trying to pass the blame to the neighboring properties in finger pointing and even so far as a law suit.**
- 3. Lighting from this facility shines onto my property hampering the use of my property and making it all but impossible to back in to park with three mercury vapor lights shining in your face.**
- 4. Signs have been over allowed size. Signs in the area of state street tend to draw traffic into a private driveway where there is no access to this facility or place to turn around other than on other private property. This driveway is owned and 100% maintained for the last 16 years by myself. If this is not an unnecessary impact on neighboring properties, I don't know what is.**

- 5. Again addressing drainage for this site. This facility still allows run off from its roofs to fall onto neighboring properties.**
- 6. Applicant has yet to install slats in fencing in eastern side of facility.**
- 7. Applicant has yet to plant landscaping per city ordinances as provided in his proposals and as conditions of his use.**
- 8. Access roads. Applicants proposed access to this facility was to be from Warner Street, thus eliminating cross traffic through the facility, and the gate on the east side used as fire truck exit only. Applicant proposed this rather than enter into a maintenance agreement on private drive towards state street and concerns of running a business over a rite of way.**
- 9. A storm water management plan completed? And implemented??**
- 10. A utility rite of way has been deleted from the property description for this facility described in statutory warranty deed 8209070051 as was recorded on september 7, 1982. Also not included in the property description is the east half of the south half of lot 1 wrongly added to the last CUP. It was not part of the property previously owned by the Hamiltons that had been grandfathered in. And now plans are to include parcel B in this CUP, also property not part of this original use that was being down scaled. The applicants pervious proposal called for this parcel to be living quarters for an employee. Was never said to be part of the facility.**
- 11. The use of parcel B as an office for the facility before this new proposal**
- 12. The addition of the portable buildings before the CUP is applied for.**

Thank you for your considerations in this matter.

**James Hawkings
1211 State St.**

Appeal of Conditional use permit Application of Jean Swett, application no. CUP #172

Appeal of findings of fact and conclusions and order no. CUP #172

I am James Hawkings, at 1211 State St. Sedro-Woolley, and owner of the adjoining property to the east of the Swett property. The reason for filing this appeal is that the wording in the finding of fact and conclusions are not consistent to the wording in the proposal of the applicant and lacks clarity to the conditions of use. The application proposal dated 11/27/01 reads "changes in the application is that access will now be off of Warner street versus State street. The gate on the state street side would be for emergency exit only." Wording in the finding of facts #10 reads "The applicant has agreed to limit hours of operation of the facility to the hours of 7:00 am to 8:00pm. And has agreed to make the primary entrance to the facility from Warner street."

The conditions of approval limit the size of signs, but do not address the location or limit the locations as was asked in the hearings.

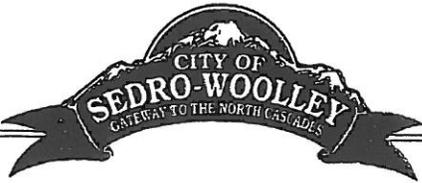
Decision #7 only requires applicant to plant landscaping on the south side of the facility, inconsistent with city requirements and his application.

I think the conditions proposed by the applicant as to limiting cross traffic to emergency traffic only, limiting the gate on the State street side to emergency exit only and entrance to his facility being off of Warner street should be specific conditions of the C.U.P. And that a sign not be allowed on the north end of building 2, as indicated in the proposed sign placement given to the hearing examiner. The applicant had changed the proposed access to his facility to Warner street to avoid entering into a maintenance agreement on the driveway off of State street, and allowing a sign in this area would only draw traffic into a privately owned and maintained driveway, to a locked gate with no turn around, creating a nuisance, trespass and unnecessary impact on the adjoining neighbors.

The application also proposed to include landscaping consistent with the city requirements to the extent possible. This to include fencing, and 7 foot landscape screen comprised of medium shrubs on 6 foot centers on the west property line and deems it not possible to do on the east

property line due to an entry door into building 2. Entry door to building 2 no longer exists and should not be a factor as to exclude this area from city required landscaping.

I would also like this facility to not be referred to as 1211 State street. In over 13 years that I have lived at 1211 State street there was never any confusion or have I seen any documentation showing the Swett property to be anything other than 1209 State street, and after a year since this CUP was first filed and numerous times at trying to clarify this, the conclusions still refers to the property as 1211 State Street. It is not the practice of this city or its fire department to issue one address to two different tax parcels, each with separate structures and separate owners



CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
Building, Planning & Engineering
720 Murdock Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733
llahr@ci.sedro-woolley.wa.us

May 31, 2005

Tom Swett
1200 Warner Street
Sedro-Woolley, WA 98284

RE: Conditions of approval – CUP #2569

Dear Mr. Swett;

Following the City Council decision dated April 13, 2005 denying the appeal of James Hawkings regarding the approval of your amended conditional use permit #2569, staff visited your property to determine any outstanding items that need to be completed.

The City has not been notified of any appeal of this decision being filed with Skagit County Superior Court. Therefore, the decision of the City Council is presumed to be final.

The conditions of approval are as follows including staff comments in *italics*:

- A. The applicant shall comply with all conditions of the original permit approval (no. 172).
- B. The applicant shall maintain the minimum required 20 foot emergency vehicle access at all times.

During the staff inspection, the emergency vehicle access was kept clear and the Fire Department confirmed access through the subject property.

- C. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.

The applicant shall abide by the required hours of operation. To date, the City has received no complaints regarding hours of operation.

- D. There shall be no outside storage of vehicles, recreational vehicles, boats, etc. Three outside storage tents are currently located in the southwest portion of the site. No additional outside storage tents shall be placed on the subject property.

The vehicle located along the southern property line is a violation of this condition, and shall be removed or placed under cover so as not to be visible.

- E. Traffic impact fees may be assessed for the additional storage units as required by ordinance, and as determined by the City Engineer.
- F. Completion and maintenance of drainage facilities as per plans approved by city engineer, if required.

The City has approved the drainage facilities as constructed, based on observed conditions. However, it is illegal to discharge stormwater onto adjacent properties

- G. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.

The applicant is in compliance with this requirement.

- H. All signs, including temporary signage, are limited to a combined total of 20 square feet. Any existing signs which exceed this amount shall be removed as a condition of this approval.

The applicant is in compliance with this requirement.

- I. The applicant shall install slats in the fence along the eastern property line and the northern property line as required in the original permit, and as approved by the City Planner.

The applicant is in compliance with this requirement. The applicant has modified the fence line from what was originally approved by the Planning Commission. The current fence line follows the applicant's property lines. While the applicant has the right to fence his entire property, the site plan that was approved by the Planning Commission is considered binding and must be complied with or modified by the Planning Commission (see pre-app meeting comments enclosed).

- J. The facility shall comply with the City of Sedro-Woolley Solid Waste Enclosure Standards as approved by the Solid Waste Division, and provide access for commercial service.

The applicant is working with the solid waste department to provide appropriate access for the business. This requirement shall be completed no later than July 1, 2005 as required by the Planning Commission.

- K. Submit a landscaping plan for approval by the City Planner which satisfies the landscaping requirement of the original approval. (Hearing Examiner decision item #7)

Please submit a drawing no later than June 15, 2005 showing the proposed location of landscaping as discussed during the site visit for review and approval by the City. Landscaping shall be completed to the satisfaction of the City no later than July 1, 2005.

- L. Applicant must post signs "FIRE LANE – KEEP CLEAR" as indicated in the site plan, and as approved by city staff.

The applicant is in compliance with this requirement.

- M. Primary access to the facility shall be from Warner Street only.

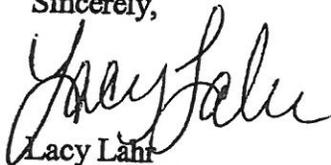
- N. The residence located 1200 Warner Street (P77223) shall not be used for purposes of commercial storage. It may be used for office purposes and living quarters only.

- O. Comply with all local, state, and federal regulations, including but not limited to the City of Sedro-Woolley Municipal Code, Comprehensive Plan, and Public Works Design Standards; International Fire Code, and International Building Code.

The Planning Commission granted approval of your amended conditional use permit application provided that all conditions of approval are completed to the satisfaction of the city prior to July 1, 2005. The approval may be subject to revocation, following appropriate notice and a public hearing, if the conditions of approval are not completed by this date.

Please contact me at 855-0771 with any questions regarding these conditions.

Sincerely,



Lacy Lahr
City Planner

CC: Pat Hayden, City Attorney / Erin Klinger, Development Coordinator / File

Enclosure

COMMENT SHEET

DATE: 8-19-04

APP. NUMBER PRE APP # 2497

PROJECT NAME: A 1 MINI STORAGE UNITS

LOCATION: 1230 WARNER ST

STAFF COMMENTS:

Amend Conditional use permit
to Planning Commission

Storage containers 19-20 ~~ft~~ 10x20
upto...

Using 42 units in buildings

Show ANY changes to original approval
on site plan

Describe any changes proposed from the
original approval

Lacey Jahn
SIGNATURE
Planning
DEPARTMENT

My Name is, Jessica Phares, I rent unit E2, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature Jessica Phares

My Name is, Michel Barnett, I rent unit F5, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature Michel Barnett

My Name is, allyson Greenwood, I rent unit A6, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature allyson Greenwood

My Name is, EARLENE WHITE, I rent unit A9, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature Earlene White

My Name is, DONA C. PISANO, I rent unit B2, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature Dona C. Pisano

My Name is, TERESA M. EILERS, I rent unit _____, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature Teresa M. Eilers

My Name is, JOSEPH MOLITOR, I rent unit D1, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

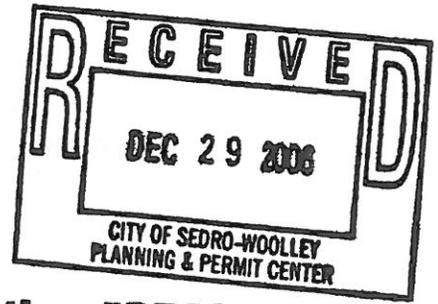
Signature Joseph Molitor

My Name is, Jane DeVoe, I rent unit E1, from A1- Heated storage, I was told at the time of renting, and understand that the Hrs. of operation are from 7:30 AM to 8 PM, and that items in storage will be available to me during these hours.

Signature J.B. DeVoe

James Hawkings 856-0643
1211 State St.
Sedro-Woolley, WA 98284
360 856-0643

9/14/05
4/26/06



City Officials: Attention Pat Hayden

Per conditional use permit application #2569 amending conditional use permit # 172 you approved on the condition that all conditions of cup # 172 were in compliance or would be in compliance by 7/1/05 as a requirement of approval of cup #2569.

In reference to these conditions: the conditions of cup #172 are still not in compliance. Lighting still shines on to neighboring property. Roof water runoff still runs onto neighboring property. I do not believe signs are yet in compliance with the 20 square foot limits. Landscape screening per the applicants proposal has not been done.

MUST INSTALL PERMANENT SHIELD

GUTTER ?

After 3 1/2 years of non compliance it is again left to the neighboring properties to police these issues. Some of these requirements, such as fire lane markings and such are not an issue to me, but should be to the city staff .

MUST INSTA PER 17.50.12

SIGN ON FENCE PER DEAN K.

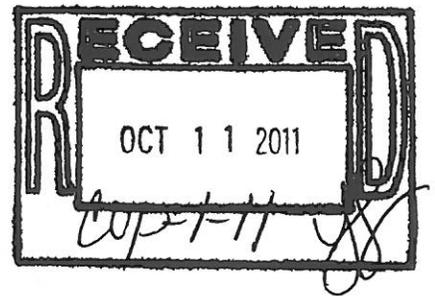
After this long, lack of compliance should totally remove cup #2569. This bringing several more compliance issues for cup # 172 back to the table. The portable buildings added before the application for #2569. The use of the mobile home

as an office before #2569. Both of these issues were addressed in his original cup. No building will be added or altered. The mobile home was to be used as living quarters only for an employee.

**James hawkings
1211 state street
Sedro-Woolley, WA**

I, Jean Suetz, Authorize Tom
Suetz to make any changes
to 1230 Warner St
Sedro Woolley, WA. 98284

Jean Suetz



NOTICE OF APPLICATION AND PUBLIC HEARING

Friday, December 2, 2011 10:00 AM

Sedro-Woolley Municipal Courtroom
325 Metcalf St., Sedro-Woolley

Application: Conditional Use Permit # CUP-1-11

Applicant Tom Swett, Jean Swett – A-1 Storage

Address: 1230 Warner Street

Assessors Parcel Number: P77224

Request: A conditional use permit (CUP) application from A-1 Storage has been received by the Sedro-Woolley Planning Department. The request is to allow a portion of the existing storage building to be converted to be equipped with hydroponic gardening systems. The metal cabinets and rooms would be used by individuals for growing medical marijuana indoors in a secure environment. The CUP, if approved as requested, will modify an existing CUP that allows the storage facility to operate 130 storage units in a residential zone. Because hydroponic gardening requires more frequent attention than the existing use on the property (personal storage), the proposal is anticipated to generate more vehicle trips per day than the current use.

Project Approvals Required: Conditional Use Permit

Environmental Documents: N/A

Public Comment Period: Interested persons may comment on the application, receive notice and participate in any hearings and request a copy of the decision. Written testimony may be submitted to: City of Sedro-Woolley Planning Department, ATTN: Senior Planner, 325 Metcalf Street, Sedro-Woolley, Washington, 98284, until 9:00 am of the date of the public hearing.

Public Hearing: The Sedro-Woolley Hearing Examiner will hold a public hearing on the Conditional Use Permit application on Friday, December 2, 2011 10:00 AM at the Sedro-Woolley Municipal Courtroom, 325 Metcalf Street.

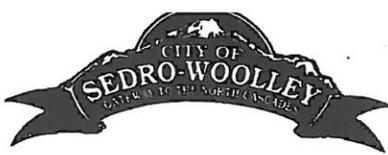
Notice Published: Wednesday, November 16, 2011 in the Skagit Valley Herald

EXHIBIT E
TO STAFF REPORT

Closed Record Appeal Exhibits

EXHIBIT # 2

Exhibit # 2
To Closed Record Appeal



MEMO:

To: Sedro-Woolley Hearing Examiner

From: Jack Moore, 
Planning Director/ Building Official

Date: December 2, 2011

Subject: CUP-1-11 – Addendum to Staff Report – Renting Indoor Space for Hydroponic Growing of Medical Marijuana

Staff prepared a Transmittal & Report Memorandum (Staff Report) for the Hearing Examiner and made it available to the public on November 23, 2011. On November 30, after reviewing the Staff Report, the applicant – Tom Swett – submitted two supplemental documents. The first is titled *Supplemental Clarification Memo* and is attached hereto as Exhibit F to the Staff Report.

The applicant's *Supplemental Clarification Memo* includes a reference to an Exhibit A – a flyer showing the types of filters that are currently used at the facility – however that exhibit was not submitted to the Planning Department. The second document (Exhibit G of Staff Report) includes revised answers to the questions on page 2 of the CUP application form.

These supplemental documents effectively alter the applicant's Conditional Use Permit request. This memo is to help clarify to the Hearing Examiner and the interested public the request as modified by the applicant.

The revised application is a modification of two previously approved CUPs and proposes 15 traditional self-storage units as well as hydroponic garden units for 40 customers, reduced from 90 garden units proposed in the original application. This greatly reduces the number of traffic trips compared to what was previously approved under CUP #2569 as demonstrated in the applicants *Supplemental Clarification Memo*.

The revised application materials do not mention outdoor storage for RVs and trailers. The first CUP allowed up to 11 RVs or trailers to be stored outdoors, the second CUP reduced that amount but did not state how much of a reduction.

REVISED RECOMMENDED CONDITIONS

After reviewing the applicant's revised proposal clarifying the existing mitigation measures in place and significantly reducing the number of daily traffic trips, the Planning Department recommends the following conditions if the Hearing Examiner approves the proposal:

1. All lighting shall be positioned downward and shielded from directly illuminating neighboring properties;
2. The business hours shall be limited to 7:00AM to 8:00PM;

3. Signs are limited to a combined total of 20 square feet;
4. Applicant shall submit a landscaping plan that includes landscaping at the entrance to the facility. The plan must be approved by the Planning Department and the landscaping shall be installed within 3 months of CUP approval;
5. Limit the outdoor storage of RVs and trailers to a maximum of 8 units.
6. The public comment period ended after the staff report was compiled, so complete public comment was not available to staff to help address the public concerns and possible impacts of the use. Staff asks that the Hearing Examiner add necessary conditions based on the written public comments received and oral testimony at the December 2, 2011 hearing.

Supplemental Clarification Memo

The proposal is for the modification of an existing Conditional Use Permit for A-1 storage (CUP #2569). That permit was a modification of the original Conditional Use Permit (CUP #172). The purpose of this narrative is to provide clarification and answer questions raised by the City regarding the application.

Only one of the two existing storage buildings has been converted for the indoor gardening purposes (The large building along the northern property line as shown on the site plan). The remaining building would continue to house eleven conventional storage units. In addition to the 11 traditional storage units in the separate building, there are 4 traditional units that have not been converted to allow for indoor gardening that can be rented for traditional storage purposes. This brings the total traditional units to 15. The converted building would allow for up to 40 renters to use the growing facilities. This would result in a total of 55 renters—a significant reduction from the 130 units previously approved.

The property is roughly 24,000 square feet in size. If it were to be subdivided it could accommodate two single family homes and the impacts associated with them. The discussion that follows provides clarification regarding the issues that the Planning Department Staff have indicated are most significant.

Traffic

The primary difference between the proposal and the approved CUP is the number of trips that would be generated and the type of trip. It is anticipated that the 40 renters would generate up to 13 trips per day and the 15 traditional units would generate another 4 trips per day for a total of 17 daily trips. The previously submitted narrative incorrectly stated that the trips from the 130 units to be 4 per day. In actuality, the number of trips from the 130 storage units is 36 trips per day. This number was calculated using the ITE Trip Generation Manual (Land Use type Mini-Warehouse (151)) which indicates that on a weekday it can be anticipated that each storage unit will generate 0.28 trips ($0.28 \times 130 = 36.4$). The anticipated 17 daily trips is significantly fewer than the 36 trips approved under the CUP and in fact would be fewer than the number of trips that would be generated if the property were developed as 2 single family homes (each single family home generates roughly 10 trips per day for a total of 20 trips). In addition the trips would not be the large moving trucks and trailers that would typically be associated with storage units (with the exception of the 15 conventional storage units—a significant reduction from the approved 130 units) but would be personal vehicles.

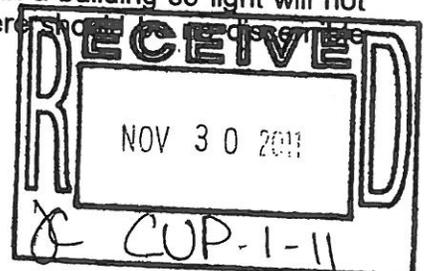
Noise

The primary source of noise from the indoor storage activities would be the noise of the vehicles coming to and from the site. As discussed previously the number of trips is fewer than approved in the earlier CUP so would be a reduction in the anticipated impacts from the modification. Gardening activities would occur inside of the buildings while the traditional storage unit model includes the noise associated with moving items from a truck/trailer located outside of the units in to them. Overall the noise associated with indoor gardening is less than that associated with traditional storage.

Lighting

Each gardening set up is enclosed and they are further enclosed in a building so light will not escape. No changes are proposed to the exterior lighting so there should be no difference from the approved and existing storage use.

