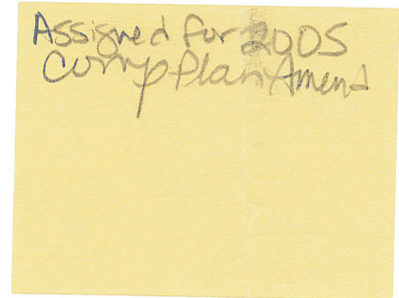


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Walla Walla County, WA

ORD

2005-14106

Page: 1 of 10

11/08/2005 11:00A

ORDINANCE NO. 323

AN ORDINANCE OF THE COMMISSIONERS OF WALLA WALLA COUNTY, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT TO JUSTIFY THE CONTINUED MAINTENANCE OF THE MORATORIUM IMPOSED UNDER ORDINANCE NO. 320, ON THE ACCEPTANCE OF NON-EXEMPT APPLICATIONS FOR CERTAIN PROPERTY LOCATED IN SCOTT CANYON, WHICH MORATORIUM SHALL BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, PURSUANT TO RCW 36.70A.390; AMENDING THE DEFINITION OF NON-EXEMPT APPLICATIONS IN ORDINANCE 320 TO INCLUDE REMODELING THAT RESULTS IN AN INCREASE UP TO 1,000 SQUARE FEET AND TO CHANGE THE AREA SUBJECT TO THE MORATORIUM SO THAT IT ONLY INCLUDES PROPERTY THAT WOULD REQUIRE VEHICULAR ACCESS BY WAY OF SCOTT ROAD.

WHEREAS, on September 12, 2005, the Walla Walla County Commissioners adopted Ordinance No. 320, which declared an emergency necessitating the immediate imposition of a Moratorium on the acceptance of non-exempt applications in the area of Scott Canyon (as shown on a map identified as Attachment A to that Ordinance); and

WHEREAS, RCW 36.70A.390 provides that if the County Commissioners do not hold a public hearing prior to the adoption of a moratorium, the Commissioners shall hold such hearing within sixty days after adoption of the moratorium; and

WHEREAS, the County's SEPA Responsible Official issued a Determination of Non-Significance for the moratorium, which was not appealed; and

WHEREAS, on October 17, 2005, the Commissioners held a public hearing on the Moratorium, and on that date, accepted testimony from all members of the public desiring to be heard on the subject; and

WHEREAS, during the public hearing, the Commissioners heard testimony from property owners in Scott Canyon, who contended that the moratorium should not apply



to property for which there is a vehicle access other than Scott Road, requesting that the Moratorium Property (as identified in Attachment A to Ordinance 320) be changed to reflect the property identified in Exhibit 1 to this Ordinance; and

WHEREAS, during the public hearing, the Commissioners were presented with the issue whether any of the exempt development permits should include permits for expansions of structures that would result in more people living in Scott Canyon, which would place additional demands on Scott Road with additional vehicles, as well as demands for roadway improvements; and

WHEREAS, on November 7, 2005, the Commissioners considered these Findings of Fact, deliberated on the issue whether to maintain the moratorium, and voted to continue the moratorium as described in Ordinance No. 320 with the amendments set forth in this Ordinance; Now, Therefore,

THE COUNTY COMMISSIONERS OF THE COUNTY OF WALLA WALLA,
WASHINGTON, ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the definition in Section 1(B) of Ordinance No. 320 is hereby adopted by reference as if fully set forth herein.

Section 2. The definition in Section 1(A) of Ordinance 320 is hereby amended to read as follows:

1. Administrative interpretations;
2. Sign permits;
3. Street use permits;
4. Permits for interior alterations of a structure with no change in use,
PROVIDED THAT: if the alteration of the structure results in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;
5. Right of way permits;



6. Single family remodeling with no change in use, PROVIDED THAT: if the alteration of the structure results in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;
7. Plumbing permits;
8. Electrical permits;
9. Mechanical permits;
10. Tenant improvement permit, PROVIDED THAT: if the improvements result in the addition of 1,000 square feet or more to the size of the structure, such permit shall not be exempt;
11. Fire code permits;
12. Boundary line adjustments; and
13. Design Review approval.

