

RECORD OF THE PROCEEDINGS  
SKAGIT COUNTY BOARD OF COMMISSIONERS

Wednesday, June 28, 1989

10:00 a.m. Continuation - Consideration of Barbara H. Spaeth Appeal of Hearing Examiner's Decision Regarding Residence of Mr. Eric Ericsson.

The Skagit County Board of Commissioners met in regular session on Wednesday, June 28, 1989, with Commissioners Dave Rohrer and W. W. Vaux present. Commissioner Wylie's absence was excused.

CONTINUATION - CONSIDERATION OF BARBARA H. SPAETH APPEAL OF HEARING EXAMINER'S DECISION REGARDING RESIDENCE OF MR. ERIC ERICSSON.

Commissioner Vaux explained that on the advice of the County's attorney, a site visit, which was decided upon at the previous meeting, was canceled. He stated that new evidence such as a site visit is inadmissible unless a public hearing has been called.

Commissioner Vaux opened the discussion by advising Mrs. Spaeth of her option to postpone the discussion to another date, at which time all three commissioners could be present. He explained to her that, should a vote occur that resulted in a divided decision, the decision of the Hearing Examiner in this matter would stand.

Mrs. Spaeth chose to proceed, again requesting that the Board call for their own public hearing to receive testimony on the matter.

Betsy Stevenson then briefly reviewed the history of the Ericsson property, stating that in 1984, the Shoreline Administrator visited the Ericsson property to determine the set-back for a new residence to be erected on the property. The following month, Mr. Ericsson applied for and was issued a building permit for his residence. In August of 1986, Mr. Ericsson's residence passed a final inspection. In November of 1986, a complaint was received regarding the existence of two residences on the property, violation of allowable set back, and activity on the beach without permits. This was investigated and, after removal of kitchen facilities at a guest house cabin located on the property, Mr. Ericsson was considered to be in accordance with all requirements. A subsequent complaint regarding shoreline setback distance was also investigated, and again Mr. Ericsson was found to be in compliance. Ms. Stevenson read from the Shorelines Master Plan the definition of the Ordinary High Water Mark.

Dave Hough, Senior Planner, stated that there are two items at issue in Mrs. Spaeth's appeal; first, that the residence is placed too close to the Ordinary High Water Mark (OHWM), violating shoreline setback requirements, and second, that the guest cabin on the property constitutes a second residence. Mr. Hough stated that the County Ordinances provide for a guest house on the property with a primary residence, as long as the guest house has no kitchen facilities. He stated that the guest cabin on the Ericsson property was originally an old auction shed, has no foundation, has had minimal

improvement, and was determined by the Planning and Community Development Department to be unusable as a second residence.

Ms. Stevenson stated that an Administrative Appeal was then filed with the Skagit County Hearing Examiner and a public hearing held to consider the appeal. The Hearing Examiner upheld the decision of the Shoreline Administrator following that public hearing, and Ms. Stevenson read from his official decision. An appeal of the Hearing Examiner's decision was then received from Mrs. Spaeth for consideration by the Board of Skagit County Commissioners.

Mr. Ericsson was then given an opportunity to speak. He introduced his daughter, his wife, and a neighbor, Isabel Griggs. He stated that Mrs. Spaeth's appeal was actually late in filing, but was allowed by the Hearing Examiner because of the illness of Mrs. Spaeth's husband. Mr. Ericsson quoted from a letter of November 11, 1988, in which Mrs. Spaeth requested a postponement of a public hearing scheduled for November 15, 1989, in order to development evidence to support her appeal. Her letter states her intent to obtain an independent survey of the Ericsson property, and says that if that survey supports the finding of the Planning Department, a public hearing shall no longer be necessary. Mr. Ericsson then stated that Mrs. Spaeth contracted with a Darrell Sorenson for a survey of his property, with findings of Mr. Ericsson's home being 42 feet, 49 feet and 56 feet from the OHWM. Mr. Ericsson maintained that Mrs. Spaeth's own contractor found in favor of the Planning Department on two of three measurements. Mr. Ericsson referred to a statement in the Hearing Examiner's letter of response to the appeal in which Mr. Scofield states that Mrs. Spaeth's own evidence given by the surveyor supports Mr. Ericsson's claim. Mr. Ericsson stated that the burden of proof lies on Mrs. Spaeth and, having failed to produce that proof, she should be given the opportunity to withdraw her appeal. However, if she does not wish to do so, then the Board should uphold the decision of the Hearing Examiner.