EXHIBIT **F**
STAFF REPORT ADDENDUM



Odor

The gardening facilities include filtration systems to ensure that any odors are mitigated. We have attached a copy of a flyer showing the types of filters that are currently in use at the facility (Exhibit A).

Security

The security of the entire facility has been increased to discourage vandals and theft. The fencing around the facility has been upgraded and alarms have been installed. Evergreen Security Company has been retained to provide security services for the property.

Legal Issues

The City Staff has indicated that "the CUP application is not being judged on that facet". However, the applicant has been in close contact with local, state and federal law enforcement regarding the facility.

In reviewing a conditional use permit request, the Hearing Examiner must consider the following criteria specified in Section 17.56.060 of the Sedro-Woolley Zoning Ordinance. Use extra sheets if needed.

1.

How does the proposed use conform with the Comprehensive Plan for the City of Sedro-Woolley? The proposal is a modification to an existing Conditional Use permit. The original permit was issued in 2002 for a total of 58 units (CUP-1-02) and was modified in 2005 to allow 130 units (CUP #2569). The current proposal would modify the existing CUP to allow for a significant number of the traditional storage units to be converted to indoor gardening facilities. The net effect of the proposal is to reduce the number of units to 15 traditional storage units and 40 tenants utilizing the indoor gardening facilities. The indoor gardening facilities are similar to the storage use in that the owner leases space to garden instead of store household items or other "excess stuff" that the renter may have. Since the use is substantially similar to the approved CUP and since the CUP was previously found to be in conformance with the Comprehensive Plan for Sedro-Woolley then the modification is then also in conformance with the Comprehensive Plan.

2.

Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated). For well over 20 years the site has been used for storage purposes of one kind or another. For the last 9 years the current owner has had a CUP for to operate a storage unit—first for 58 units and then for 130 units. All of these uses were not only compatible with the surrounding area but have been in use long enough that they in fact are part of what defines the character of the area. The proposal is a less intensive use than the previously approved CUP for 130 traditional storage units. As proposed the 15 traditional storage units and 40 indoor gardening tenants would be compatible with the area as has the approve storage unit and the storage use that has been occurring on the property for more than 20 years.

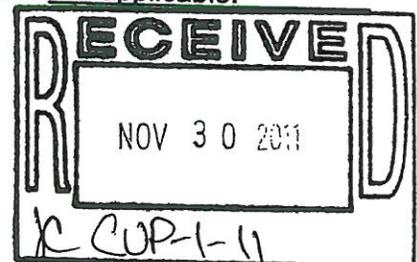
3.

Is the proposed development or use well planned in all respects so as to be an asset to the community? The proposed modification is the continuance of an existing storage use of the property. The indoor gardening would result in more frequent trips by the renters of the space than traditional storage units however they would arrive at the site in personal vehicles not have rental trucks or trailers. In addition the fewer overall renters would result in fewer overall trips. The hours of operation would not change. No changes would be made to the exterior of the site so it would not look different than it currently looks. Since the previously approved CUPs met the requirement for being well planned and an asset to the community and since this modification request primarily impacts the interior of the buildings and reduces the number of renters, it too meets the criterion.

4.

Other applications or variances being applied for as part of project: Not applicable.

EXHIBIT **G**
STAFF REPORT APPENDIX



Closed Record Appeal Exhibits

EXHIBIT # 3

Exhibit # 3
To Closed Record Appeal

NOTICE OF APPLICATION AND PUBLIC HEARING

Friday, December 2, 2011 10:00 AM

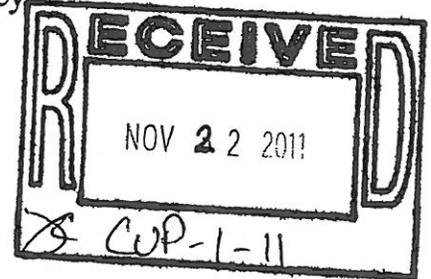
Sedro-Woolley Municipal Courtroom
325 Metcalf St., Sedro-Woolley

Application: Conditional Use Permit # CUP-1-11

Applicant Tom Swett, Jean Swett – A-1 Storage

Address: 1230 Warner Street

Assessors Parcel Number: P77224



Request: A conditional use permit (CUP) application from A-1 Storage has been received by the Sedro-Woolley Planning Department. The request is to allow a portion of the existing storage building to be converted to be equipped with hydroponic gardening systems. The metal cabinets and rooms would be used by individuals for growing medical marijuana indoors in a secure environment. The CUP, if approved as requested, will modify an existing CUP that allows the storage facility to operate 130 storage units in a residential zone. Because hydroponic gardening requires more frequent attention than the existing use on the property (personal storage), the proposal is anticipated to generate more vehicle trips per day than the current use.

Project Approvals Required: Conditional Use Permit

Environmental Documents: N/A

Public Comment Period: Interested persons may comment on the application, receive notice and participate in any hearings and request a copy of the decision. Written testimony may be submitted to: City of Sedro-Woolley Planning Department, ATTN: Senior Planner, 325 Metcalf Street, Sedro-Woolley, Washington, 98284, **until 9:00 am of the date of the public hearing.**

Public Hearing: The Sedro-Woolley Hearing Examiner will hold a public hearing on the Conditional Use Permit application on Friday, December 2, 2011 10:00 AM at the Sedro-Woolley Municipal Courtroom, 325 Metcalf Street.

Notice Published: Wednesday, November 16, 2011 in the Skagit Valley Herald

*I do not support the approval
of this Conditional Use Permit # P 77224.*

Fred W Boede

*11-21-2011
P143*

City of Sedro-Woolley Planning Department

Attn: Senior Planner
325 Metcalf Street
Sedro-Woolley, WA 98284

I Della Miller living at 1213 East State Street strongly oppose of the issuance of conditional Use Permit #CUP-1-11.

Tom Swett has a history not being in compliance with his permits. Allowing this permit will bring additional traffic to A-1 storage not only vehicle but foot traffic. In the request it states that if allowed then the storage would require more attention. Tom does not pay attention to the storage location currently. Currently the perimeter is and has not been maintained.

There are vehicles that are parked outside in the storage area that are not supposed to be there.

Currently there are lights that shine onto my property that is an annoyance, which I have tried to address. When I turned in a complaint a small piece of metal was placed on the light, which has no effect on the problem.

He currently has storage space that medical marijuana has been growing in with out a conditional permit. What is to stop him from not complying if allowed, and if this is allowed then ALL conditions must be met and enforced?

If allowed what assurances from Tom Swett and the city for additional measures against potential crimes. The growing of marijuana has the potential of attracting thieves and vandals.

The permit does not address the school that is just blocks away.

There is vehicle traffic to A-1 storage well past the closing hours of this business.

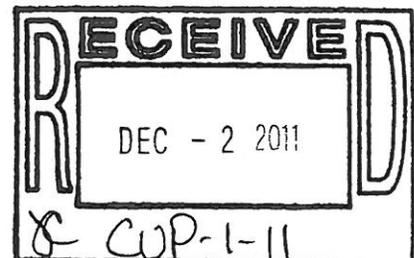
A-1 storage and Tom Swett are not good neighbors and does not respect them.

Thank you for your time on this matter,

Sincerely,



Della Miller
1213 E. State Street
Sedro Woolley, WA 98284



Closed Record Appeal Exhibits

EXHIBIT # 4

Exhibit # 4
To Closed Record Appeal

TRANSCRIPT OF
SEDRO-WOLLEY HEARING EXAMINER PUBLIC HEARING FOR CUP-1-11
DECEMBER 2, 2011

Examiner: Can everybody hear me o.k.? We're sure about that. My name is Don Largen, I am the hearing examiner on today's case which is a conditional use application 1-11. Um, we're recording right now right?

We are.

Examiner: O.k. great, yes, Jack Moore is in attendance for the planning staff and Jack if you would like to give us all a brief run down on what we are looking at here today I'd appreciate it.

Jack Moore: Certainly, we've received an application for a modification of an existing conditional use permit; the project proponent is Mr. Tom Swett of 1230 Warner Street. Existing, he has had 2 conditional use permits for the use of mini-storage-standard storage units. The modification is to have the slightly different use of indoor hydroponic gardening for medical marijuana. The original staff report outlines some of the background on the previous conditional uses that were approved both conditional use numbers 2569 and CUP102. It outlines mitigation measures at that point for operating a commercial business in a residential zone including things like traffic trips, number of units, lighting, screening, etc. On July 12th of this year we received an application for a modification of the existing conditional use approval, we did publish to notify the public and also sent letters to everyone within 500 feet describing the proposed use which is indoor, again, indoor hydroponic growing both in secure rooms and secure metal cabinets that are individually controlled. In looking at the proposal and visiting the site with the city police, the county sheriff, drug task force and then consulting with the county prosecuting attorney, it was determined that the proposed business model does not meet any of the current prohibitions under state law, at least the level that would be clearly prohibited. It is not a dispensary; it is not a collective garden since the units are individually controlled. The application originally--we needed some additional information so we requested from the applicant to submit clarification on a number of things. We did receive that in September so we then scheduled the hearing for today. What is not included the original staff report is a modification that I have presented to the hearing examiner today and is available to the general public. It is based on our staff report and our recommendation of denial and that Mr. Swett came back with some supplemental information and a distinct modification of his original proposal, so that is included in the smaller packet and an attempt to describe and clarify what the current proposal is as of this date. Mr. Swett greatly reduced the number of units from his original application in order to reduce the traffic trips by about half; that was one of the major components that was considered in the original application paperwork which resulted in a recommendation of denial. He also clarified a number of other components having to do with the noise, lighting, odor, traffic, security, etc. The staff has prepared a memo in response, again to attempt to clarify the latest proposal from the applicant and

(staff) has prepared revised set of conditions if the application is so approved. I believe that summarizes but I am happy to answer any further questions. Mr. Examiner?

Examiner: I do have one and I am sorry if this may put you on the spot. In your staff report prior to the amendments submitted by the applicant, staff recommendations you provided 2 recommendations, one was to deny the permit and the other was a set of conditions were to see it move forward. It appears to me that the denial was based primarily on the number of trips generated from traffic. Given the reduction has staff considered changing their recommendation at all?

Jack Moore: It does appear with the greatly reduced level of traffic trips and the other supplementary information that was submitted that this application would now meet the definition of no unreasonable adverse affect to the community.

Examiner: O.k. All right, I don't have any questions of staff right at the moment. I am assuming the applicant is here some place? How are you doing today?

Tom Swett: Good.

Examiner: I guess you have to come up to a microphone here. Do you like to go by Tom or Thomas?

Tom Swett: Either one.

Examiner: Either one, o.k. I have to swear you in? Do you attest and affirm that today's testimony is the truth as you understand it?

Tom Swett: Absolutely.

Examiner: O.k. Thank you very much. You submitted an amendment the other day and I received it and took a look at it and I guess I have a few questions for you just to get my mind around what's changing within the structures themselves and how we get down to a couple of the numbers we have gotten down to here. As I understand it the smaller building will be continued to use for traditional storage...

Tom Swett: At this time.

Examiner: At this time and that is 11 units?

Tom Swett: Yes.

Examiner: And the modification you submitted is going to keep another 4 units in the larger building for ...

Tom Swett: No, no there is a portable building that is being used in 5x10 rentals for outside, just basically for storage, they have renters in them still.

Examine; O.k., o.k. Just wanted to make sure where the spaces work. In your original application you commented that there was potential for 90 relatively small lockers and that has been reduced down to 40.

Tom Swett: Yes.

Examiner: Now, do the size of these lockers change with that reduction?

Tom Swett: The lockers are the same, we just, we come up with a way that they were able to actually use rooms and still have visual for the law enforcement to go through and see that no one is over growing through these viewing boards.

Examiner: O.k.

Tom Swett: And it allows people that already have their own equipment that would be growing in their homes an opportunity to use their own equipment and still stay within the law and not have their family adversely affected by their growing.

Examiner: Yeah, understood. Do the size of the units change relative to the reduction in the number of, I mean, in one of the documents that you submitted with the original application, I think it was 7 foot by 5 foot space lockers or something?

Tom Swett: No the lockers have always been in a 2 by 3 foot locker and we were able to put 3 or 4 lockers in an existing room and with the opportunity for people to bring in their own equipment that they've already purchased they would be using 10 by 10 or 10 by 11 type room spaces.

Examiner: O.k. How does that then, one of the arguments and again the issue of whether the activity is allowed under state laws is not before me and staff and police do not see a conflict at the moment, where I am going with this is that one of the arguments you made was that keeping units small gave law enforcement and yourself a way to control the amount that each person was producing so that stayed within in it, with this reduction and possible combination of several lockers together how are you going to continue to do that?

Tom Swett: Well, we have the viewing rooms and we have, we are out to maintain that everyone is going to grow well under the amount approved by the state. And so we are running between, they are allowed 15 plants.

Examiner: Right.

Tom Swett: We're running between 4 and 6 plants so we are running under most conditions.

Examiner: O.k.

Tom Swett: So they have also approved gardening where people can combine their gardens and can make it even cheaper for them to afford the space to keep it out of their homes. And then I've still tried to keep those at 9 per person.

Examiner: O.k.

Tom Swett: Well under the limit of the law. One of the key things is that we do have the viewing ports and we have in their contracts as they sign them that they will at any time be willing to come down and meet law enforcement, open their room up directly to law enforcement and for hands on viewing.

Examiner: O.k. Relative to traffic, I understand where the numbers come from, the international transportation engineer's tables for a mini-storage unit and for that segment of what you are continuing to do. I am curious where you got the traffic numbers for the folks coming to take care of their crops.

Tom Swett: What was that again?

Examiner: I am wondering where you came up with the numbers for the people coming to take care of their crops?

Tom Swett: Yeah, hydroponic growing requires roughly 3 to 4 days in order to maintain your water levels and move your lighting so therefore a person growing will basically show up once every 3 to 4 days for about a 15 minute period to maintain their space.

Examiner: So this is automated in some fashion then?

Tom Swett: They are all; when you are growing under you are more or less automated.

Examiner: O.k.

Tom Swett: They feed themselves you just have to keep the reservoirs full.

Examiner: And those reservoirs are containing a fair amount of nutrients I am assuming?

Tom Swett: Yes, mmhmm.

Examiner: And where does that get, where does that water eventually end up?

Tom Swett: That's all biodegradable and grass type of; there is no harmful nutrients in that so basically it goes to the plant and if there anything left it is just dumped out.

Examiner: So this goes into the city sewer system and...

Tom Swett: Basically I have a huge drain system that the city made me install quite some time ago that is a drain out front and that's where it goes.

Examiner: O.k. And I guess getting back to the number of trips per grower, I am assuming from your experience dealing with folks coming in and out that's where you are getting that number?

Tom Swett: Yes and by, most of them don't spend anymore time than they need to. The less time spent I guess the better the product.. More time you play with it the less you get.

Examiner: A lot like baking I suppose. O.k. Um, presumably folks are working during the day as well so getting back to the impact of the traffic again, I would assume that there are some times of the week that there are more people there than others, you know, folks coming from work, you know, after working stopping by and on the weekends. Have you ever noticed any change in, is there a peak use is what I'm trying to get to?

Tom Swett: You might have a peak use in the 5 or 6:00 range but when you are getting to, a lot of these people are disabled.

Examiner: That would make sense.

Tom Swett: A lot of these people don't have jobs and they just make it the times that they feel comfortable getting out when they are well enough to get out.

Examiner: O.k. I am assuming that you have seen the staff recommendations and analysis and particularly the conditions that they would like to see me put on this if this gets approved. Do you have any concerns or issues with any of those conditions?

Tom Swett: No, not at all. Anything that is being reasonable we will certainly accomplish.

Examiner: There are also a couple of comments that I have received written and through the course of talking with staff that there has been some modest complaints about the site, your site, perhaps not being kept up as well, maybe some vehicles that are not suppose to be there. How would you address these questions?

Tom Swett: All the vehicles that are there, some are mine, um, there are only 4 of them that are actually renting space to be there and then I have approval for up to 11 all alone and I think there's only 8 on the property now and 3 of those are mine. So I didn't see a vehicle issue if there is we can address and certainly take care of it.

Examiner: O.k.

Tom Swett: You don't make any money on vehicles.

Examiner: I imagine not.

Tom Swett: There's nothing lost by trying to get them to try to get them taken away.

Examiner: O.k. I don't have anymore questions for you right at the moment. I appreciate it thank you. Is there anything else you want to add relative to your application or comments?

Tom Swett: The traffic issue that was brought up as far as us having actually an increase in traffic there is actually a typographical error by the surveyors that I paid that turned in this paper work, they've actually made a mistake. All along we have been reducing, from day one we were actually reducing any opportunity of traffic.

Examiner: O.k.

Tom Swett: And slowing down and then we are also removing any large vehicles such as trailers or trucks and what not that would be coming through there, we would be eliminating that.

Examiner: I guess one more question for you, relative to security. It is my understanding that you live on site?

Tom Swett: Yes.

Examiner: And so there is someone there 24/7 basically?

Tom Swett: Yes.

Examiner: And you have a security firm who is monitoring things for you?

Tom Swett: They have, we put several measures in place that I did not want to make public

Examiner: O.k.

Tom Swett: But there are several measures after dealing with the Law Enforcement that they would like to see us have to make sure that no only the place is safe but that I am safe and the customers are safe .

Examiner: O.k. All right.

Tom Swett: So we have taken extra measures and security.

Examiner: O.k.

Tom Swett: And we have put extra measures as well into power bringing in new transformers to the pole to add the lines to make sure that everything was up to snuff to be able to handle the issues we are playing with.

Examiner: O.k. All right Mr. Swett I appreciate it. Thank you. Is there a member of law enforcement here today that has actually been out to the site? How are you doing today? If you could just state your name and your position please for the record.

Chief Wood: It's Doug Wood, Chief of Police Sedro-Woolley Police Department.

Examiner: My primary question and I understand Mr. Swett not wanting to get into the details of his security for obvious reason. I am assuming that you have talked with them and you have seen what they're doing.

Chief Wood: Yes.

Examiner: Do you find that the improvements that they made are adequate from your standpoint to monitor, to increase the level of security?

Chief Wood: Um, I believe that he has for his original plan and since he modified it and I apologize we didn't get anything in, we just recently went down and toured the site again. The original plan with the box growing cabinets, you know, we could find nothing wrong with that and when he changed it to the rooms then that brought up some new concerns for security and they are not only that he rents the rooms there is a possibility that people could grow over the limit that they are allowed to have by state law and we really, you know, originally we did not think it was possible to over grow the amount of plants or the amount or product that they can keep in the cabinets but the rooms you could so it would become something that we would have to monitor more regularly and also the increased amounts would possibly tempt someone to break in to get the product, where before you would have to break through the fence, go through the security system and 2 locked doors into a cabinet to get a smaller amount but the bigger amounts is just, I can see where that may be problematic for us and for Mr. Swett in the future and also the viewing ports are more what I would call peep hole, they could be covered up and it would become a increased chance of having to tax the security in the systems more than his original plan.

Examiner: O.k., um, I am assuming you will all be continuing to work with the applicant in the future as this goes forward.

Chief Wood: Yes, he has been very upfront with myself, the sheriff, drug task force leader, we had people from the drug task force go out and view it and he was very open about allowing us in and allowing us to view the records, the prescriptions.

Examiner: The documentation per each person?

Chief Wood: Yeah.

Examiner: So there has been a cooperative effort going on here?

Chief Wood: Yes, he's been very upfront since he began this whole process years ago.