Notwithstanding the inclusion of any permit in the list above, if any of the above permit applications request any alteration or changes which would also require a critical areas permit or trigger review under the State Environmental Policy Act (SEPA), such application shall not be exempt. In addition, an exempt permit shall include any other development application submitted to the County for the Moratorium Property that is complete on or before the effective date of Ordinance 320.

Section 3. The definition in Section 1(C) of Ordinance 320 is hereby amended to read as follows:

C. "Moratorium Property" shall include the property legally described in Exhibit 1, which is the map attached to this Ordinance ~~Exhibit A, the map attached hereto and which is by this reference made a part hereof, and more commonly described as the property shown in Exhibit A, the map attached hereto and which is by this reference made a part hereof, and more commonly described as the properties, and portions thereof~~ located above the first (seaward) Scott Road streambed ford located in Sections 9, 10 and 15 in Township 7 North, Range 38 East, W.M., that cannot be accessed from another County Road.



Section 4. Adoption of Findings of Fact. As required by RCW 36.70A.390, the County Commissioners hereby adopt the following findings of fact to support the continued imposition of the County's six (6) month moratorium on the acceptance of Non-Exempt Applications.

A. Staff Report. During the public hearing, the County's Community Development Director, Scott Revell, provided testimony as to the following facts:

- 1) Scott Road is a public road that is located about five miles east of Dixie. Scott Road accesses a few dozen properties that are located along Dry Creek. Scott Road crosses Dry Creek in several places via streambed fords.
- 2) Dry Creek contains summer steelhead that were listed as threatened species in 1999 under the federal Endangered Species Act (ESA).
- 3) Endangered fish and/or their eggs can be present in the subsurface gravels of each streambed ford even when the creek appears to be dry.
- 4) Harming a listed fish, its eggs or its habitat can violate the Endangered Species Act. The County has been advised by the National Marine Fisheries Service that the County could share in the liability for violations based on the activities authorized in furtherance of permits issued by the County, including vehicles driving through the stream. As a result, the County's legal consultants have recommended that the moratorium be adopted so that the County may evaluate its options with regard to use, maintenance and repair of the road. In addition, the County desires to evaluate its comprehensive plan and development regulations to ensure that its permitting decisions will not violate the ESA.
- 5) The County has obtained information from the Washington Department of Fish and Wildlife (WFDW) confirming that the sections of Dry Creek that are crossed by the access road to the subject area are located in an area of known distribution of the listed species, and also contains critical habitat for rearing and spawning of threatened species (summer steelhead). This information is contained in the Walla Walla Sub-basin plan and WFDW publication "Assessment of Salmonids and their habitat conditions in the Walla Walla River Basin"; and
- 6) The National Marine Fisheries Service has confirmed this information, and further has advised the County that penalties under the federal endangered species act (ESA) could result if actions associated with the use of the road by County permittees violate the ESA; and



- 7) Scott Road is also the site of road work undertaken by the County Public Works Department in 2003 that may have impacted critical habitat. A component of the remediation efforts negotiated by the National Marine Fisheries Service and the Washington State Department of Fish and Wildlife for the road work included a training program for County employees on work in and around critical areas, and consideration of a development moratorium; and
- 8) Continued increases in traffic use due to development activity is likely as evidenced by recent permit submittals. If the County does not impose a moratorium while it evaluates the situation, additional development permits may be submitted, become vested, and thwart the County's ability to address this problem at this early stage; and
- 9) Scott Road streambed fords are inadequate to handle more traffic due to development, given the fragility of the critical area and environment; and
- 10) The County desired to impose an immediate moratorium on the acceptance of development applications for property located in the Scott Canyon area, in order that the County can determine whether or not development in the Scott Canyon area, as contemplated in the existing Comprehensive Plan and development regulations, is consistent with existing law, specifically the Endangered Species Act, the State Environmental Policy Act and the Growth Management Act; and
- 11) The County will evaluate the Scott Road streambed fords on the North Fork Dry Creek to determine long term options for reducing or eliminating traffic impacts to steelhead critical habitat from existing and/or new development in the area; and
- 12) If the County finds that its existing Comprehensive Plan and development regulations are not consistent with law, the moratorium will be needed to craft and adopt new Comprehensive Plan and development regulations.

