

RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS

Monday, February 12, 1990

9:00 a.m. Board of Health:

- 1) Request of Ray Wibbens to Allow Disposal of Existing Sheetrock on His 5-Acre Parcel at 405 Friday Creek Road.

10:00 a.m. 1) Signature - Agreement in Principle for Settlement of Operation and Construction Claims, Skagit County Resource Recovery Facility.

10:30 a.m. Public Works Department - Mark Spahr, Director:

- 1) Public Hearing - Vacation of Unnamed Alleyway in Plat of Alger.
- 2) Signature - Establish One-Way Traffic on Entner Lane #1393.
- 3) Signature - Petition for Tree Removal.
- 4) Discussion - Rock Quarries.
- 5) Discussion - Utility Permit Fees.
- 6) Miscellaneous.

MISCELLANEOUS ITEMS.

1:30 p.m. Public Hearing - Lowell Engberg Appeal of Hearing Examiner's Decision Regarding Shoreline Application #12-89.

MISCELLANEOUS ITEMS.

3:30 p.m. Executive Session - Litigation and Personnel.

The Skagit County Board of Commissioners met in regular session on Monday, February 12, 1990, with Commissioners Ruth Wylie, W. W. Vaux and Dave Rohrer present.

BOARD OF HEALTH:

- 1) Request of Ray Wibbens to Allow Disposal of Existing Sheetrock on His 5-Acre Parcel at 405 Friday Creek Road.

Prior to the arrival of Mike Lewis, representative of Mr. Wibbens, and John Moffat, Skagit County Chief Civil Deputy, Judith Meadows, Environmental Health Specialist, gave a slide presentation of approximately 15 slides of the Wibbens property at 405 Friday Creek Road. The slides, along with a site drawing done by Ms. Meadows, showed the location of a large sheetrock dump adjacent to a large shop building with living facilities attached. Via the site drawing, Ms. Meadows demonstrated the drainage of water from the area of the dump into nearby Friday Creek.

Ms. Meadows briefly explained that, as a result of information and complaints, an illegal sheetrock dump was located on the Wibbens property both on an air overflight and a ground visit.

Ms. Meadows explained that Mr. Wibbens, although claiming to have been filling the dump for approximately 3 to 4 years, may have been filling the dump for 7 or more years, as the shop building, which he claims is build atop a portion of the dump, is shown in an Assessor's Office topographical map, circa 1983.

Other slides of the dump showed metal and wood waste mixed with the sheetrock. Ms. Meadows estimated that the dump consists of about 80% sheetrock and 20% other wastes. One slide showed the proximity of the dump to a neighbor's house.

Slides of a ravine behind the shop and living quarters show sheetrock and other items, such as an old bed, a bathtub and a shopping cart, dumped into the ravine. Ms. Meadows noted that the ravine drains into Friday Creek via a culvert constructed under nearby Old Highway 99.

Ms. Meadows noted that Mr. Wibbens claims to be layering the sheetrock and debris with gravel.

At this point, Mr. Lewis, Mr. Wibbens' attorney, and John Moffat arrived and were briefed on the slide presentation. Mr. Lewis was allowed to view all of the slides.

John Thayer, Environmental Health Supervisor, informed the Board that complaints were received as early as August of 1989 on the sheetrock dump. After the site had been identified and confirmed by a ground visit, a solid waste violation was issued on December 6, 1989, for maintaining an illegal sheetrock dump. Mr. Lewis subsequently appealed the imposition of a fine associated with the violation. Mr. Thayer explained that he, Mr. Lewis, and Mr. Moffat met to discuss the violation on February 5, 1990. At that time Mr. Thayer explained to Mr. Lewis that no fine had as yet been levied.

Investigation subsequent to the discovery of the violation has revealed that the sheetrock dump has no Health Department operating permit, has no SEPA review or Environmental Checklist, as required by the Planning Department, and is in violation of Department of Ecology (DOE) standards as well.

The Solid Waste Violation orders the removal of all materials from the site. The dangers of sheetrock are documented in a letter from DOE's Solid and Hazardous Waste Program, which had been previously provided to the Board.

Mr. Thayer indicated that the concerns of the Health Department about the Wibben's property are that it is an illegal, unlicensed site; that it may cause well contamination on the Wibbens or adjacent property; that it contaminates surface water draining into Friday Creek; and that allowances for the dump to remain at its current location would set a precedent for any other illegal dumps identified in Skagit County.

Mike Lewis, attorney for Mr. Wibbens, remarked that he came away from the February 5th meeting with County officials with the feeling that there would be no compromise in the removal of the sheetrock. He made the following points he felt were in favor of his client:

- Mr. Wibbens is a licensed sheetrock hauler. Mr. Wibbens intends to produce his license as proof. He delivers new sheetrock to job sites and removes old sheetrock to the dump located on his property.
- Although Mr. Wibbens did not check with the County when he established his dump, he did speak with sources in the sheetrock industry, who indicated that sheetrock was not a contaminant.
- The sheetrock is being dumped on Mr. Wibbens' personal property, relative to his own personal purposes.

At this point Commissioner Vaux wondered whether Mr. Lewis meant that Mr. Wibbens had not allowed other contractors to dump sheetrock at the site on 405 Friday Creek Road. Mr. Lewis replied that he was unsure whether this had occurred or not, but that most probably Mr. Wibbens had allowed other contractors to dump sheetrock there.