Examiner: O.k. Great. I appreciate that. Thank you. O.k. We are going to hold off anymore questions of the applicant and staff and I am assuming there are some folks here today who would like to step up and speak and since you put your hand up first I'm gonna let you come on up. If you could please state your name and address for the record.

Karl Schumaker: My Name is Karl Schumaker, I live at 9694 Gladsjo Lane and I am here to speak against. First of all we know that a hydroponic garden is nothing more than a legal term for marijuana grow operation. Marijuana as we know is a schedule 1 narcotic. It is very, very addictive. Also RCW Title 69 explains the do's and don'ts of this growth. 15 plants is actually not correct. It is a maximum and/or a maximum of 24 oz. whichever is fewer. Also Sedro-Woolley, I would like to know how the city is going to guarantee the people that this legal marijuana grow op doesn't end up like a lot of the ones in the state and I have some articles that show how other areas have been busted for illegal sales. I would also like to bring up the problem of gangs here in Sedro-Woolley that are growing immensely and I quote "We are seeing a lot of gang activity around the area said Sedro-Woolley Police Officer Adam Musgrove during the last decade or so, gangs have roots throughout Skagit County making territory along the way." In the city alone the storage area/the grower who is going to pay for this, the extra police protection? Is Mr. Swett going to guarantee 24 hour armed guard against these gangs? Is he going to provide cameras? Is he going to provide entry/extra laws is he going to provide extra lighting or security fencing? And I would say since I am a retired military police officer something in the area of 12 feet tall with razor wire around the top and what about other security laws. Special buildings and containers. Is he going to provide all of this. Additional documentation for the operations, increased police patrols. I do not think that Chief Wood has sufficient officers to patrol this area especially with the gang problem that is in that area and the problems that Mr. Swett has created over the years. Again I ask who is going to pay for this. I have a list of the 7 gangs that are operating in this area if anyone would them and the fears and concerns of the people in that area since most of the gangs are on the Township area which is in the area where this proposed legal grow op is to be. Thank you.

Examiner: Thank you Karl. I'm going to work back. So you are next.

Matthew: My name is Matthew Thornton and I would appreciate it if you wouldn't print that because it is kind of a security issue for my family. I think that one of the things that we have to address here is that the people that may have recommendations from their physician under the state law have a civic duty to do the best thing that they can for their community and their family and I have a unique perspective on this because in the past I've had need to have medical marijuana prescription. I currently have that documentation but I don't currently medicate because of other things going on in my life not relative to today's events. Anyway, so I have undergone medication change temporarily to try to correct some other problems. Nonetheless as a patient I find it real offensive that my neighbors would come in and have objections to something that actually protects the community and the children and other people specifically my kids. And here's why because I would really prefer if I was a citizen that my next door neighbor who has a medical need doesn't get robbed from his home with his children there, o.k.? And in the State of Washington this has already happened at least several times, in other medical marijuana states this has happened dozens of times and there have been kids traumatized. The police dept. and the sheriff dept. back here can't deny that there have been medical patients families in this state that have been unnecessarily traumatized by getting their doors being kicked in and stuff like that. Now as your neighbors if I do a certain thing I take what I'm doing and I'm taking it out of people's homes, so I'm taking it away from the children and that's the most important thing, not your feelings about marijuana but what is happening in our community to our children. Secondly when we talk about what is happening with our children, let's take a look at these gangs. If I'm in a gang I'm gonna find it a lot easier to figure out that this guy by word of mouth has slipped and someone knows that he has a grow operation and I'm gonna kick down the door of his residence in a home invasion long before I'm ever gonna jump a fence, o.k. security system, o.k. that happens to be publicized a this point it's being very secure, on a level of their assistance with bringing the police to this place so they can prevent something like that happening, you know, and you don't have family's being traumatized. I'd rather see \$10,000.00 worth of medical marijuana come out of a place without a child being traumatized. This is what's this is about for me. If my wife, who I'm getting a divorce from, doesn't want me to have this stuff around my children I still have to medicate, o.k. and needing to share my conditions and I have the right to do that _____ . The thing I'm doing as a responsible adult is I'm keeping that crap away from my kids, it's dangerous to my kids and here's my neighbors and I'm trying to be civically responsible to and they are saying No, we don't like this and it is highly, you now, I've got questions as to how Mr. Swett gets his, has to have another permit for renting space which he was already doing. He's renting space at a lower level units, increased security, the traffic issue is kind of moot and as far as the theft thing I think I kind of put this in place, you guys have a choice here. As community you want homes kicked in and children traumatized or would you rather see a storage facility get robbed. And that is a real thing and that's not fear of marijuana or fear of methamphetamine, that's fear of _____ so that's a real bad feeling. We can be driving down a road to go tend to a garden and we wouldn't have any problems with some other community garden growing tomatoes or vegetables and other medicinal herbs which we are entitled to do as well and you know it would be in my best interest to grow

some but my point is I'm trying to protect my neighbors because my house isn't going to burn down because I have poor electrical unit or I don't know what I'm doing and I pack in you know 50 amps of grow equipment on a 20 amp server and my house catches on fire and then jumps over to your house. I mean it's just really kind of funny here that we're talking about people saying I've got these impacts to my life and to my neighborhood that are really based in fear and not fact and not reality. The reality is that what this man is proposing, what this man is doing takes this stuff away from my children and neighbors, make it an asset to your neighbors. We're not doing something irresponsible I would think that you all would have some kind of obligation to back me up on this as a parent, you know, allow me to _____ because you say I can't do this in this neighborhood but I can do it in my neighborhood and what effect _____ and the stores and do it in the house next door and the Police Chief and the city attorney they're gonna _____ literally go _____ . Grow, grow, grow and it is a responsible person. When I grow I had one of the big rooms that goes and you know I have to keep my _____ because my marriage situation may improve to where my better half who isn't my better half anymore decides that we _____ because I have taken steps to remove this from our children. I keep saying to them it's kind of like your _____ it is just absolutely not relevant to this building permit. _____ . The police's concern about robbery is with all due respect kind of absurd because the greater dangers in the community is having children put at risk and I'm gonna throw that down every time, every time and secondly you know here's the other thing, the voters in the state of Washington have voted on all this stuff we're talking about today so it's kind of a moot point.

Examiner: O.k. Thank you Matthew. Anyone else? Young lady here on the end there. And again your name and address please for the record.

Kristina Mullins: Kristina Mullins 9599 Fruitdale Road, Sedro-Woolley.

Examiner: How do you spell the last name please?

Krstina Mullins: M U L L I N S.

Examiner: Thank you.

Kristina Mullins: Um, I have many problems with this, this man's idea of putting in a garden growing of marijuana. First of all I am part of the next generation and my kids if I have any in the future and even young children in our community are going to be suffering from the decisions that we make today. The last man said that it would protect us to make the marijuana plant productive and have it taken out of family homes. Who's going to guarantee that's going to happen, who's going to guarantee, I mean how are you going to take even more police to check all the homes to make sure it's been taken out of the homes. Also, what numbers prove that those on marijuana have not harmed compared to those who have broken into homes for that marijuana, I mean, I know there are many numbers if you ask nurses and police officers of people who have

been harmed from marijuana because they don't know what they are doing when on the drug. Also, he mentioned vegetables as being equal to marijuana which I think all of us know vegetables help people stay healthy and marijuana has adverse effects of that. Then, very importantly though it sounds as though we are promoting drug traffic by giving people addicted to marijuana a place to legally grow it in our community rather than trying to stop the drug trafficking problems we already have.

Examiner: O.k. Thank you Kristina. And the young lady in the back. And your name and address please.

Gail: Gail Wellborn, 23584 Cove Road, Sedro-Woolley.

Examiner: And could you spell the last name?

Gail Wellborn: W E L L B O R N.

Examiner: Thank you.

Gail Wellborn: I agree with what the marijuana user gentleman has said. It is dangerous and because of that I don't want it in our community. I am a 10 year resident. My degrees are in psychology and the addictions, alcohol and drug. My husband and I are concerned about marijuana being grown in the small town of Sedro-Woolley. It will further the moral decay of the world and add to it in this small town which is so wonderful. I know drugs, I know what happens. You can color it with any kind of fancy language, it is still drugs, and they are addictive. There was a pot drug party a half mile from our home that led to thievery and fear for senior women in our neighborhood several months ago. That resulted in stolen property from many neighbors, a stolen vehicle that was driven into a tree and totaled and children of the thief left without a father when he was prosecuted and incarcerated. There are few absolutes about cannabis although many claim beneficial effects with its use, however, controlled prescription drugs are available that have similar beneficial effects that are controlled by the medical community. I've heard many in law enforcement believe meth, heroin and other hard drug usage begins with marijuana which leads me to this question for our respected Chief of Police: Do you know of a case or incident of those who abuse hard drugs that didn't start with marijuana? Thank you.

Examiner: Thank you Gail. Gentleman right here, thank you. And your name and address please?

Leonard Johnson: Leonard Johnson, my address is 1212 Talcott Street in Sedro-Woolley. This is exactly my background. I have no problem with the growing of marijuana or whatever they want to do, I have a problem with it being in our community, in the middle of town. I'm sure that you could find a place out of the city limits where there's not a bunch of houses and traffic _____. To make a storage facility right in the middle of town. Can't you take it out of town. Can't you take the storage facility and move it where there's less people. What they do with the pot, that's their deal. If they

want to grow it some place, I just think in the middle of our community, in the middle of a small town, at the middle of a dead end street, now you are going to grow it here. There's got to be a better place. Where there's a whole lot less houses, a whole lot less people affected by it. I'm not against the pot thing or whatever, I just don't want it in my back yard.

Examiner: All right, thank you Leonard. Right there.

Sharilyn Matthews: My name is Sharilyn Matthews and I live at 1110 Warner Street and I don't have a problem with medical marijuana itself. I also have a problem with the location. I actually live on the street where the traffic would be occurring and I know that there are 12 children in that 1100 block of Warner Street if not more, I know of 12 and I have one of them who play on that street and play in those yards. We already have speeding trucks specifically one white truck that speeds down that road, that one block and I'm concerned about my child in my neighborhood getting run down and being effected by the disabled people and how are they disabled and how are they, are they effected as they are driving by their medical marijuana that they are taking, when are they taking this medical marijuana, are they taking it, you know, smoking it there at the facility, before they leave, you know, I have some questions about that. So, if it was in an industrial park somewhere I wouldn't even be here, but it's not it's on my street and that's my concern.

Examiner: Thank you Sharilyn. Anyone else today? Uh, fellow in the shirt and I'll come back to you, I meant sweatshirt. And your name please.

James Hawkins: James Hawkins PO Box 156 Clear Lake.

Examiner: No relation to the physicist?

James Hawkins: Uh, no.

Examiner: O.k. never mind.

James Hawkins: I own the property to the east at 1211 State for the last 23 years. I have a problem with the conditional use permit process I guess. We have conditional use permits and I thought if you didn't meet the conditions you don't get the use but that hasn't, the history hasn't shown that and he is not in compliance with his first conditional use permit, he's talking about 11 parking spaces in the outdoor storage facility, well, his second conditional use permit eliminated all outdoor parking by his proposal except for 3 tents to have parking inside of them and that doesn't seem to come up anymore. We have a problem with access on the back side, he had signs up that drew traffic in my driveway, for me to put with

Examiner: Off of State Street?

James Hawkins: Off of State Street, we put up with 2 years while the sign was there which was not in compliance. We get foot traffic in through that way, the back gate has been left unlocked, and access to the facility has been after hours multiple times. There is still a light that shines in my eyes when I back my trailer in. And the city says they haven't had any complaints there recently but after 10 years of complaining I guess it gets kind of old. The man talked about getting the marijuana out and away from his kids but the house to the north of this has 2 people in the building, the screening hasn't been done there, there is no fencing between the building and that property and there are kids in that back yard. In his proposal it says that my residential dwelling is a excavation business or something, I've lived there for 3 years so. If someone is going to break into this where are they gonna do, they ain't gonna go by his house and the front gate to do it, they're gonna come around in the back or something so it's not, I don't need it in my yard either.

Examiner: Yes without a conditional use.

James Hawkins: Yeah, it used to be _____ too but now its industrial only so, o.k. This is a residential community and no we are not happy with his compliant so far and so thank you.

Examiner: All right, thank you James.

Robert Castilleja: My name is Robert Castilleja.

Examiner: You're gonna have to help me with that one more time.

Robert Castilleja: C A S T I L L E J A.

Examiner: Great. Thank you.

Robert Castilleja: We live at 1203 Talcott Street. I am here representing my wife. She couldn't be here today because she owns a licensed day care. She has been established since 2005. I apologize if I offend Mr. Swett. You know, I've used marijuana when I was younger but it wasn't for me. The problem with this here, the parents that bring their child to our day care are talking about leaving because they don't want their children near this. I am less than 100 feet from this place and I think it would be a very big mistake because this is going to become a real nuisance problem to the whole community. They say it is under, how should I say this, controlled atmosphere. What happens when it leaves this place. Is it gonna wind up in our schools, in the parks, all over the city. I already have problems where I live, just the other day, yesterday, I had a doctor's appointment and I had to go to work at 12:00. A car down the street just comes flying through, slams his brakes, turns around and I know the young boy down the road, I know he's selling something and I've reported it and the city has never done nothing about it. What's going to happen when this place starts happening like that. That's just, you know, I'm against this because of the licensed day care that I have. You know, if

something did happen, some people decide they are going to break in and decide they are going to use armed weapons, where's those bullets gonna go. I'm right, almost straight across from this place here, I can't have that. So, that's my concern. Thank you very much.

Examiner: All right, thank you. Anyone else today? You haven't had a chance yet.

Steve Osier: My name is Steve Osier, it's O S I E R. My address is 12356 Bartle in Clear Lake. I own the property at 1113 Talcott Street. It is a rental. It is a family residence, a 3 bedroom house. And both I and my renter are against this proposal. I agree with all the reasons against it, the traffic, the code questions and everything. I'm against it for the fact that it is against federal law, even mentions it right in your paperwork there, it says the legality of it is cloudy, I wonder what some of the leaders of this community are smoking themselves when they are allowing this to happen in our community. I think if the legislators in the state of Washington want this to happen it should be grown in Olympia. We've got 900 and some state employees that are going to be out of work next June when the liquor stores close, they could be selling the medical marijuana. I'm against it on every count and so is my renter.

Examiner: O.k. Thank you Steve. I just want to, I'm going to let you come back up and speak but I'm not going to let this get into a debate over state laws or morals or such today but if you have another comment please come up. Please come to the microphone.

Matthew: What I'm getting at with some of this stuff, I understand people's concerns and fears, I really do as a citizen I feel for everyone of them but I don't think that any less of any of you for having those fears. I think it's not totally unreasonable for you to feel that way. On the other hand, what we're talking about is a use permit, the fear isn't the same thing as a tangible problem and what I mean by that is we can speculate that the Boon Hill gang is going to come in and raid this thing and they're gonna run all around the neighborhood shooting up stuff and people and all that stuff and we're all gonna be put in danger, I mean it's not completely farfetched, we have a thing every year where we have a gang of bank robbers reenact our famous bank robbery in town and they ran around shooting guns and all this other stuff and people were put in danger and we celebrated but what we are doing here, I want to point out a couple of things. It is medical cannabis, by state legislation and the reason it is medical cannabis is to kind of clear the air about a couple of things there. What people do illegally of their own accord has absolutely nothing to do with this man's conditional use permit. He is not encouraging any illegal behavior, in fact he is encouraging compliance with the current laws and he is encouraging compliance with the current laws in a manner that goes above and beyond his civic duty in those laws, you know, people are very responsible about what they are doing. If someone decides to take that product and put it out on the black market, then they are a criminal. No doubt about that folks. If anything I grew and took that medication into the black market I would then turn into a criminal, I am no longer a patient, I am a criminal and that's not his problem but knowing that that I could possibly

do that what he's done is he has made us all open up what we are doing so that these guys over here can make sure that we're complying, they do that internally but the police dept. doesn't have any control over what I do outside of my grow room without investigation of their own or criminal activity on my part. You know, so part of what's happening here is that you folks don't want any of your community _____, you also have the right to legislation but this isn't the forum for legislation this is about building a conditional use permit and doesn't have anything to do with legislation, if we want the city council to say that people can't grow medical cannabis in a residential area that is really not something we can address here, what we can address here is does this conditional use permit cause a direct infringement upon these people's property rights, the neighbor's property rights as well as provides evidence of direct preponderance of harm happening so there is a common sense factor that goes in here, common sense part of this thing that that fear of crime increased crime is a real thing or a negative thing and the one lady that has the experience with drugs and alcohol from the addicts stand point, you know, and it is very addictive situation and all that, you know, we can agree or disagree on that, it is still something that is not really addressable here, the addictive qualities of any medication because we know there is people taking oxycontin and let me tell you what that does to you.

Examiner: O.k. we're getting a little off point here.

Matthew: But getting back on point, we're nickel and diming over what people's medication choices are. What we have here is community garden, you can call it, a community garden because we have people who come in as a community and garden on the same location, this man is renting space. In one of this rented space he is providing extra security, he has worked really hard at taking care of questions that this man over here has and taking care of questions that this man over here has. I think he's been up front in addressing those questions. I think as a community person I care about what happens to Sedro-Woolley is that honestly, you know, if my kids are to have a normal life, o.k. and are at less risk and without putting your kids at risk that's really an equation for me, it's just my kids with his thing are at less risk. And it is a tangle less risk. The stuff is not in my house, the stuff is not around my children, my children's classmates parents _____ but that's not happening because I have taken those measures. I mean I'm not here outing myself, in a situation that puts me in jeopardy just to let you folks have some _____, some _____ is thinking on behalf of the community with an open mind. You don't think your concerns are real but the fears may not be justified or actual on this use permit and that's kind of where I'm at on the whole thing. I don't feel like this guy should have ever been outed for what he is doing in the paper and I certainly don't feel like that by asking him to do the conditional use permit that I have been placed in a position where I am now outed because someone has to speak for the patients and I've outed myself and if someone is talking about the impact of people's lives, well this process is effecting my life totally because I've had to come over here and basically as a patient who has permission by a doctor, who has cancer _____ o.k.? and I've had to out myself because we've got a town that's mudding the waters that really he had a conditional use permit to rent space, that's kind of where I'm at.

Examiner: O.k. appreciate it. Mr. Swett? Again I'm not trying to engender a debate here.

Tom Swett: Just real quickly I wanted to point out that the being zoned in a residential area is where the state wrote the guidelines; our reason for being in the city limit is strictly for safety. It allows for the police dept. to be there within a 5 minute time span vs. the county which would be a 20 minute time span from the time of the alarm. So that is one of the reasons for being in a city. Again I believe we've met everything that the city wanted to see in the way of meeting the requirements to be allowed and that is basically, I had a lot to say but I'll just let it go. People have their feelings and I understand their feelings. The objective is to make a safer place for everyone and in time I think they'll see that.

Examiner: O.k. Thank you Mr. Swett. I don't think you've had a chance to talk. Good morning.

Marlin Miller: Morning, my name is Marlin Miller.

Examiner: Marlin?

Marlin Miller: Marlin, like the fish.

Examiner: O.k.

Marlin Miller: 713 Brickyard Boulevard, Sedro-Woolley. I just have a brief question and would like to direct it towards the Chief, that is will approval of this application _____ the pressure or over tax the police force. If that is the case we surely don't need that. And as far as the gentleman who spoke here before to about tangibles, yes it's not fear. I think there are some facts and people have come here, we've got a lot of businesses sitting back here and we're not here in fear, we are here in reality and that's why we're here today.