B. Testimony from the Public: 9 members of the public testified.

1. James Paradise, 14 E. Main Street, Walla Walla, WA., real estate representative for Ed and Mary Kohler. Mr. Paradise stated that his client plans to build a retirement home and that the property can be accessed via Lewis Peak Road without using Scott Road. He does not believe that it is in the public interest to impose a moratorium.

2. Ardell Ainsworth, 5883 Lewis Peak Road, Dixie, WA. Ms. Ainsworth asked the County Commissioners to consider the fact that the hillside was unstable between Lewis Peak Road downhill toward Scott Road and Dry Creek.

3. Raymond Nilson, 671 Scott Road, Dixie, WA stated that he would like to remodel an existing home on his property in the moratorium area and that he can access his home without using a Scott Road stream ford.



4. Mike Berglund, 720 E. Fremont Dayton, WA stated that he owns the property at 1442 Scott Road which has an existing dwelling. He further stated that he would like to obtain a critical areas permit in order to construct a footbridge because he can only access his dwelling by driving or wading through Dry Creek from Scott Road. He further stated that he has investigated the permitting process to obtain an Hydraulic Project Action permit from the State Department of Fish and Wildlife and has been informed by the state agency staff that such a permit could be issued. He also stated that the construction of a footbridge over Dry Creek would not result in any additional usage of his property and would reduce vehicle trips through Dry Creek.

5. Mike Birge, 1704 Road 44, Pasco, WA 99301 stated that he owns property in the moratorium and that he is unable to sell his property because prospective buyers are not able to obtain a permit to build a home on it.

6. Stacy Bjordahl, 422 W. Riverside, Spokane, WA attorney for Mike Birge. Ms. Bjordahl submitted a letter articulating her client's position and summarized his position that the moratorium was improper and would result in an unconstitutional taking.

7. Cricket Cordova, 519 Stone Street. Ms. Cordova explained that she owns property outside of the moratorium area in Section 4 and 9 of Township 9 North that can be access from Seaman Road.

8. Jack Early, Box 2131 Richland, WA 99352. Mr. Early explained that he owns land above the 6th stream crossing.

9. Nathaniel Farnham, 729 Scott Road, Dixie WA 99329. Mr. Farnham explained that he concurred with Mr. Nilson's testimony.

C. Deliberations by Commissioners. Commissioner Tompkins stated that the County was working to find equitable solutions for the affected property owners that did not burden the taxpayers of the County.

D. Need to Preserve the Status Quo. Walla Walla County Watershed Planning Director Cathy Schaeffer explained that a moratorium was needed to preserve the status quo with regard to development in Scott Canyon. If the County did not impose a



moratorium and study the problem, the County might violate the ESA, resulting in enforcement action from the federal government.

E. Moratorium to be Maintained for Six Months. In light of the above, the Commissioners desire to maintain the moratorium imposed by Ordinance No. 320 for a period of six months. This moratorium shall apply to all non-exempt applications for property within the area defined as the Moratorium Property. F. Duration of Moratorium. The moratorium imposed by Ordinance 320 commenced on the effective date of that Ordinance. The moratorium shall terminate six months thereafter. The Commissioners shall make the decision to terminate by ordinance and termination shall not otherwise be presumed to have occurred.

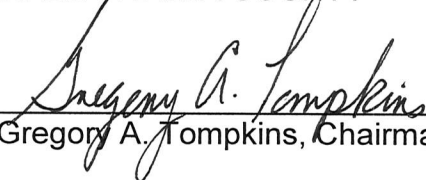
Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Publication. This Ordinance will be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force immediately.

PASSED by the Walla Walla County Commissioners on this 7th day of November, 2005.

WALLA WALLA COUNTY

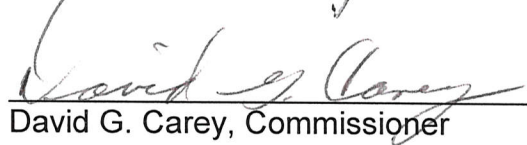


Gregory A. Tompkins, Chairman






Gregg C. Loney, Commissioner


David G. Carey, Commissioner

ATTEST/AUTHENTICATED:

By: 
Connie R. Vinti, Clerk of the Board

APPROVED AS TO FORM:

By: 
COUNTY PROSECUTING ATTORNEY