Mrs. Spaeth was then given an opportunity to respond. She requested that Ms. Stevenson once again read the definition of the OHWM from the Shorelines Master Management Plan, which was done. She stated that her surveyor had reported one finding of 42 feet, which supports her claim. She stated that her view is partially blocked by Mr. Ericsson's construction. She stated that the guest cabin is indeed a residence, as it was inhabited at one time by a Steven Dunthorne. Mrs. Spaeth related that a wetland pond separates her residence from that of Mr. Ericsson, and that if the house had been built an additional 8 feet back from the OHWM, the home would have then been too close to the wetland area. Mrs. Spaeth maintained that her surveyor's finding of 42 feet is absolute proof of violation of the Shoreline Master Management Plan. She asked to submit aerial photos of the site for the Board's review; however, these were rejected, as they were not part of the Hearing Examiner's file, and therefore are inadmissible as evidence in an appeal.

Isabel Griggs, a neighbor to the Ericsson property, stated that she also has a log cabin guest house on her beach. She refuted Mrs. Spaeth's claims that Steven Dunthorne had once lived in the Ericsson cabin, and stated that the cabin was used solely as a summer house. She stated that she is unable to live in her guest house during the winter, and knows it is impossible to live

in the Ericsson guest cabin during the winter, as water stands in the kitchen at that time.

Mr. Ericsson added that Steven Dunthorne's parent's home was located quite close to the Ericsson cabin, allowing him to stay there during inclement weather.

When questioned by the Board, Ms. Stevenson stated that in her professional opinion, the setback requirements have been met on the Ericsson property.

Mr. Ericsson located pictures of the site that were part of the Hearing Examiner's file, which was confirmed by Mr. Hough, and these were allowed to be introduced to the Board.

Mrs. Spaeth and Mr. Ericsson then had discussion on the location of the OHWM; Mrs. Spaeth maintaining that the OHWM is located at the level of the change in vegetation, and Mr. Ericsson stating that since the change in vegetation is affected by the change in seasons, a second accepted method of determining the OHWM, by mean high tide, should be employed. He stated that Mrs. Spaeth's surveyor obtained a measurement of 56 feet when using this method. Mrs. Spaeth maintained that the other houses on the beach use the change in vegetation as the OHWM determiner, and that the Ericsson home is located closer to the water than any other house on the beach.

Commissioner Vaux then noted that the same unanswered questions still remain from the time when a site visit was first considered. He motioned to call for a public hearing at the site of the Ericsson property at Seaway Hollow on Tuesday, July 18, 1989, at 3:00 p.m., to examine the property and receive testimony on the matter. Chairman Rohrer seconded the motion. The motion carried and was so ordered.

#### MISCELLANEOUS ITEMS.

- A. A resolution approved by the Prosecuting Attorney's Office was submitted, calling for a public hearing to consider changes to the "Dangerous Dog" ordinance after one year of enforcement proceedings.

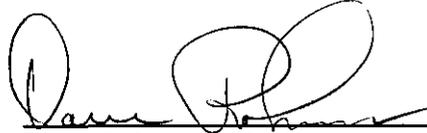
Commissioner Vaux motioned to adopt the resolution calling for a public hearing on Tuesday, July 18, 1989, at 10:00 a.m., to consider amendments to Chapter 7.06 of the Skagit County Code pertaining to "Dangerous Dogs". Chairman Rohrer seconded the motion. The motion carried and was so ordered. (Resolution #12109)

- B. The Board approved for signature a Quit Claim Deed for property earlier quit claimed to Gary L. Steiger. This Deed adds the verbiage "Plat of Bessemer" to the legal description of the property, which clarifies the description of the property recorded under Auditor's file #8903170004.

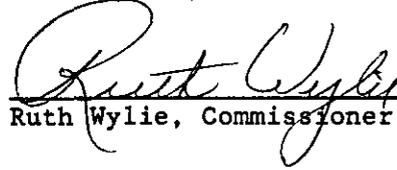
ADJOURNMENT

Commissioner Vaux motioned to adjourn the proceedings. Chairman Rohrer seconded the motion. The motion carried and was so ordered.

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON



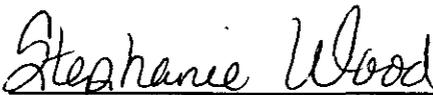
Dave Rohrer, Chairman



Ruth Wylie, Commissioner

W. W. Vaux, Commissioner

ATTEST:



Stephanie Wood, Clerk  
Skagit County Board of Commissioners