Examiner: O.k. Thank you Marlin. And you haven't had a chance to talk. Give me just half a second o.k. Sorry, go ahead.

Della Miller: My name is Della Miller.

Examiner: Della?

Della Miller: Della D E L L A, I live at 1213 E. State Street where my property is 30 feet away from the storage unit and I have a 15 year old daughter and I know for a fact that there are 9 children from the ages of 10 to 16 that are within a full house radius and I strongly oppose him having the grow and the lockers that close to my property.

Examiner: O.k. Thank you. You haven't had a chance to talk yet, I'll get back to you. Go ahead.

Rick Matthews: Rick Matthews, 1110 Warner Street. I just want to echo a few things that have been addressed and comment on a couple of gentleman's back statement. I am glad that he is worried about his kids and not wanting it to be in his house but I don't like the fact that now it's going to be right by my house with my kids. I'm gonna tell you that I have had the impact of this place for over a year now as it is the traffic has increased a whole lot, people drive up and down the street going about 35 mph

and it's been happening for over a year and I just can't handle it

_____ . And as far as you know projecting things I think that is why we are here, we all have concerns and when you make decisions about things you want to look at things that could happen before you make a decision and I think that's why we're here today to express some of those things and I think those are valid points that we look at, you know, that there is a possibility that more people will come and you know buy the marijuana and there could be you know what we might call seedier people around in the neighborhood and stuff and I don't believe that the storage unit would be the only place that somebody might try to break into and or burglarize, I think they may look around at the houses and think that they might want to try and break into somebody's house also and mine is one of them there so I have concerns about that and I think they are valid concerns so I am against it. I'm not against necessarily the theory of it although I disagree with it but it's been approved I guess and authorized in certain conditions but I think that it should be an industrial type area not a residential area and I disagree with the response that the police are able to show up quickly, I mean who cares how quickly they show up if it's in an industrial area and there's nobody else around there when they get there, they get there you know so I don't think that is a very valid point myself but anyway I object to it and those are some of the reasons why.

Examiner: O.k. Thank you Rick. Again if you could just state your name so we can identify you.

Karl Schumaker: Sure, it is Karl Schumaker again. I would like to just make a couple of real quick points. One, the gentleman did state that what goes on with the marijuana outside your complex is not his problem. That's true it's not just Mr. Swett's problem, it's our problem and that is why we are here addressing it. Secondly the gentleman said that people are uninformed. I am a DEA trained retired military police officer. Marijuana, _____, etc. is very addictive and yes I've seen a lot of problems with marijuana. I've seen a lot of things go on in my 22 year navy career and I don't want it in my neighborhood. Medical use beside that I'm against that but then again that is my opinion. It has been approved by the voters but I don't want it in my neighborhood, the smell if he is going to smoke it over there. I've done over a thousand controlled burns for the military and that stuff reeks and if he is going to be smoking his marijuana at the storage place or any place else it covers the neighborhood and it is a nauseating smell. I do not want it around my grandkids and I don't want it around the rest of the kids in that neighborhood. Thank you.

Examiner: Thank you. Would anyone else like to make any further comments today? Come on up.

James Hawkins: James Hawkins I own the property at 1211 State. I got renters in my house with kids and the neighbors have kids. This fear or whatever is not a tangible deal I guess. One of the conditions of the conditional use permit that is no unreasonable, adverse effect on the neighborhood and I guess this fear or the threat of things happening to your kids or your family is a reasonable adverse effect. If this is approved in any form, or whatever, does this open up the area for similar type deals as a conditional use of a nonconforming use or downgrading or whatever is the same type of deal in the neighborhood. I would like to know what it does for that.

Examiner: Well, relative to that I think I can answer part of that question by saying that this facility has been there as the neighborhood has grown up around it so we have a property that was formally in a very different kind of use for many, many years as the neighborhood developed. It would be difficult for me to see, or I have a hard time seeing how a similar type of facility could be located in a residential zone given the nature of simply the storage use itself, I mean it wouldn't be allowed.

Jim Hawkins: My property was in the same grandfather as that property. Mine was part of the _____ shops or whatever or mini-storage, my property is for sale but it still got voted into that circumstance so if it worked for him there are more places in the city of Sedro-Woolley.

Examiner: O.k. Fair enough. Thank you.

Eron Berg. Mr. Examiner, good morning. Eron Berg, city attorney. Do you mind if I make a comment on the process?

Examiner: Not at all, please, go ahead.

Eron Berg: I think a little clarification could be useful. There were statements made regarding the leadership of this city and whether they might have been partaking in the medical cannabis themselves to get to this place and I think it is important for the community to understand that the process was where we are in Sedro-Woolley today is the possession of marijuana is and continues to be against the law. It is a schedule 1 drug. In Washington State as a result of an initiative to the people and legislation that was passed by the legislature and actually vetoed by the governor but portions that were enacted by the governor became law. It is an affirmative defense to the crime of possession if you have a recommendation from a medical provider. It is a recommendation because it continues to be against federal law for a medical doctor to prescribe a schedule 1 drug. Our state's governor just requested this week an exception/a change in the rules by the federal government to make marijuana a schedule 2 drug which would allow it to be prescribed by doctors as a medical drug and dispensed at licensed pharmacies rather than neighborhood storage lockers. The issue for Sedro-Woolley is

that under state law we have certain authority. In fact, in Sedro-Woolley we have all the powers of the state that the state hasn't taken away from us. Anything that the state has taken away from our city council and our mayor through preemption we don't have the capacity to act and in this case we do not have the capacity to regulate the criminal status of marijuana that is beyond the scope of our city's authority that has been preempted by state law. If this proposal is for the capacity to grow plants in a residence there would be no permits necessary. If this was a proposal to rent space in appropriately zoned neighborhood I do not believe we'd be here today, it would be an allowed use in the appropriate place. We are here today because this activity occurs in a residential neighborhood and it is the impact of this activity on the neighborhood that are the subject is hearing today and ultimately the decision before you is to grant or deny and if granted what conditions will be imposed upon the user to address all of the concerns you have heard today which range from the very activity itself to all of the risks of the activity, so whether it is additional fencing, additional set backs, on site security, to address law enforcement costs, automated gates like you see at other mini-storage facilities so there is no open gate at any time, it is a touch pad, card controlled access point, video monitoring, payments to the law enforcement that we hear the reason they want to be in Sedro-Woolley is because we have faster response times than if they aren't in Sedro-Woolley, I'm not privy to the top secret security plan but what I heard is my plan is to have police response. Well, the police are very much taxed in Sedro-Woolley, we run a 14 commissioned officer department and the city is larger than our neighbor Burlington which has double that amount in service and we are on the cusp of potentially losing law enforcement as a result of our budget conditions so I am concerned about that but the main purpose of my comments is just to set the process, and I don't know that might be your wrap-up is to let people know what happens and what the decision making matrix is. Obviously federal law and state law are not privy to our conversation today but the conditions that could be imposed if approved or the denial, that's where we are at for the hearing today.

Examiner: I appreciate that thank you. Yes.

Sharilyn Matthews: Sharilyn Matthews again and I have something that hasn't been addressed yet and that is property values in that neighborhood. Already our property values are down significantly and if we tried to sell our home who is going to want to move into that neighborhood, who is going to want to buy our homes. So that is just one more concern and when you said that you know if it was out in the county, what about across the street, there are facilities, there are buildings open right here across the street in the old Bendex, you know, I forget what it's called now, but you know that would be different than in our neighborhood. Thank you.

Examiner: Thank you. Does staff have anymore comments or clarifications they would like to make? And I was going to ask you next.

Chief Wood: Just to answer some questions. There is no question that we would rather see this sort of facility in an industrial area because it does and will create more work for the police dept. but we do enforce the laws and it is, I've been here 30 years,

and it is a lot different law enforcement now with the change in the medical laws. In the past we would get people calling up and saying, Hey my neighbor is growing marijuana, we go down there and check and if not get a search warrant and go in and arrest them. Now we do that and the officers go knock on the door and say hey we've got a report that you are growing marijuana in their house, they show us a prescription and we check how many plants there are and we leave, it's odd, that's a big change for us also. It will add to our work load especially if they get increased traffic more than it is now because you people will complain and we'll have to go down and monitor the traffic. As originally put forth to us with the cabinets, I don't believe that it would have been that much of an impact but with the change I believe it will and it is also like any business, it depends on how it is run, how many problems it will create us. We have bars open up downtown, if they are run good there are not a lot of problems, if they are not run good or not operated good there are a lot of problems and we certainly do not want to be the enforcers for some people growing drugs. It is disturbing that the plan is that he calls us and we come down and keep people from stealing his marijuana but on the flip side we are bound to treat everybody the same and be honest and open and openly enforce the laws so that is what we are doing and we will go by whatever the lawmakers say but yes it would be better if it was in a different location but it is there. I think that's all.

Examiner: Thank you. I'm going to take one more comment and then we're going to wrap this up.

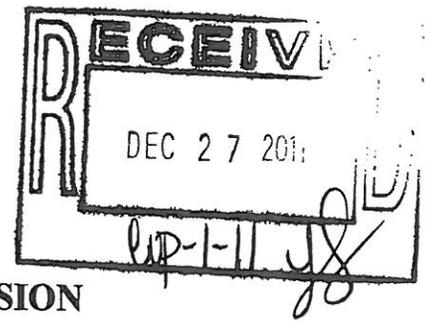
Gail Wellborn: Gail Wellborn. Just as recent protests that are freedom of speech and we need that, they cost thousands and thousands of dollars to the city's that they are being run in. Who is going to pay the additional taxes when we have to hire more police officers and it is going to have to happen, you can't, you can't not do it, that means my property taxes are going up, we're not going to get any help from the state, the state is broke, the country is broke, so who is going to pay. I don't want to. Thank you.

Examiner: Thank you. I have no further questions of staff. I think I have a sense of how everyone in the room feels about the pro's and con's of the issue here and I appreciate your comments and insight very, very much. Thank you. And having said that we're going to let the record show that the public hearing portion of this case ended at 11:15 a.m. I thank you all very much for coming today, it has been enlightening. Take care.

Closed Record Appeal Exhibits

EXHIBIT # 5

Exhibit # 5
To Closed Record Appeal



**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER
CITY OF SEDRO-WOOLLEY**

APPLICANT: Tom Swett
CASE NO.: CUP-1-11
LOCATION: 1230 Warner Street, Sedro-Woolley, Washington
APPLICATION: A request for a Conditional Use Permit to allow conversion of a portion of an existing self storage facility for the purpose of renting spaces to allow individuals to grow their own medical marijuana.
REVIEW PROCESS: Hearing Examiner conducts a public hearing and makes the final decision.

SUMMARY OF RECOMMENDATIONS AND DECISION:

Staff Recommendation: Deny
Hearing Examiner Decision: Deny

PUBLIC HEARING:

After reviewing the official file, which included staff's Transmittal & Report Memorandum to the Hearing Examiner; and after visiting the site; the Hearing Examiner conducted a public hearing on the application. The hearing on the Swett conditional use application was opened at 10:00 a.m., December 2, 2011, in City Hall, Sedro-Woolley, Washington, and closed at 11:15 a.m. Exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the Planning Department.

HEARING COMMENTS:

The following is a summary of the comments offered at the public hearing.

From the City

Jack Moore, Planning Director: Mr. Moore described the proposal noting that it was submitted as a modification to the existing conditional use permit granted the applicant in 2005 (see Exhibits B and C). He described the permit history and background, as well as staff's analysis (see Exhibit A). Mr. Moore submitted Exhibits F, G and H into the record. Exhibits F and G are supplemental memos submitted by the applicant, responding to the

conditional use criteria and modifying the number of requested converted units from 90 down to 40. Exhibit H is staff's clarification of the supplemental materials submitted by the applicant.

From the Applicant

Tom Swett: Mr. Swett described his business model and noted that he had been working closely with local law enforcement and city officials to make sure that he was in compliance with the State's medical marijuana laws (see applicant's narrative in Exhibit A). He responded to several questions from the hearing examiner noting that the reduction in the requested number of units likely meant each unit would be larger, that the number of trips per unit he estimated between 3 and 4 a week, and described activities associated with individual visits (i.e. crop management).

From the Public

Thirteen people provided comment at the hearing. The majority were opposed to the conditional use request because it involved medical marijuana, which most thought that regardless of what the State allowed it was a bad idea. One individual spoke in favor of the request noting that it provided a secure alternative to an individual's home. Several people stated that while they did not have an issue with medical marijuana per se, they felt that the location within an established residential neighborhood was inappropriate. Reasons cited included a perceived increase in traffic and traffic speeds, the presence of small children on Warner Street, and an in-home day care in one of the residences, all related to overall safety along this dead-end residential street.

FINDINGS OF FACT AND CONCLUSION

1. The Findings of Fact, numbers #1 through #15 found on pages 2 through 4 in Exhibit A are found to be accurate and are hereby adopted by reference as part of the Hearing Examiner's findings of fact.
2. The nature of the proposed use is not regulated under City code. As noted on page 6 of Exhibit A, the legal issues surrounding medical marijuana are ambiguous, both from the conflict between federal and state regulations, and a certain lack of clarity within the state rules. The applicant has involved local law enforcement and city officials in developing his business plan, providing for documenting, monitoring and securing of individual growing units. The conclusion of the City is that the business plan as presented does not appear to be prohibited under the state's medical marijuana regulations. However, to avoid the potential of involving the city in an illegal act (vis a vis the Federal government), the application is being reviewed solely on the criteria for conditional use approval.
3. Self-storage facilities are not specifically regulated in the city's municipal code. There are no definitions and no performance or location standards. The Comprehensive Plan is also silent as to self-storage facilities. A-1 Storage was allowed through conditional use permits #172 (aka CUP -1-02) and #2569 in 2002 and 2005 respectively (see Exhibits B and C). Rationale for approval was twofold:
 - a. The previous use of the property had been a maintenance, storage and fueling facility for logging trucks and other associated heavy vehicles, a use that pre-dated current city

- codes. A self-storage facility was found to be similar enough to the previous use by virtue of the long term storage of vehicles that self-storage was found to be an extension of an established nonconforming use. However, this is still a nonconforming use within a residential zone.
- b. The self-storage facility was allowed based on proposed substantive improvements to the site that met the conditional use criteria and benefited the immediate neighborhood. These included remediation of contaminated soils, remodeling of the existing buildings, eliminating large vehicle traffic on Warner Street and reduced traffic in general, elimination of the majority of outside storage, improved fencing and installation of landscaping. It was noted in Exhibit A and from hearing testimony that not all of these improvements have been completed (i.e. fence screening and landscaping). However, inspection of the site and at least one comment letter supports the conclusion that there has been a net reduction of neighborhood impacts over the previous use as a logging truck facility.
4. The Planning Department found that the proposed use of individual units for hydroponic growing by multiple people was different enough from the existing use (i.e. self-storage) that a conditional use permit is required. In Exhibit G the applicant's response to conditional use criteria #1 states that the proposed use is "substantially similar" to the existing permit since the renter "*leases space to garden*" rather than to "store" items. In effect, the proposed use is similar enough by virtue of the fact that space is being leased that it is in conformance with the Comprehensive Plan.
 5. As noted above the City's municipal code and comprehensive plan are silent on self-service or mini-storage facilities. Thus the question becomes how are these facilities commonly defined and regulated for land use purposes? Below is a sample of such definitions from the RCW and three other communities in the region.

RCW 19.150 Self-service storage facilities
RCW 19.150.010

(1) "**Self-service storage facility**" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

Skagit County Code

Chapter 14.04 Definitions "M"

Mini-storage: a service use containing separate storage spaces that are leased or rented as individual units. Mini-storage shall not include the conduct of business activities other than rental of storage units of the premises and shall not have outside storage of property.

Mount Vernon Municipal Code

Chapter 17.06 Zoning definitions

17.06.130 M definitions

"**Mini storage facility**" means a building or group of buildings in a controlled access and fenced compound that contains varying sizes individual compartmentalized and controlled-access stalls or lockers for the dead storage of customers' goods or wares.

Bellingham Municipal Code
Chapter 20.08.020 Specific Definitions

M.7. Mini-Storage: A building or group of buildings which contain individual, compartmentalized and controlled access stalls and lockers for the self service of nonutilized storage of the customer's goods or wares.

None of these definitions include activities other than the simple storage of belongings or goods. Phrases such as “dead storage” and “nonutilized storage” and “storing and removing” and not including “business activities” clearly point to self-storage as being a use that is regulated as a passive activity that does not require the regular involvement or intervention of the person leasing the space.

6. The applicant argues that the proposed use is similar enough to the existing self-storage use by virtue of the fact that space is being leased for individual purposes. Thus, it should be allowed. I do not agree with this argument. The leasing of space is not an indicator of use and what is at issue is that there is a change in use from passive storage to active indoor gardening.
7. SWMC 17.12.010 sets out the use restrictions for the R-5 residential zoning district. The proposed use does not appear to fall within any of the use categories listed for the R-5 zone. To paraphrase 17.12.010.C, if a use is not identified under either 17.12.010.A or 17.12.010.B, then it is prohibited.
8. Relative to the conditional use criteria found in SWMC 17.56.060 I find the following:

A. Conforms to Comprehensive Plan:

The applicant states in Exhibit G that since the proposed use is substantially similar to the self-storage use approved in the previous permit, it also conforms to the Comprehensive Plan. However, as noted in the above findings, the applicant’s logic for it being a similar enough use is not based on the actual use, but rather the fact that units are being leased. There is no discussion as to how a change to indoor gardening, which is a more active use, is specifically in conformance with the comprehensive plan.

B. Compatibility with the surrounding area and no unreasonable adverse impacts:

I agree with staff and the applicant that most of the potential significant issues can be mitigated (see Exhibit A, page 5 & 6). The primary impact at issue is whether or not there is a net increase or decrease in traffic on Warner Street resulting from the proposal. Exhibit F contains a discussion of traffic where the applicant provides updated analysis and concludes there would be a net decrease in traffic volumes. The applicant uses ITE Trip Generation Manual land use types for Mini Warehouses and Single Family residences to generate trip numbers for comparison.

The ITE tables are useful for estimating traffic volumes prior to construction of a proposed use. However, they are based on national averages and may or may not reflect the actual number of trips for an existing setting or combination of land uses. What is missing in this case are actual traffic counts on Warner Street that would allow before and after comparison of traffic volumes. Testimony at the hearing suggests there has been some increase in traffic in the 16 months since the applicant started renting units for

indoor growing. We do not know with any accuracy what the actual trips have been for A-1 Storage or the residences along Warner Street. Therefore, I find the traffic information presented to be inconclusive.

C. *Proposed development or use is well planned so as to be an asset to the community:*

The applicant states that the proposal meets this criterion since the original permit met the requirements and that the new use would impact primarily the inside of one of the buildings. The proposed use does not require any substantive physical changes to building exteriors or the rest of the lot. However, staff notes in Exhibit A that the site currently appears more like an industrial site, rather than a commercial site in a residential zone, would be required to provide substantive screening and landscaping. Staff also notes that screening and landscaping have not been completed as required under the previous permit. In that there is much of that still not in place it is difficult to find that the facility is currently an asset to the community.

DECISION

Based upon the foregoing findings and conclusions, the request for a conditional use to allow partial conversion of an existing legal nonconforming self-storage facility to indoor hydroponic gardens is Denied.

Entered this 19th day of December, 2011.


Donald B. Lergen
Hearing Examiner

APPEAL OF HEARING EXAMINER DECISION

Appeal of Examiner's Decision. The decision of the Examiner, approving, modifying, or denying an application or an appeal shall be final and conclusive unless a written appeal is filed according to the City's appeal procedures as set forth in Chapter SWMC Section 2.90.90 E; which states that any party with standing may file an appeal within 14 days of the hearing examiner's decision with the Planning Director, and to be scheduled and heard by the City Council.

EXHIBITS:

The following exhibits were offered and entered into the record:

- A. Transmittal & Report Memorandum to the Hearing Examiner; file CUP-1-11.
- B. Conditional Use Permit #1-02, approved January 10, 2002.
- C. Conditional Use Permit #2569, approved February 1, 2005.
- D. Letter from Jean Swett, property owner, authorizing changes to the submitted permit.
- E. Notice of Application & Public Hearing, published November 16, 2011.
- F. Applicant's Supplemental Clarification Memo, modifying the permit request and responding to issues raised in Exhibit A; received on November 30, 2011.
- G. Applicant's responses to the Conditional Use approval criteria found in Section 17.56.060 of the City's Municipal Code; received on November 30, 2011.
- H. Memo from Jack Moore, Planning Director, dated December 2, 2011, an addendum to Exhibit A, clarifying Exhibits F and G.

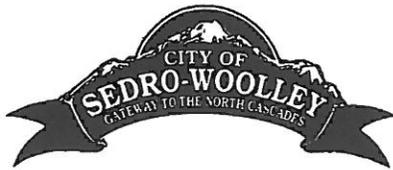
PARTIES OF RECORD:

A complete list of the participants at the public hearing is available from the Planning Department upon request.

Closed Record Appeal Exhibits

EXHIBIT # 6

Exhibit # 6
To Closed Record Appeal



Planning Department
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

Notice of Decision for Conditional Use Permit file #CUP-1-11

Issued: December 23, 2011

Notice is hereby given that on December 2, 2011 the Sedro-Woolley Hearing Examiner held a public hearing on Conditional Use Permit application #CUP-1-11 to allow a portion of an existing storage building at 1230 Warner Street, Sedro-Woolley to be converted to be equipped with hydroponic gardening systems. The metal cabinets and rooms would be used by individuals for growing medical marijuana indoors in a secure environment. On December 19, 2011 the Hearing Examiner issued a decision to **DENY** the conditional use permit application.

Application: The CUP request is to allow a portion of the existing storage building to be converted to be equipped with hydroponic gardening systems. The metal cabinets and rooms would be used by individuals for growing medical marijuana indoors in a secure environment. The property is located in the Residential 7 zone. The CUP, if approved as requested, will modify an existing CUP that allows the storage facility to operate 130 storage units in a residential zone. Residential 7 zoning regulations require that the proposed use be approved per the CUP process and meet the criteria in Chapter 2.90 of the Sedro-Woolley Municipal Code (SWMC) and the criteria in Title 17 SWMC. This application was not subject to an environmental review.

Applicant: Tom Swett *for* property owner Jean Swett, 1230 Warner Street, Sedro-Woolley, WA, 98284.

Address: Subject property is located at 1230 Warner Street, Sedro-Woolley, WA 98284. Assessors parcel number: 77224.

Appeal Period: This decision will be final unless appealed within 14 days of the notice of decision. Interested parties may appeal this decision or request reconsideration by the Hearing Examiner until **4:30 PM, Friday, January 6, 2012**. The appeal will be a closed record appeal in front of the City Council. Appeals shall be delivered to the Planning Department, attention Planning Director, by mail, by personal delivery or by fax. Appeals shall be in writing, be accompanied by the required fee, and meet the requirements of SWMC 2.90.090(E). Please contact the Planning Department at 325 Metcalf Street, Sedro-Woolley, WA, (360)855-0771 for complete details and fees for the appeal process or to obtain further information about this application.

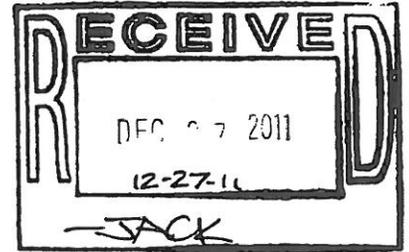
Closed Record Appeal Exhibits

EXHIBIT # 7

Exhibit # 7
To Closed Record Appeal

December 27, 2011

City of Sedro-Woolley Planning Department
325 Metcalf Street
Sedro-Woolley, WA 98284



RE: Reconsideration of Hearing Examiner Decision CUP-1-11

The applicant for the requested CUP would like to request that the Hearing Examiner reconsiders his decision dated December 19, 2011. The decision rendered by the Hearing Examiner is for denial of the requested permit. Denial of the request would preclude the applicant from leasing space to tenants for purposes of indoor gardening. The applicant would still be allowed to lease storage space of up to 130 storage units. The decision would prohibit the applicant from realizing income from a significant emerging market niche—specifically, indoor hydroponic gardening.

The Hearing Examiner decision includes three findings as the basis for the denial. The following discussion outlines the reasons that we believe the decision is in error and should be reversed.

A. Conforms to Comprehensive Plan:

In the application materials the applicant has indicated that the leasing of space for storage purposes and the leasing of space for indoor gardening purposes are substantially similar. The Hearing Examiner disagrees with this and has indicated that it is not the act of leasing the space that is at issue in this application but the act of storing items versus indoor gardening that is at issue. The Examiner also states that neither self-storage or indoor gardening are regulated by the Sedro-Woolley Municipal Code (SWMC) or the Comprehensive Plan. He refers to self storage as a passive use and indoor gardening as an active use. He cites several different code definitions for storage facilities as his basis for determining passive versus active.

The original CUP was granted for this site to legitimize the non-conforming use (storage and maintenance of logging equipment) that had existed on the site from a time predating zoning in the City of Sedro-Woolley. The Sedro-Woolley Comprehensive Plan does not currently and has never specifically discussed non conforming uses or self storage. This fact was included in the original CUP application and has never been disputed by the City or the applicant. The basis for approval of the original CUP and the subsequent modification to allow nearly twice as many storage units was the Comprehensive Plan policy LU5.7 that deals with the issue of recognizing the rights of property owners to freely use and develop their property. This was the only Comprehensive Plan policy cited in the approval of the original Conditional Use Permit and its modification. The Land Use Policy is still in effect and still forms the rationale for allowing the leasing of space for storage or leasing of space for indoor gardening. The City has twice allowed that rationale and it would apply to this modification as well.

In response to the Examiners statement that there is no discussion regarding how indoor gardening complies with the Comprehensive Plan we offer the following. In each of the residential zones in the City of Sedro-Woolley, one of the allowed uses is Low Intensity Agriculture. The SWMC defines Low Intensity Agriculture as:

"Low-intensity agriculture" means the production, raising or keeping of any form of crops, ornamental plants or animals; provided, that any animal, excluding household pets such as dogs and cats, such as horses, cattle, hogs, pigs, goats, sheep, bovine animals, chickens, fowl or any other animals, poultry or fowl, shall not be raised, kept or maintained on a lot or

ownership of less than forty thousand square feet, except as permitted under Chapter 6.20. (SWMC 17.04.030)

It is important to note that there is no limit on the number or type of plants that are allowed. People are not limited to the number or type of house plants that they can have. No limits are placed on the number or types of plants that you can grow in your garden. No limits are placed on the size of garden that you may have. No limits are placed on the means of producing the crops—grown in dirt or grown hydroponically. Clearly the City did consider limitations on agriculture within its bounds as it has specific provisions limiting the type and number of animals that are allowed but this is not the case for crops.

For purposes of the subject permit the relevant portion of the “Low Intensity Agriculture” definition is the production, raising, or keeping of any form of crops or ornamental plants. Clearly indoor gardening falls under this definition and would therefore be the kind of use that is allowed outright in the R-5 zone. As an allowed use it would necessarily be consistent with the Comprehensive Plan.

Finally, as to the differentiation of a passive storage use versus a more active indoor gardening use, the applicant has addressed this by reducing the total number of storage units that are available at the site. The total number of units is significantly reduced from 130 traditional storage units to 15 traditional storage units plus 40 gardening tenants (a total of 55 versus 130). The resulting use is less than half of what is currently permitted. In addition, while the gardening tenants may make more frequent visits to the site, they do not make those visits in moving trucks and/or trailers. Thus the trips that they make are more compatible with the types of trips that would be expected in a residential neighborhood. It is also debatable as to how passive self storage is. Many people make regular visits to their space. People store seasonal items and regularly visit their units to rotate items depending on the season. Community organizations store items that are used on a weekly, monthly or other rotational basis. Items are routinely removed and replaced as they are used and then put back into storage until needed again. People have short term storage needs and put their entire house in storage while remodeling is done. Some even store their houseplants during these short term storage uses and visit frequently to water the plants. Storage facilities have hours that people can come to the site but have no limits on how frequently people may visit their belongings.

In addition to being silent on non conforming uses and storage uses, the City Code and Comprehensive Plan do not specifically discuss passive and active uses. It could be argued that a low intensity “active” use such as indoor gardening would have significantly fewer neighborhood impacts than a higher intensity “passive” storage use. It appears that there is general agreement that the current use has fewer impacts to the neighborhood than the historic logging equipment storage and maintenance facility. Since the storage facility never operated the 130 units it was allowed to operate, the full impacts of what is allowed have never been experienced in the neighborhood. This issue is discussed more fully below.

B. Compatible with the surrounding area and no unreasonable adverse impacts.

It appears that this issue can be boiled down simply to traffic impacts. We find it troubling that the Hearing Examiner discounts the ITE traffic counts when these are the industry standard for predicting traffic impacts in virtually every jurisdiction in the country and for virtually every type of development. Jurisdictions (including the City of Sedro-Woolly) require applicants to use the ITE numbers because they are the best predictors available. Not only are the numbers used for predicting traffic volumes, they form the basis for assessing impact fees for that development. It is unlikely that the City or the Examiner believes that the basis for assessing traffic fees is based on inaccurate data. We believe that the Examiner has made a significant oversight in this area.

In an ideal scenario, traffic counts would be available to show the impacts of before development and after development impacts. However, if the City were to require before development and after development traffic counts for every project that has traffic impacts, no development would ever be approved. Further, in this instance, traffic counts taken before the conversion of storage units to gardening units and after that conversion would not be relevant. The City has approved a CUP that would allow the facility to operate 130 storage units. The applicant has never operated 130 storage units—the most units ever rented were 68. The neighborhood has never experienced the full traffic impacts of the approved CUP. The approved traffic impacts could be almost twice as many as were experienced in the neighborhood prior to conversion of the storage units.

As was stated in our supplemental clarification information, the number of trips generated by the proposal is significantly fewer than what the City previously approved. The proposal is expected to generate a similar number of trips that would be generated by two single family homes (the number of homes that could be developed on the site). While the Examiner is correct that the ITE numbers are based on national averages, the numbers that have been arrived at for single family residential uses are based on a very broad number of studies from across the country and include correction factors to account for differences. Given the sizes of the lots in the neighborhood, their location in respect to the Central Business District, and the overall lack of transit options in Skagit County; the 10 trips per household per day is a valid estimate of trips for the neighborhood. It is used by virtually every jurisdiction in Skagit County, including Sedro-Woolley. Therefore, as stated in our supplemental materials, if the property was developed with 2 single family homes it would have substantially similar traffic impacts as would be expected from the current proposal (20 for single family versus 17 for the proposal).

It is also worth noting that in their addendum to the staff report dated December 2, 2011, the City Staff agree with the applicant's analysis that the proposed 15 storage units and 40 gardening tenants would result in a greatly reduced number of trips from what was approved under the current CUP (#2569). As such, it should be clear that the proposal is consistent with the surrounding area (in fact more consistent than the previously approved CUP) and would not result in unreasonable adverse impacts.

C. Proposed development is well planned so as to be an asset to the community.

It appears that the issue here is landscaping. The City Staff and the Hearing Examiner indicate that the landscaping requirements of the previous permit were not completed. We have attached to this reconsideration request a letter dated May 31, 2005 from the previous City Staff indicating that the applicant was in compliance with the required fencing/slats condition of the CUP approval (Item I). The letter indicates that a landscaping plan was required and indicates that a site visit had been made that determined the location of additional required plantings. The applicant submitted the required landscaping plan to the City and City Staff approved the plan in 2005. The additional plantings were made and no further correspondence was received from the City regarding the issue. It was and is the applicant's belief that the project came into compliance with the City requirements in the summer of 2005 and has been in compliance since. While the current City Staff may not agree with what previous City Staff required for landscaping, it is not accurate to state that the applicant has not complied when there is a letter from the City indicating that he did comply.

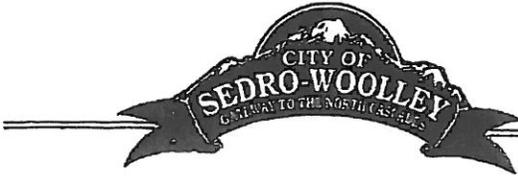
We have attached photos of the property taken from the perimeter and aerial photos from each angle showing that the site is currently screened from neighboring properties. It is important to note that since 2005, the applicant has constructed a home on the property (it was constructed during the last 2 years). The construction of the home has resulted in some reconfigured fencing and gate system. These new features may require some additional screening/landscaping that was not included in the previous CUP since they did not exist at that

time. It would be appropriate for the City Staff to include conditions to address the new features. In addition, if the City Staff believes that additional landscaping is required as a result of the modifications to the CUP then the appropriate step would be to include those as conditions of this permit approval. It is not appropriate for the City to deny the request because the applicant has not complied with requirements that he was unaware of and that have just been determined to be necessary.

Storage facilities are typically large "box" structures that appear more industrial than commercial. To state that the site has an industrial rather than commercial appearance is not relevant. We have reviewed all of the previous CUP documentation and find no reference to a requirement that the site is required to have commercial appearance. Even if there were such a requirement it is unclear what a "commercial appearance" would be.

Finally, the Hearing Examiner is reminded that the applicant has an approved CUP for a storage facility to be operated within the buildings that exist on the site today and in the configuration that they exist today. One of the criterion for CUP approval is that the development is well planned and an asset to the community. Since the City approved the CUP not once but twice, it must be assumed that the City believed that the structures and their configuration were an asset to the community. The proposed use makes no external changes to the buildings. It is difficult to understand how internal remodeling of the structures would result in the project suddenly not being a well planned asset. While it has been many years since the site was a logging equipment storage facility, that was the original use of the site that triggered the need for the original CUP. The improvements to the site in the years since granting the original CUP have been a significant benefit to the neighborhood.

In closing, the applicant believes he has shown that the project complies with the Comprehensive Plan and surrounding area, does not have unreasonable adverse impacts, and is a well planned asset to the community. We respectfully request the Examiner to consider these points and reverse his decision and recommend approval for the requested CUP.



CITY OF SEDRO-WOOLLEY

Sedro-Woolley Municipal Building
Building, Planning & Engineering
720 Murdock Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733
llahr@ci.sedro-woolley.wa.us

May 31, 2005

Tom Swett
1200 Warner Street
Sedro-Woolley, WA 98284

RE: Conditions of approval – CUP #2569

Dear Mr. Swett;

Following the City Council decision dated April 13, 2005 denying the appeal of James Hawkings regarding the approval of your amended conditional use permit #2569, staff visited your property to determine any outstanding items that need to be completed.

The City has not been notified of any appeal of this decision being filed with Skagit County Superior Court. Therefore, the decision of the City Council is presumed to be final.

The conditions of approval are as follows including staff comments in *italics*:

- A. The applicant shall comply with all conditions of the original permit approval (no. 172).
- B. The applicant shall maintain the minimum required 20 foot emergency vehicle access at all times.

During the staff inspection, the emergency vehicle access was kept clear and the Fire Department confirmed access through the subject property.

- C. Since the site is in a residential area, operating hours shall be limited to 7 a.m. to 8 p.m.

The applicant shall abide by the required hours of operation. To date, the City has received no complaints regarding hours of operation.

- D. There shall be no outside storage of vehicles, recreational vehicles, boats, etc. Three outside storage tents are currently located in the southwest portion of the site. No additional outside storage tents shall be placed on the subject property.

The vehicle located along the southern property line is a violation of this condition, and shall be removed or placed under cover so as not to be visible.

- E. Traffic impact fees may be assessed for the additional storage units as required by ordinance, and as determined by the City Engineer.
- F. Completion and maintenance of drainage facilities as per plans approved by city engineer, if required.

The City has approved the drainage facilities as constructed, based on observed conditions. However, it is illegal to discharge stormwater onto adjacent properties

- G. All lighting to be directed downward and away from neighboring properties. No light pole to be installed at eastern end of site.

- H. All signs, including temporary signage, are limited to a combined total of 20 square feet. Any existing signs which exceed this amount shall be removed as a condition of this approval.

The applicant is in compliance with this requirement.

- I. The applicant shall install slats in the fence along the eastern property line and the northern property line as required in the original permit, and as approved by the City Planner.

The applicant is in compliance with this requirement. The applicant has modified the fence line from what was originally approved by the Planning Commission. The current fence line follows the applicant's property lines. While the applicant has the right to fence his entire property, the site plan that was approved by the Planning Commission is considered binding and must be complied with or modified by the Planning Commission (see pre-app meeting comments enclosed).

- J. The facility shall comply with the City of Sedro-Woolley Solid Waste Enclosure Standards as approved by the Solid Waste Division, and provide access for commercial service.

The applicant is working with the solid waste department to provide appropriate access for the business. This requirement shall be completed no later than July 1, 2005 as required by the Planning Commission.

- K. Submit a landscaping plan for approval by the City Planner which satisfies the landscaping requirement of the original approval. (Hearing Examiner decision item #7)

Please submit a drawing no later than June 15, 2005 showing the proposed location of landscaping as discussed during the site visit for review and approval by the City. Landscaping shall be completed to the satisfaction of the City no later than July 1, 2005.

- L. Applicant must post signs "FIRE LANE - KEEP CLEAR" as indicated in the site plan, and as approved by city staff.

The applicant is in compliance with this requirement.

- M. Primary access to the facility shall be from Warner Street only.

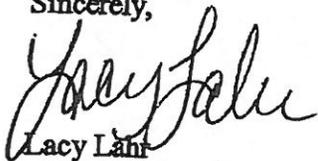
- N. The residence located 1200 Warner Street (P77223) shall not be used for purposes of commercial storage. It may be used for office purposes and living quarters only.

- O. Comply with all local, state, and federal regulations, including but not limited to the City of Sedro-Woolley Municipal Code, Comprehensive Plan, and Public Works Design Standards; International Fire Code, and International Building Code.

The Planning Commission granted approval of your amended conditional use permit application provided that all conditions of approval are completed to the satisfaction of the city prior to July 1, 2005. The approval may be subject to revocation, following appropriate notice and a public hearing, if the conditions of approval are not completed by this date.

Please contact me at 855-0771 with any questions regarding these conditions.

Sincerely,



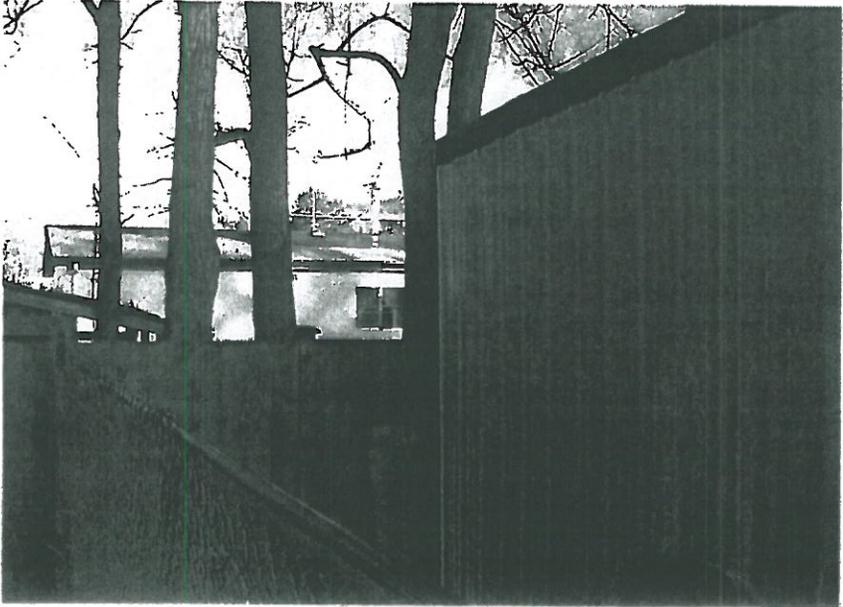
Lacy Lahr
City Planner

CC: Pat Hayden, City Attorney / Erin Klinger, Development Coordinator / File

Enclosure



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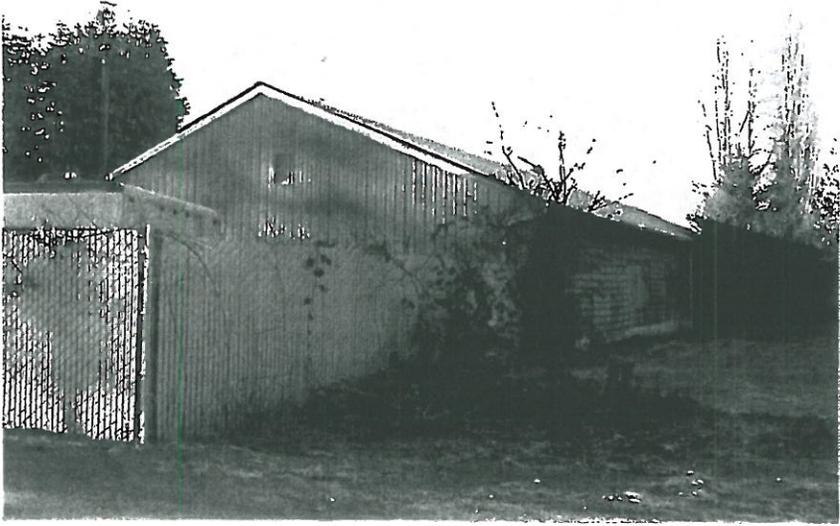
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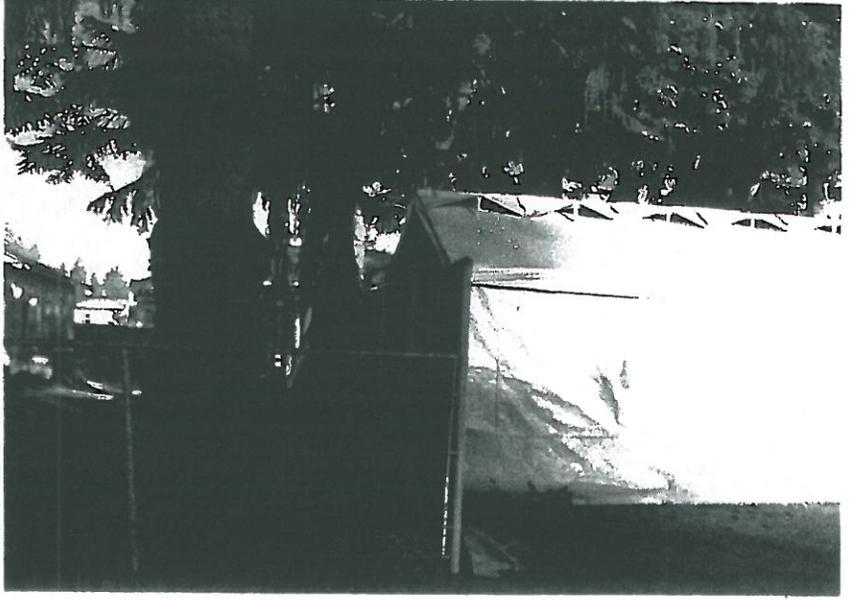
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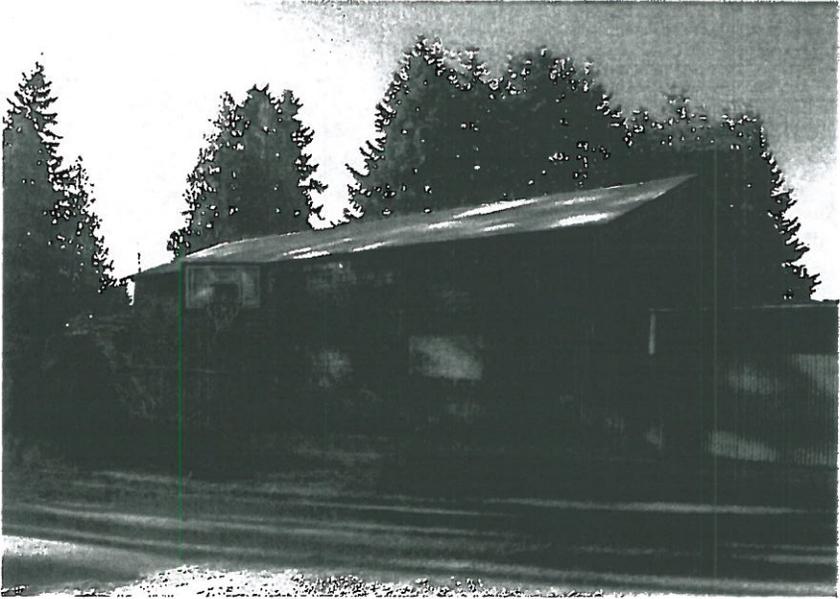


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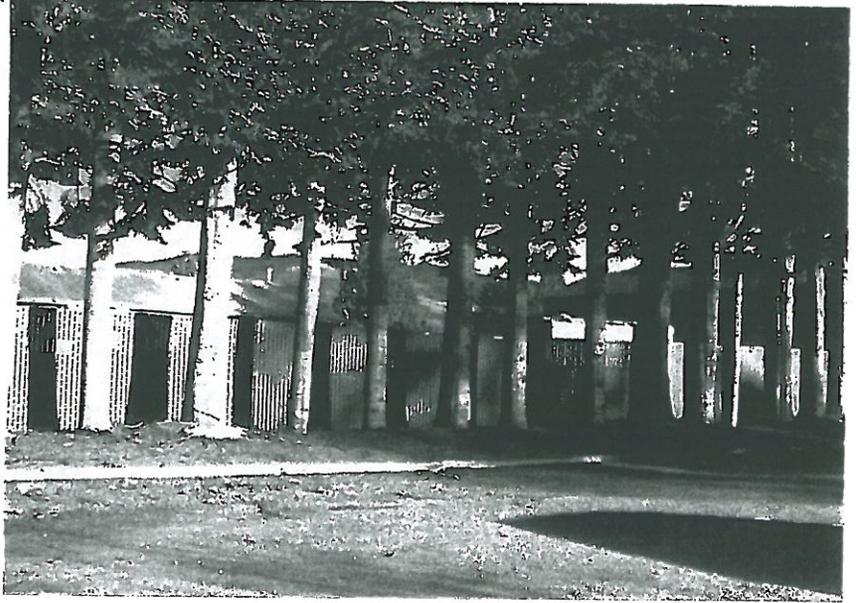


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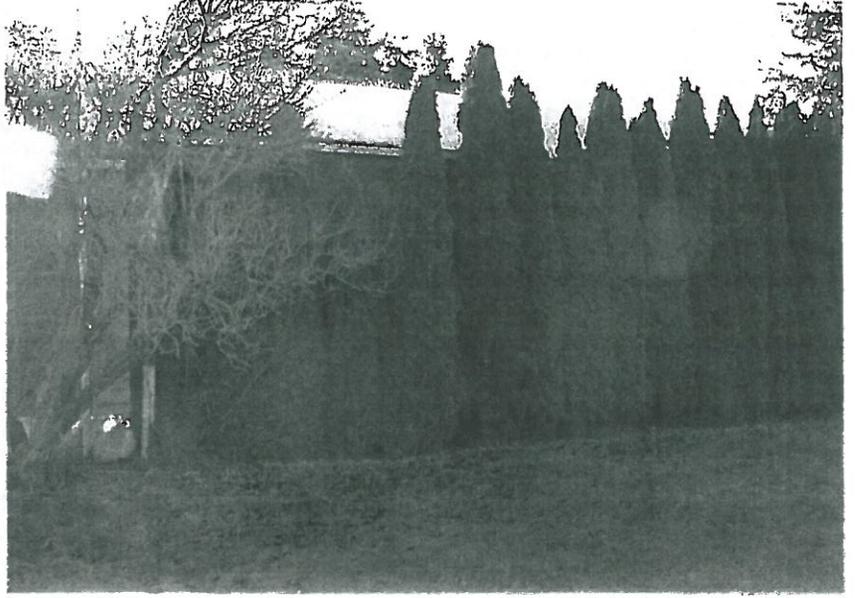
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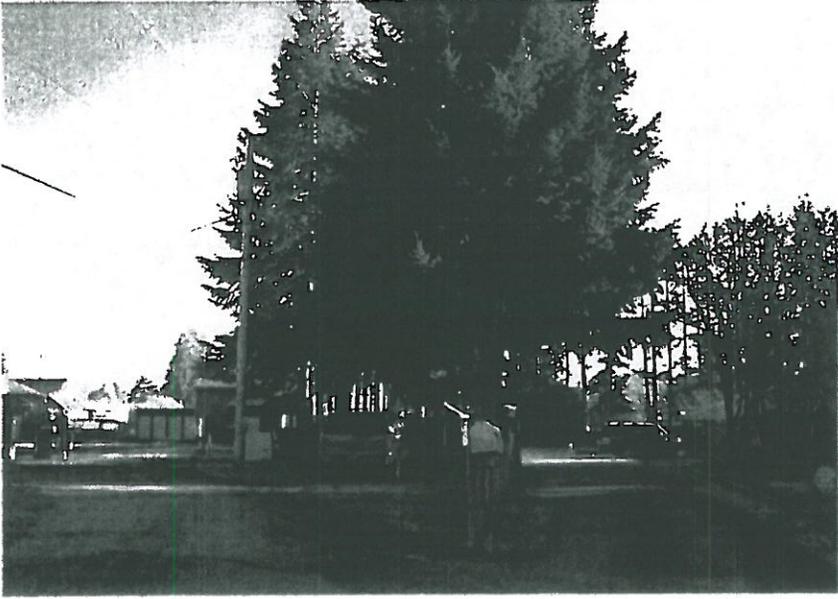


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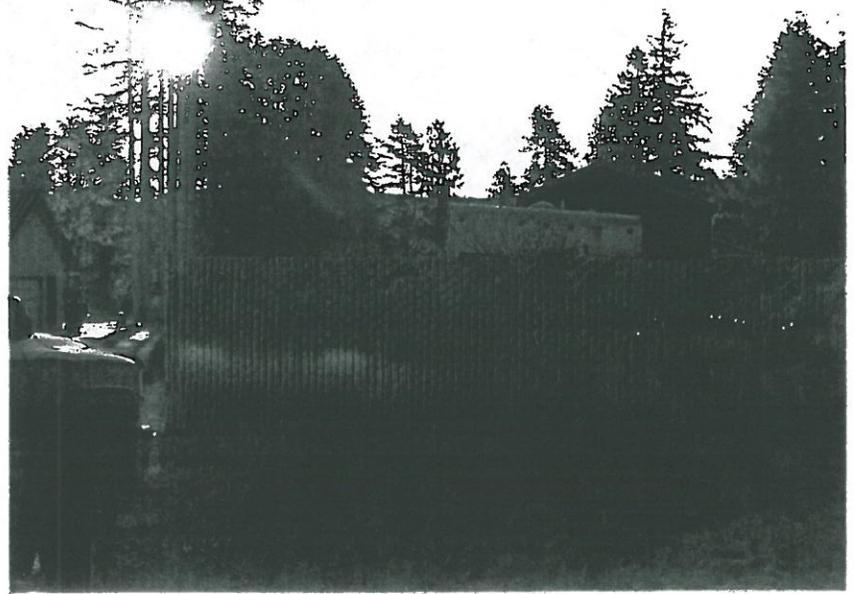


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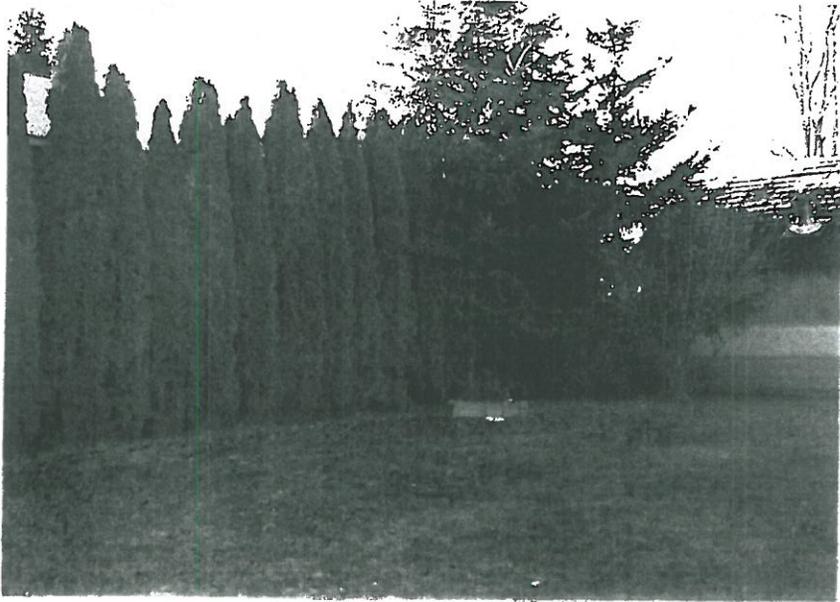
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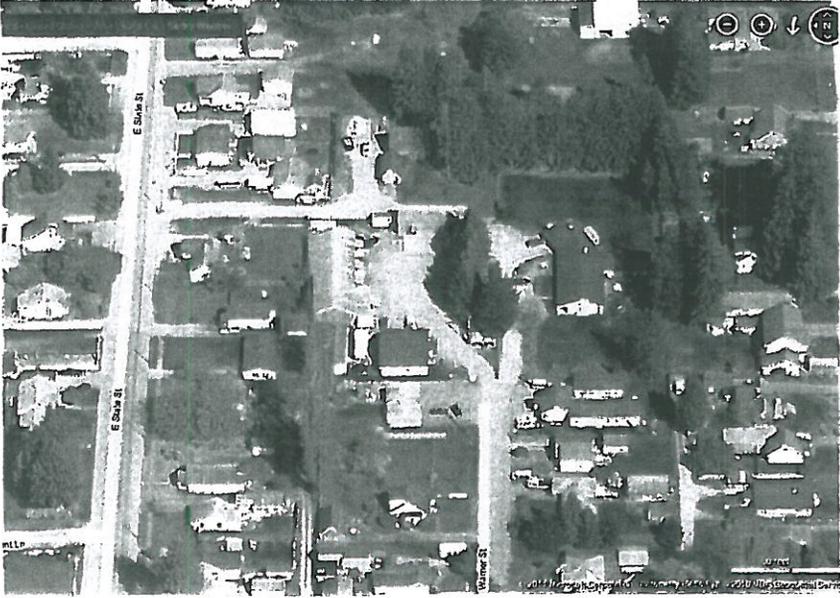
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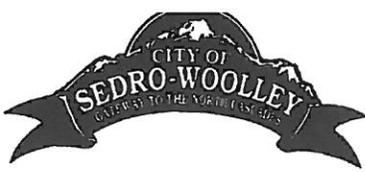
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Closed Record Appeal Exhibits

EXHIBIT # 8

Exhibit # 8
To Closed Record Appeal



Planning Department
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

January 4, 2012

Thomas & Jean Swett
1230 Warner St.
Sedro-Woolley, WA 98284

RE: Conditional Use Permit— CUP-1-11

Dear Mr. & Mrs. Swett,

In response to your reconsideration request, the hearing examiner requires additional information.

From the hearing examiner:

As noted in SWMC 2.90.080(G)4, the examiner may request additional information as part of the reconsideration review.

The applicant has stated in the submitted reconsideration request that the storage facility has never operated at capacity, noting that the most units ever rented at one time has been 68. This is a new piece of information that I find to be relevant to my review and analysis.

I would like the applicant to provide me with some additional information relative to the facility's occupancy since 2005 when it was allowed to increase to 130 units.

- 1) What has the average occupancy rate been since 2005? It would be helpful if an average for each full year could be provided, as well as indicating what the least and most units rented at one time have been for those periods.
- 2) Similarly, what has been the average length time that individual units have been rented, and what have been the lows and highs?
- 3) Please provide a brief description of a typical mix of tenants the facility has had since 2005. In other words, have they been mostly households storing extra belongings; small businesses storing inventory, etc.

Please submit the requested information to the Planning Department by 4:30 p.m January 14, 2012.

If you have any questions, please feel free to call me at 855-0771 or e-mail jmoore@ci.sedro-woolley.wa.us

Sincerely,

Jack Moore
Planning Director/ Building Official

cc: File – CUP-1-11

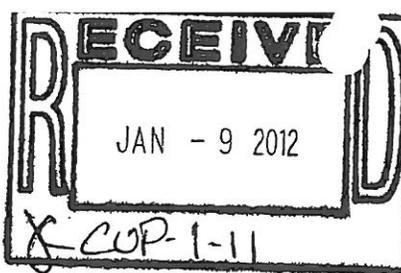
Closed Record Appeal Exhibits

EXHIBIT # 9

Exhibit # 9
To Closed Record Appeal

January 9, 2012 11

City of Sedro-Woolley Planning Department
325 Metcalf Street
Sedro-Woolley, WA 98284



RE: Response to Hearing Examiner Questions after Reconsideration Request CUP-1-11

The Hearing Examiner has requested additional information relative to the operation and occupancy of A1 Storage since its Conditional Use Permit was modified to allow the operation of as many as 130 individual storage units. After the modification was granted Mr. Swett increased the number of indoor heated storage units to 68 and successfully rented these units. Additional units that he intended to rent were to be unheated spaces. With the economic downturn, Mr. Swett found no demand for unheated spaces and as is the case with many small businesses throughout the county, in these difficult times had been unable to realize his plan to increase the number of units on the property to the full 130 that were approved by the City.

It is important to remember that the current request is a modification of the approved CUP that would, today, allow 130 individual storage units and all of the associated impacts to the neighborhood. We understand that the neighbors perceptions of the impacts to the neighborhood are based on the number of storage units that were operating prior to the conversion to gardening units. However, the fact remains that the City of Sedro-Woolley approved a CUP for 130 units with all associated impacts and that the current modification must be reviewed against what was approved. That said we offer the following answers to the Examiner's specific questions.

Question 1. What has the average occupancy rate been since 2005? It would be helpful if an average for each full year could be provided, as well as indicating what the least and most units rented at one time have been for those periods.

Since 2005, the vast majority of the time (in excess of 95%) all 68 units have been rented. The most units that have been vacant during that time period are occasionally one or two rooms.

Question 2. Similarly, what has been the average length of time that individual units have been rented and what have been the lows and highs?

There is no real average length of time. Peoples storage needs are as varied as people are in general. One of the units has been rented to a tenant for 10+ years (that individual was the second tenant the business ever had and is still there today) other renters have rented for as little as six months. Mr. Swett is unaware of any tenant that has rented space for less than six months.

Question 3. Please provide a brief description of a typical mix of tenants the facility has had since 2005. In other words, have they been mostly households storing extra belongings; small businesses storing inventory, etc.

While there have been a mix of tenants using the storage for a variety of reasons, because they are heated indoor units, the primary renters are for household items. The rooms are 10' x 10' rooms and 10' x 12'. People rent the spaces to store extra items; to store seasonal items; while they are remodeling or as a result of some kind of natural disaster; while they are having a new home built; or a variety of other reasons. While tenants may discuss their reasons for renting the space with Mr. Swett, he respects their privacy and does not micro-monitor what they store, why they store it, why they visit their units, or how often they visit.

The applicant appreciates the Examiner's review and analysis of the proposal and hope that the information provided allows for the requested modification to be approved.

Closed Record Appeal Exhibits

EXHIBIT # 10

Exhibit # 10
To Closed Record Appeal

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER
CITY OF SEDRO-WOOLLEY**

REQUEST FOR RECONSIDERATION

APPELLANT: Tom Swett

CASE NO.: CUP-1-11 (see Exhibit A and Attachments)

REQUEST: Applicant is requesting a reconsideration of the Hearing Examiner's decision issued on December 19, 2011.

FINDINGS OF FACT AND CONCLUSION

1. The Sedro-Woolley Hearing Examiner issued a decision for CUP-1-11 on December 19, 2011, to deny the requested permit modification to an existing, legal nonconforming self storage facility to allow units to be rented for purposes of indoor growing of plants, in this case medical marijuana (see Exhibit B).
2. A timely Request for Reconsideration of the Hearing Examiner's decision was filed by the applicant on December 27, 2011 (see Exhibit C). The applicant raises issues for each of the three approval criteria that I find to be valid points for further review and reconsideration. These are discussed below.
3. On January 4, 2012, I requested additional information from the applicant relative to actual occupancy of the self storage facility since 2005. I received the requested information in a timely manner on January 9, 2012 (see Exhibit E).

COMPLIANCE WITH THE COMPREHENSIVE PLAN

4. In my decision (see Exhibit B) the focus of the review was on the differences in nature of the existing and proposed use, and solely in the context of the modification of an undefined, legal nonconforming use. This comparison was made in response to the applicant's logic that it is the renting of space which makes the two uses substantively similar enough for approval of the use modification. In addition, the applicant had not provided a demonstration that the proposed use modification complied with the Comprehensive Plan.

In the request for reconsideration (see Exhibit C) the applicant specifically addresses the criteria for compliance with the Comprehensive Plan (SWMC 17.56.060.A). He notes on page 1 of Exhibit C that low-intensity agriculture is a use permitted outright in the R-5 zoning district (SWMC 17.12.010.A). He correctly points out that there are no limitations placed on the type or how many plants are allowed, or the manner in which they are cultivated; i.e. no distinction is made between indoor versus outdoor cultivation. The applicant concludes that the indoor cultivation of plants is allowed in compliance with the Comprehensive Plan.



In as much as the SWMC does not limit the type or manner of cultivation, I must agree that the indoor cultivation of plants does fall within the low-intensity agriculture use category. In addition, there is also no code provision that would prevent an otherwise conforming use to be undertaken in the same facility as a nonconforming use. My conclusion #7 in Exhibit B is, therefore, in error and is withdrawn.

CONCLUSION: The proposed modification of use complies with Conditional Use criteria 17.56.060.A

COMPATIBLE WITH SURROUNDING AREA & NO UNREASONABLE ADVERSE IMPACTS

5. It has been discussed in Exhibits A and B that the other potential impacts identified by staff can be adequately mitigated, and that the primary issue came down to traffic. My conclusion that the traffic information was inconclusive stemmed primarily from not having an additional way to gauge how much traffic has actually been associated with the self-storage facility, which is necessary in order to make a reasoned comparison of impacts, and not the use of ITE tables per se. In the request for reconsideration (Exhibit C) it was noted that the most units rented at one time has been 68. This constituted new information that I found relevant to traffic impacts, since it provides an additional point of reference for comparing impacts.

The requested use modification is to allow 40 units to be rented for indoor cultivation, while retaining 15 units for traditional storage. The applicant estimated there would be 13 trips a day associated with the 40 cultivation units in Attachment F of Exhibit A. At the hearing the applicant estimated an average of 3 trips a week per unit, which would equal approximately 17 trips per day. With the 15 traditional units at 4 trips a day this gives a range of 17 to 21 trips a day resulting from the use modification.

The applicant has stated that ninety-five percent of the time there has been 68 units rented at any given time since 2005. This comes out to approximately 19 trips a day based on the ITE Trip Table used in the application (see Exhibit A, Attachment F).

In the absence of an actual history of traffic counts on Warner Street, the above estimates are the best information available from which to compare potential impacts. Based on the information provided, the range of potential trips resulting from the use modification averages out to equal the estimated number of trips associated with self-storage facility over the last six years.

CONCLUSION: The proposed use modification complies with Conditional Use criteria 17.56.060.B

PROPOSAL IS WELL PLANNED

6. The applicant has submitted a letter dated May 31, 2005 (see Exhibit C) from the city staff person that inspected the property after approval of CUP #2569. The letter documents substantive compliance with the conditions of that conditional use permit. I find that this constitutes new information that is relevant to this review.

In addition, there are no changes proposed to the exterior of the existing buildings or the property as a whole. Those items identified by staff and neighbors that may have

deteriorated or not been completed (e.g. glare from lights, landscaping) can be adequately mitigated to meet this criterion.

CONCLUSION: The proposed use modification can be conditioned to comply with Conditional Use criteria 17.56.060.C

DECISION

Based upon the foregoing findings and conclusions, the applicant has met the burden of proof. Therefore, the request to allow the proposed use modification CUP-1-11, allowing for 40 cultivation units and 15 traditional storage units, is APPROVED, subject to the following conditions:

1. All lighting shall be directed downward and away from neighboring properties.
2. The business hours shall be limited to 7:00AM to 8:00PM;
3. Signs, whether on site or off-site, are limited to a combined total of 20 square feet;
4. Applicant shall submit a landscaping plan that includes landscaping at the entrance to the facility and on the south side of the property. The plan must be approved by the Planning Department and the landscaping shall be installed within 3 months of CUP approval;
5. The applicant shall limit the number of outdoor storage of RVs and trailers to a maximum of eight units

Entered this 19th day of January, 2012.



Donald B. Lergen
Hearing Examiner

APPEAL OF HEARING EXAMINER DECISION

Appeal of Examiner's Decision. The decision of the Examiner, approving, modifying, or denying an application or an appeal shall be final and conclusive unless a written appeal is filed according to the City's appeal procedures as set forth in Chapter SWMC Section 2.90.90 E; which states that any party with standing may file an appeal within 14 days of the hearing examiner's decision with the Planning Director, and to be scheduled and heard by the City Council.

EXHIBITS:

The following exhibits are entered into the record for this reconsideration request:

- A. Transmittal & Report Memorandum to the Hearing Examiner; file CUP-1-11.
- B. Hearing Examiner's Decision issued on December 19, 2011.
- C. Applicant's Request for Reconsideration, with attachments, dated December 27, 2011.
- D. Memo from Jack Moore, Planning Director, to the Hearing Examiner acknowledging receipt of the Applicants' Request for Reconsideration, and dated December 27, 2011.
- E. Applicant's response to the Examiner's request for additional information dated January 9, 2012.

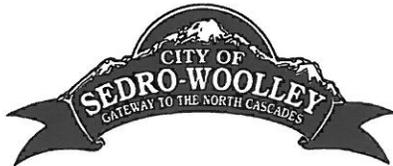
PARTIES OF RECORD:

A complete list of the participants at the public hearing is available from the Planning Department upon request.

Closed Record Appeal Exhibits

EXHIBIT # 11

Exhibit # 11
To Closed Record Appeal



Planning Department
Sedro-Woolley Municipal Building
325 Metcalf Street
Sedro-Woolley, WA 98284
Phone (360) 855-0771
Fax (360) 855-0733

Notice of RECONSIDERATION Decision – APPROVAL of Conditional Use Permit file #CUP-1-11

Issued: January 20, 2012

Notice is hereby given that the Hearing Examiner has issued a revised decision for Conditional Use Permit (CUP) #CUP-1-11. The Hearing Examiner held a public hearing on December 2, 2011 for CUP-1-11. On December 19, 2011 the Hearing Examiner issued a decision to deny the CUP application. On December 27, 2011 the applicant submitted a request for reconsideration in accordance with Sedro-Woolley Municipal Code (SWMC) 2.90.080. After reconsidering the application, the Hearing Examiner has issued a decision to **APPROVE** CUP-1-11 with the following conditions:

1. All lighting shall be directed downward and away from neighboring properties;
2. The business hours shall be limited to 7:00AM to 8:00PM;
3. Signs, whether on site or off-site, are limited to a combined total of 20 square feet;
4. Applicant shall submit a landscaping plan that includes landscaping at the entrance to the facility and on the south side of the property. The plan must be approved by the Planning Department and the landscaping shall be installed within 3 months of CUP approval; and
5. The applicant shall limit the number of outdoor storage of RVs and trailers to a maximum of eight units.

Application: The CUP request is to allow a portion of the existing storage building at 1230 Warner Street, Sedro-Woolley to be converted to be equipped with hydroponic gardening systems. The metal cabinets and rooms would be used by individuals for growing medical marijuana indoors in a secure environment. The property is located in the Residential 7 zone. The CUP, if approved as requested, will modify an existing CUP that allows the storage facility to operate 130 storage units in a residential zone. Residential 7 zoning regulations require that the proposed use be approved per the CUP process and meet the criteria in Chapter 2.90 of SWMC and the criteria in Title 17 SWMC. This application was not subject to an environmental review.

Applicant: Tom Swett *for* property owner Jean Swett, 1230 Warner Street, Sedro-Woolley, WA, 98284.

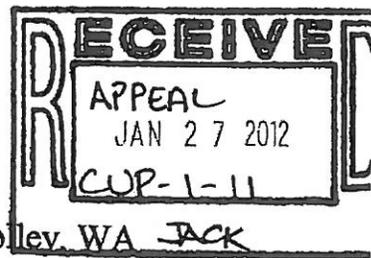
Address: Subject property is located at 1230 Warner Street, Sedro-Woolley, WA 98284. Assessors parcel number: 77224.

Appeal Period: This decision will be final unless appealed within 14 days of the notice of decision. Interested parties may appeal this decision until **4:30 PM, Friday, February 3, 2012**. The appeal will be a closed record appeal in front of the City Council. Appeals shall be delivered to the Planning Department, attention Planning Director, by mail, by personal delivery or by fax. Appeals shall be in writing, be accompanied by the required fee, and meet the requirements of SWMC 2.90.090(E). Please contact the Planning Department at 325 Metcalf Street, Sedro-Woolley, WA, (360)855-0771 for complete details and fees for the appeal process or to obtain further information about this application.

Closed Record Appeal Exhibits

EXHIBIT # 12

Exhibit # 12
To Closed Record Appeal



To: City of Sedro Woolley
From: Karl Shewmaker and other concerned residents of Sedro Woolley, WA
Subject: Hydroponic Gardening CUP-1-11, submitted by Tom Swett

Mr. Swett would suggest, according to his reconsideration statement, that growing marijuana is no different than growing potatoes or carrots and therefore is covered under the SWMC and the Comprehensive Plan

First off we would like to state that growing and dispensing a *schedule I controlled substance* is not the same as growing potatoes or carrots in a house or garden, and therefore not covered under SWMC or the Comprehensive Plan. As such according to the SWMC Chapter 9.36, to possess this drug within the city limits is, depending upon the amount, a felony.

Sedro Woolley currently has no codes, laws or other statutes to govern, control, ensure security/safety/physical security or regulate marijuana grow operations, nor is there any license mentioned in either the SWMC or Comprehensive Plan to cover such a business.

The State of Washington has yet to fully develop such regulations stating the State will revisit Chapter 181 Laws of 2011 in 2014. (RCW 69.51A)

Because the Governor vetoed 36 of the 58 sections of the legislature's bill amending Chapter 69.51A RCW, the law, in its final form, understandably has inconsistencies and ambiguities. For example, certain sections that were not vetoed make reference to other sections that were vetoed.

The recent amendments to Chapter 69.51A RCW change the scope and effect of the law. New sections affect the rights of qualifying patients and their designated providers. The law now allows "collective gardens" that provide for growing and cultivating up to 45 plants to serve no more than 10 qualifying patients. The law also provides other changes to the rights and responsibilities of medical marijuana patients and their designated providers.

The new law, however, clearly delegates to cities the authority to implement zoning requirements, business licensing requirements, health and safety requirements, and business taxes as those requirements and taxes relate to the production, processing, or dispensing of medical marijuana. In particular, local regulations should address ambiguities concerning the location and operation of collective gardens, and ensure that provisions related to designated providers are

I would like to appeal the CUP-1-11
1
Karl Shewmaker

not used to establish a de facto dispensary when the authority for such uses were vetoed.

Washington RCW 69.51A. 140

(1) Cities and towns *may* adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. **If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.**

The city of Sedro Woolley should take time to conduct appropriate research to understand the extent of the changes provided in the new law, to analyze impacts and potential liabilities under federal law, and to determine an appropriate regulatory framework for any new uses that are allowed under these laws.

Sedro Woolley must ensure that proposed locations for these operations are appropriate and that any potential secondary impacts arising from the operation of these uses or facilities are minimized and mitigated. These secondary impacts may include, but are not limited to, burglaries associated with the cash and marijuana maintained on the site, or an increase of other illegal activities, such as drug use, within the vicinity of any and all marijuana grow operations.

In particular, and without limitation, the city should analyze the impacts of allowing these uses and facilities in residential zones as well as impacts arising from the proximity of these uses and facilities to schools, daycares, parks, religious and cultural facilities, jails and courthouses. Accordingly, the city should find that a zoning, licensing, and permitting moratorium should be established, pending local review of appropriate locations and design requirements of these operations, and impacts of the newly amended law and its interaction with federal law.

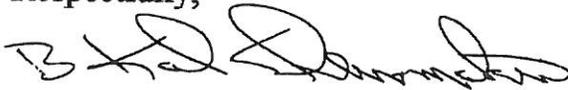
Therefore, imposing some zoning regulations on them is advisable. Types of zoning regulation that staff may propose include:

- Limiting garden locations to certain zoning districts.
- Requiring gardens to be indoor gardens only.
- Requiring a permit for establishing the garden.
- Requiring minimum spacing between gardens
- Requiring minimum distances from schools, daycares and other similar uses.

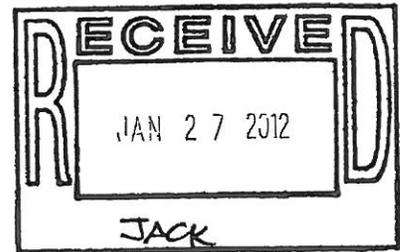
Presuming the City is interested in considering regulations for collective gardens and dispensaries, adoption of an ordinance creating a moratorium on establishing collective gardens and dispensaries is advisable. Without a moratorium, there is a risk that individuals may attempt to establish collective gardens and/or de facto dispensaries before any regulations go into effect, and then claim that they are entitled to protection as nonconforming uses from the new regulations.

RCW 36.704.390 provides cities with the authority to adopt moratoria and interim zoning regulations. A moratorium provides cities with time to develop regulations before any of the uses are established. A moratorium can be affective for not longer than 6 months. However, it may be renewed for one or more 6-month periods if another public hearing is held prior to each renewal and reasons for the extension of the moratorium are provided.

Respectfully,

A handwritten signature in black ink, appearing to read "B. Karl Shewmaker". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

B. Karl Shewmaker
9694 Gladsjo Ln
Sedro Woolley, WA



To: City of Sedro-Woolley

Regarding: CUP-1-11

I was pleased that the council denied the permit upon the recommendation of the hearing officer and the over whelming protest of those attending the meeting (approximately 40 to 1) against the growing of marijuana in the city limits and a residential non commercial area.

Therefore I was disappointed to hear that the council has reversed their decision and are now going to allow the expansion of marijuana growth in the city limits.

I'm still adamantly against having marijuana growing in our city limits. It will cause increase in traffic in that area, increase in police surveillance, (they are already over extended) increase in drug use because there is no tight control on how this marijuana is dispersed.

The attached copies show that MARIJUANA, FOR ANY USE, IS ILLEGAL UNDER FEDERAL LAW. Why approve CUP-1-11 is the question? Why?

It is my hope and desire to see that CUP-1-11 is reversed again and that this issue is put outside the city limits of Sedro-Woolley.

Thank you for your time and attention to this matter.

Sincerely,

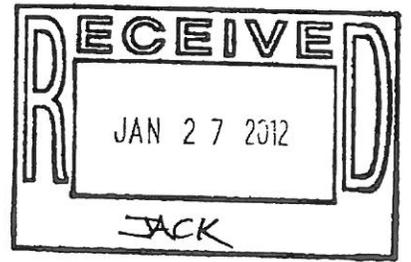
Marlin D Miller
713 Brickyard Blvd
Sedro-Woolley, WA 98284

PS. I'm disappointed that those of us that were in attendance were not notified that a meeting to consider reversing the original decision was going to be held.

1-26-12

To: City of Sedro-Woolley

Regarding CUP-1-11



I Am very disappointed that the decision has been reversed when at the meeting there were many people against you allowing a growing operation within city limits.

I am strongly against this as I have a teenage child and now we are going to be at risk.

there will be higher traffic, risk of home break ins. I Do not want this Next Door!!!

there has not been compliance with the conditional use permit that Tom currently has now.

No extra security, lights still shine towards neighbors. Complaints have been turned into the city and you have failed to see if he has fixed the lighting.

I hope you will take a strong look at reversing and denying this use permit to grow marijuana in a neighborhood. Close to schools, churches, daycares, family homes and businesses.

Signed Della Miller

January 25, 2012

City of Sedro-Woolley

Re: CUP-1-11

Gentlemen

Although we don't live right by the Swett property we are close enough to be concerned about what is happening there. As this is residential , with young families living near, we feel that this medical marijuana growing operation is not appropriate.

Even though Mr. Swett says he has taken all the proper precautions who's to stop possible break-ins,etc? Just how much time can our law enforcement spend in that area policing the situation, making sure each person is growing only the allotted amount for themselves?.

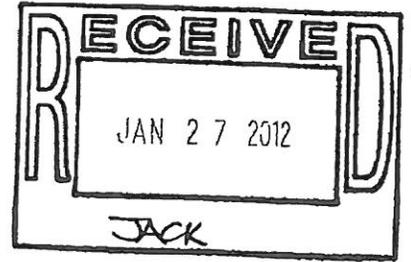
Another thing is that according to Federal law it is illegal to grow marijuana. What's to stop a raid by the Feds as has happened in other states?

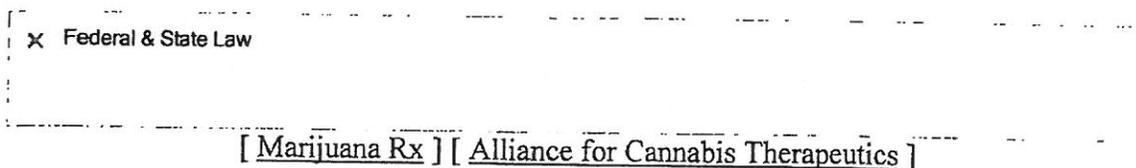
We feel that this operation should not be conducted, especially in a residential area.

Sincerely,

David H. Bates
Roberta H. Bates

David & Roberta Bates
1014 E. Talcott St.
Sedro-Woolley, WA 98284





Many people are confused about the legality of medical access to marijuana. The passage of state initiatives in recent years has intensified this confusion and places many people at risk.

First and foremost: **Marijuana, for any use, is illegal under federal law.** Even if you live in a state that has enacted legislation or passed a ballot initiative that recognizes marijuana's medical utility you are subject to arrest by federal officials for possession or cultivation of marijuana.

Secondly, it is illegal to ship or receive marijuana by mail. Do not be fooled by individuals who claim they can legally ship marijuana because they live in a state or country where "marijuana is legal." Interstate shipment of marijuana is a federal offense. So is importation of marijuana.

If you do reside in a state that has enacted a ballot initiative "legalizing" medical access to marijuana it is important that you check with an attorney or local officials about the policy in your region.

✿ Federal Laws

The Controlled Substances Act classifies cannabis as a Schedule I drug and defines it as a drug "with no accepted medical value in treatment." Despite its long history of use as a medication, cannabis is classified as a "new drug" and legal access is only possible through an Investigational New Drug Application (IND) issued by the Food and Drug Administration (FDA).

✿ State Laws

Beginning in 1978, the states began responding to pleas from the seriously ill for legal access to marijuana for medical purposes. Thirty-four states have enacted laws which recognize marijuana's medical value. Many of these laws authorized state research programs which would allow citizens to gain legal access to marijuana. Several states developed complicated research programs which gave their citizens limited access to legal supplies of medical marijuana. These programs were short-lived, however. Complex federal regulations and the continuous intervention of federal officials made such programs too difficult for most states to administer.

For a more complete discussion of state actions relative to medical marijuana please see *Marijuana as Medicine: A Recent History (1976-1996) with Recommendations.*

✿ Proposition 215 and Other State Initiatives

Frustrated with federal intransigence, voters in six states have supported ballot initiatives which "legalize" marijuana for medical purposes. These measures have demonstrated the strong public support for medical access to marijuana but they have failed to resolve the problem of legal access to marijuana for medical purposes because federal law supersedes state law.

In California, for example, Proposition 215 allows medical access to marijuana but federal officials, most notably the Drug Czar Barry McCaffrey, have threatened doctors with arrest if they prescribe marijuana. Federal law enforcement officials from the DEA have continued to make arrests in the state.

1. Growing Medical Marijuana

WA Department of Health Rules define the 60 Day Supply limit as up to 15 plants and 24 ounces of dried medicine. Here, we provide some ideas on how to grow medical cannabis legally, without the risk of arrest.

Variables

Cannabis is a hardy weed that grows vigorously. If you throw a few seeds on the ground in June, and pray for rain, you might just find a huge bush of pot flowers in the fall. But that wild mess of green vegetable matter will definitely not be suitable for medical use by terminally ill patients. The orderly production of fruiting plants is much easier to plan than to execute, and cultivation of cannabis for medical use is a fine art that requires years of experience to master. The following profiles on potential yields presume the grower already has the prerequisite education and expertise in cannabis cultivation. Novice cannabis growers will not be able to replicate these numbers in most cases.

The assortment of varieties of medical cannabis is another uncontrolled variable. Some of the most potent marijuana strains are derived from crosses between the Indica and Sativa varieties, which tend to have greater stem length creating slightly less flower nodes, and therefore less finished medicine than the pure Indica varieties that are usually preferred for indoor production. (Tall Sativa strains are more suitable for outdoor gardens, which are not specifically covered here.) The yield estimates given may have significant variation depending on the varieties and methods employed.

Patient use

The issue of patient use is separate from but fundamental to a realistic understanding of these limits on cultivation. In service with marijuana patients in and around Seattle, I have conducted a survey through patient self-reports in written correspondence incorporated into the medical records of more than one hundred Lifevine members in the Seattle area. This patient population is comprised of approximately 50% HIV/AIDS patients with the remaining categories of Cancer, Crohn's, epilepsy, Hepatitis C, Intractable pain, multiple sclerosis, and other illnesses accounting for the other half, Hepatitis C being the second most common ailment in this population. From this and other studies I have conducted including years of interviews with legally qualified patients in WA, OR, CA, and MT, I was able to determine and document the range of use of the overall population in a bell curve.

In most cases, marijuana patients use cannabis every day, though finances

and availability may forestall their consumption. A few patients may use as little as a gram or even a half of a gram per day. That percentage is as rare as the most copious users who may use more than an ounce per week. Though sources have claimed that some patients may use as much as one ounce or more per day, I find that theoretical notion unrealistic. Two or at most three ounces per week are the highest amounts I have personally known in my decade of research on the subject. On average, the middle-range of marijuana consumption by qualified patients is usually 14 to 28 grams per week of high-quality cannabis. Again, some may need more due to potency issues as well as the tolerance factor that allows increased consumption with repeated exposure leading to diminished psychoactive effects. For convenience, we shall presume the average patient, if given the availability, will consume up to one full ounce per week; hence, eight weeks' supply equals eight ounces of dried flowers.

Cultivation Profiles

Examples given here are general and do not account for the many pitfalls and hardships encountered by novice marijuana growers. These estimations presume complete success in all stages and have no margin for error. Without a doubt, maintaining a continuous supply for a typical cannabis patient with only 15 plants is a technical feat not to be accomplished without a huge investment of planning and effort.

One must first obtain marijuana plants, which may itself be a somewhat daunting task. If starting with seeds, they must be sprouted and grown to adult maturity to cull the males. Medical cannabis is almost universally "sensimilla" (without seeds) because the potency of the cannabis is increased when female plants are not pollinated. That "sexing" process can take two to three months. During that period, a law-abiding grower would have to "sex" only 15 plants, and would be forced to destroy half – the average number of males. (This is one area where a physician could not be called to testify on a botanical question, if the defendant needed to justify the possession of 30 plants that were intended to be culled long before a potential harvest.)

Any sort of meaningful breeding program is unworkable with only 15 plants in the garden. (Realistically, only collective gardens can undertake breeding programs under the new law.) For simplicity of argument, we presume the patient may obtain one female plant through a seedling process or another source, and then must grow that single plant to generate progeny through cloning, the most common method of propagation.

Profile 1:

One mother plant provides the source of 14 more. The patient requires 8 ounces of marijuana in a 60 day period. It will take 90 days to grow those 14 small plants large enough to yield slightly more than one half ounce of

medicine each, totaling the required 8 ounces. However, because it takes 90 days to grow a 60 day supply, using this method the patient fails to maintain a constant supply.

Profile 2:

One plant provides the source of 14 more, and again the patient requires 8 ounces per 60 days. If the growing time is increased from 90 to 120 days, it is possible for the experienced grower to produce 16 ounces or more of finished medicine. Thus, the patient is able to maintain a constant supply, except for the small matter of the next generation. In order to insure the next cycle is on track, at least one plant must provide the next set of starts, and those must be cloned and rooted while the previous 14 are almost ready for harvest. (This is another area where a testifying physician could not answer a botanical question, if a patient needed to justify the possession of 14 large plants and 14 small starts during the short period where rooting and the final weeks of flower development could overlap.)

If the grower is a strong expert who has overcome the many pitfalls and difficulties associated with producing huge plants, it is possible to produce two or more ounces per plant in a 120 day period. Because there is an additional allowance of 24 ounces of finished product, it is even possible for the expert grower with average needs to maintain a 60-day supply while possessing only 15 plants. However, there is also the risk of exceeding the 24-ounce limit by producing 14 plants bearing two ounces each, totaling 28 ounces, or more. This method presents a complication, when the patient requires more than one ounce per week. In that case, the grower might not be able to maintain a constant supply without exceeding the limit.

Profile 3:

One plant provides the source of 14 more, and again the patient requires 8 ounces per 60 days. However, in this example, the patient does not want to wait 4 or 5 months for harvest. The grower propagates 7 starts at a time aiming for a two-legged cycle. (This method requires at least two separate grow rooms to accommodate the two stages of development.)

7 plants grown under 1000-Watt lights, with proper pruning and staking, may produce the 1.15 ounces required to satisfy the 8-ounce requirement in a 100-day period of growth. The second 7 plants must then enter the cycle about 30 to 40 days after the first 7, to develop another 8 ounces for the following 60-day period, ad infinitum. Because of the allowance of 24 ounces dried medicine to be possessed in conjunction with the live plants, it is possible to place the second set sooner than 30 days after the first set of 7, thereby increasing the second cycle's yield at harvest, potentially leading to a surplus under optimum conditions. The technique is not as complicated as it may seem, but insuring precise yield results can only be accomplished through experience.

The cycling of cannabis plants through three stages of development – small starts, mid-size vegetative plants, and larger flowering plants – is clearly the most rapid and most productive method. However, the technique requires ample floor space, drainage, air filtration and venting, management of growing media, and of course, at least three high-voltage light systems. Rent, electricity, hardware selection, installation and maintenance and time-consuming labor, all add up to a huge burden few severely ill individuals can bear.

Profile 4:

When a group of up to ten patients pool their resources and cultivate cannabis together as one legal entity, the practical difficulties associated with plant limits described above are largely obviated. Due to the cost and time commitment needed to produce the amounts of medicine listed above, many patients have joined collective cultivation groups. In collective gardens, 15 plants per patient is quite sufficient; however, such patient groups must now maintain the new threshold of 45 plants per garden, in accordance with the 2011 amendment to WA state law RCW 69.51A, which assumes that not every collective member will require the maximum allowed number of plants.

Conclusion

To comply with legal requirements, cannabis cultivators must have strong knowledge of this little-known subject. In virtually every example, first-time growers do not produce large amounts of high-quality medicine. On the other hand, there are also a few cases, where a novice has inadvertently over-planted and produced far more than intended. The new legal constraints are a challenge, but livable given adequate planning and effort to avoid the numerous difficulties and risks involved with growing medical cannabis.

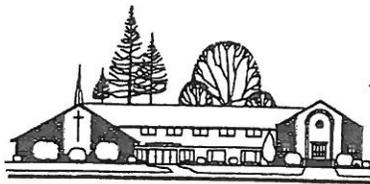
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Closed Record Appeal Exhibits

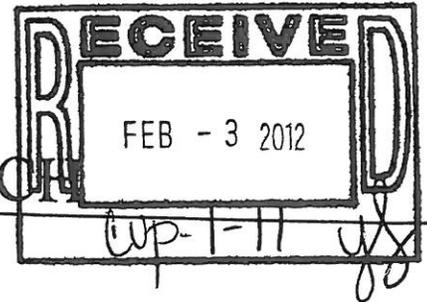
EXHIBIT # 13

Exhibit # 13
To Closed Record Appeal



FIRST BAPTIST CHURCH

Richard Coursen, Pastor



To the City of Sedro-Woolley
Planning Department

This letter is in regard to the Conditional Use Permit submitted by Tom Swett to convert his Storage Facility to a hydroponic gardening system for the purpose of manufacturing medical marijuana.

I believe this to be a slippery slope for our city. Here is why I believe this: there have been no previous permit criteria in place for this type of use by our planning commission. In fact, there have been many state initiatives to make marijuana an accepted part of society, such as medical marijuana. Other states have tried it and found it to be a negative impact on communities. Not to mention the fact that marijuana falls under the category of nationally banned substances. Controlled substances have a long history of getting into the wrong hands.

As a pastor, I am concerned about my community and the concerns of my constituents (congregation), many of whom live in the general neighborhood of this proposed venture. We already have a large marijuana problem in our city. In fact, our church borders property that regularly spills over into our parking lot with illegal marijuana activity. It is readily accessible there, which makes 535 State Street quite honestly a blight on the landscape. Why bring a marijuana growing experiment into a town with an already prevailing problem? Do we want to be known for this cultural experiment which has already drawn the unfavorable attention of many who already live here?

I am concerned about many things – clientele, notoriety, safety, children’s welfare, the need for increased police patrols, a loosening of restrictions, etc. Other questions also arise: With all the problems that already exist with the theft and over-prescribed use of drugs already on the market – why add this new headache? Who will be writing the prescriptions? Which medical clinics will be supplied by this medical-marijuana producer? Are there safeguards in place to guard against possible misuse? Have we done due-diligence in making way for this business venture to come into our city?

Please reconsider. I stand opposed to this action. It will not be an asset to our community.

Sincerely,

Rev. Richard Coursen
Rev. Richard Coursen, Pastor

*I WOULD LIKE TO APPEAL THE DECISION
FOR CUP 1-11
THIS LETTER IS INTENT OF MY FEELING*

In reviewing a conditional use permit request, the Hearing Examiner must consider the following criteria specified in Section 17.56.060 of the Sedro-Woolley Municipal Code. Use extra sheets if needed:

1. How does the proposed use conform to the Comprehensive Plan for the City of Sedro-Woolley? _____

2. Is the proposed use compatible with the surrounding area, this is, causes no unreasonable adverse impacts on other properties in the immediate vicinity? (If yes, please explain how the use is compatible. If no, explain how any impacts might be mitigated). _____

I doubt that property values would be positively affected. Not compatible with community values and ideals, raising children and keeping the values instilled by church and school.

3. Is the proposed development or use well planned in all respects so as to be an asset to the community? _____

I don't believe the community wants to be the focus of this kind of social experiment. We need businesses that foster community pride, success, family values and achievement.

This will not enhance our city or community. We are already known as the bar town. Why do we want to add "Medical Marijuana growers" to our distinction?

4. Other applications or variances being applied for as part of project: _____

Please attach the following:

- Site plan - see site plan instructions.
- Written comments from City from pre-Application meeting.
- Current title report (within 6 months of application).
- State Environmental Policy Act (SEPA) checklist (if required).
- Three sets of pre-addressed, postage-paid envelopes. See mailing procedure.
- Fees based on current fee schedule.
- The terms and conditions of covenants and agreements regarding the intended development.
- Written confirmation that the property owner is aware and supportive of proposed use.

\$100.00

Closed Record Appeal Exhibits

EXHIBIT # 14

Exhibit # 14
To Closed Record Appeal

**James Hawkings
P.O. Box 156
Clearlake, WA 98235**

Owner of property at 1211 State Street

City Officials:

I would like to express my concerns with the reconsideration decision approval of the conditional use permit file #cup-1-11 issued January 20,2012.

Conditional use : you meet the conditions or you don't get the use.

Mr. Swett did not meet the conditions of use for Cup #172, or the conditions of use for Cup#2569.

Staff has said there were no complaints about compliance. There have been multiple complaints and little compliance.

1 Drainage has not been totally taken care of. Applicant still has water running onto adjoining property. (no gutters on building #2).

2 Light still shines onto adjoining property to the east.

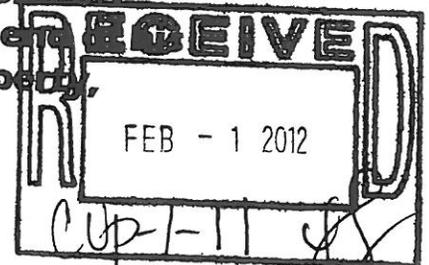
3 Outdoor storage is allowed???

4 Numbers used for traffic are questionable at the least.

As a condition to Cup #2569, Mr. Swett was to comply with all earlier conditions. Ten years later is not a time to re-negotiate these terms or allow extra time to comply. Mr. Swett has shown his total lack of regard to these issues.

1. Mr. Swett continues to allow water to run off onto adjoining properties, yet has made fraudulent claims about or even sued adjoining property owners for his self inflicted water problems

2. Mr. Swett still has a light on the east end facility that shines fully onto my property.



impairing site will backing into the driveway, casting a shadow around my doorway. This has been brought to the staffs attention numerous times and in writing at least twice, letters dated 9/4/05 and 4/26/06.

- 3. The reconsideration decision allows 8 outdoor parking spaces for storage. Mr. Swetts proposals for conditional use permit #2569 are to eliminate outdoor storage and eliminate most outdoor storage from the previously allowed 11 spaces. 8 spaces is not eliminating or eliminating most of these spaces.**
- 4. Mr. Swett's traffic numbers do not take the portable buildings or the outside storage into his numbers for traffic trips.**

This process from day one has been a nuisance with the applicant changing or altering plans during the process and omitting parts of the proposal during the process to which the staff advised me that Mr. Swett would have to comply with his proposals. We have not seen him comply to his proposals or comply with conditions of use.

After 10 years we would like to see conditions to meet all concerns and timelines to comply or revoke all conditional use at this facility.

A handwritten signature in black ink, appearing to read "Jan [unclear] [unclear]", written in a cursive style.

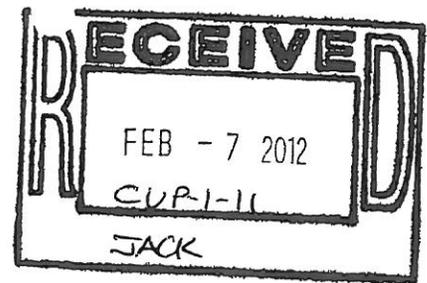
Closed Record Appeal Exhibits

EXHIBIT # 15

Exhibit # 15
To Closed Record Appeal

February 7, 2012

City of Sedro-Woolley
325 Metcalf Street
Sedro-Woolley, WA 98284



RE: Response to Appeal of CUP -1-11

The City has accepted two appeals of the subject CUP. Both of those appeals boil down to the simple fact that that appellants do not like the proposed use, they are disappointed that the Hearing Examiner approved it and they want the City Council to reverse the Hearing Examiner. The Sedro-Woolley Municipal Code 2.90.090 addresses appeals. SWMC 2.90.090 C. includes general information that is applicable to all type of appeals. SWMC 2.90.090 C. 3. describes the required form and content for appeals. It states

“Any appeal shall be filed in writing. The written notice of appeal **shall fully, clearly and thoroughly specify the substantial error(s) in fact or law which exist in the record** of the proceedings from which the appellant seeks relief.” **(emphasis added)**

The appeals filed are in writing but they include no reference at all to the record; they include no indication of the substantial error in fact or law that the Hearing Examiner made in reaching his decision; in fact, there is very little substance within the appeal at all. The appeal restates many of the arguments made at the hearing. Because the appeals do not address the required elements of an appeal they should be dismissed and the Hearing Examiner’s decision upheld.

Both the City Staff in their staff report and the Hearing Examiner’s first decision discuss the complexities of the legal status of medical marijuana. Both indicate that the CUP was not being judged on that facet of the project. The staff report and Hearing Examiner decision indicate that the CUP was to be approved or denied solely upon the criteria for conditional use approval. In his first decision the Hearing Examiner provided a detailed indication of the areas where he believed the application did not comply with the CUP criteria. The applicant timely filed a reconsideration addressing in detail the areas where the Examiner did not believe the project complied with the CUP criteria. The Examiner carefully considered and weighed the applicant’s request, asked for additional clarifying information, and ultimately determined that the project did meet the CUP criteria and reversed his decision.

The appeals that have been filed do not address the Examiner’s Findings, they do not provide a reasoned analysis of how the project does not meet the CUP criteria, and they rely solely upon an emotional argument against medical marijuana—an element that both Staff and the Hearing Examiner indicate is not a factor in the decision.

We would respectfully request that the City Council carefully review the facts of the application and uphold the Hearing Examiner’s Decision to approve the CUP.

Sincerely,

Tom Swett