- Mr. Lewis noted that sheetrock is not environmentally hazardous unless it is mixed with water and organic wastes. If this occurs, hydrogen sulfide gas is produced, which is notable for its strong odor of rotten eggs. Mr. Lewis challenged that no odor is detectable at the Wibbens property.
- Domtar Gypsum, a sheetrock manufacturer, produced a bulletin in March of 1989 that makes claims that, in its granulated form, their product is recyclable. (Industry data had previously been provided to the Board by the Health Department)
- Mr. Lewis described the amount of sheetrock located on the Wibbens property as a "substantial" and a "tremendous" amount. He stated that Mr. Wibbens' preliminary information estimates the cost to remove the debris at \$30,000 to \$40,000.

Mr. Lewis invited the Board to view the Wibbens property to note the absence of the hydrogen sulfide gas odor, and to obtain testimony from industry sources on the dangers of sheetrock. He apologized for the absence of his client, stating that it must have been the result of a mix up between himself and his client. Mr. Lewis stated that Mr. Wibbens is willing to cap off the existing dump, or to become licensed as a sheetrock dump. Mr. Wibbens is willing to do anything short of removal of the material.

Mr. Thayer referred the Board to a January 25, 1990, letter from Lisa Greeley of the Contractor Registration Section of the Department of Labor and Industries. Ms. Greeley indicates that no sheetrock contractor's license currently exists for Raymond Wibbens.

Collin Stevenson, DOE Solid Waste Unit Supervisor, gave information on the DOE's position regarding this matter. He stated that based on the Washington Administrative Codes (WAC's), this is an illegal dump. He stated that the single family exemptions cited by Mr. Lewis for dumping on personal property clearly do not apply to this dump, as the exemption allows disposal of a family's own waste only.

Regarding the health threat posed by sheetrock dumping, Mr. Stevenson reported that the DOE's position is that acidic leachate and hydrogen sulfide are produced in anaerobic conditions in sheetrock dumps. The noxious odor caused by hydrogen sulfide gas might not be noticeable on the surface of a sheetrock dump, but would be present down under the surface.

Mr. Stevenson agreed that gypsum may have a beneficial use in agriculture. It is estimated that 40 to 50 pounds applied in granulated form over a 1,000 square foot area per year may be beneficial; however, the Wibbens dump is obviously a much higher concentration.

Mr. Stevenson pointed out that the typical costs for permitting and operating a landfill are close to \$500,000; therefore, the \$30,000 to \$40,000 would be much cheaper to haul the material away.

Mr. Stevenson gave his background as that of a chemical engineer. He stated that he has performed air quality and water quality work, as well as work in the hazardous waste sector. He stated that he has a strong chemical background.

Discussion ensued on the possibility of performing groundwater testing on the Wibbens property. Mr. Stevenson noted that if no contamination is found at this time, it doesn't mean there is none, or that it might not occur in the future. Installation of a well for testing would be a reliable way of testing for contamination. Mr. Stevenson said that although capping off of the landfill would stop direct rainfall onto the material, leachate would still endanger the surrounding area.

Ms. Meadows pointed out that, regarding Mr. Wibbens alleged sheetrock license, a licensed contractor would be required to carry a bond and apparently Mr. Wibbens has none. He also has no building permit for the present shop/living quarters.

Mr. Lewis indicated that the Whatcom County Health Department took water samples from the Wibbens property. Although Mr. Lewis confessed that he has not seen the results, Mr. Wibbens indicates that there is no appreciable difference between the upstream water and downstream water.

At this time, Commissioner Vaux motioned to conduct a site visit of the Wibbens property on Friday, February 23, 1990, at 9:00 a.m. A subsequent time of 9:00 a.m. on February 26 was reserved on the Board's agenda for further discussion. Commissioner Rohrer seconded the motion, which passed unanimously.

SIGNATURE - AGREEMENT IN PRINCIPLE FOR SETTLEMENT OF OPERATION AND CONSTRUCTION CLAIMS, SKAGIT COUNTY RESOURCE RECOVERY FACILITY.

Mark Spahr, Public Works Department Director, gave a synopsis of the negotiations with the Wright Schuchart Harbor Company (WSH) regarding their construction claims for the Skagit County Resource Recovery Facility. He stated that the original claim book of WSH for additional operation and construction claims against Skagit County indicates an amount owed of \$750,000. These claims were first submitted in May of 1989. The claim book back to WSH from Skagit County listing the amount the County felt was owed to them by WSH showed that the two sides were approximately \$850,000 apart. It was the opinion of the Public Works Department that if these differences were not resolved, litigation would ensue. It was also felt that time and efforts of the County and its staff would be better spent on more positive

environmental issues rather than the litigation of claims, which prompted staff to focus on the expedient settlement of the claims.

Mr. Spahr then presented an agreement which is the result of those negotiations to the Board with a recommendation to adopt the agreement. The agreement set forth the following points:

- 1) On April 20, 1990, WSH will give to Skagit County the operation of the Resource Recovery Facility, transferring all equipment and tools to the ownership of the County.
- 2) WSH will be released from all obligations.
- 3) WSH will forego all additional operating costs.
- 4) WSH will forego all construction claims.
- 5) It will be agreed that the facility has achieved all applicable guarantees.
- 6) The County agrees to employ as many of the current operating staff as possible for an interim period of approximately two months.
- 7) An independent third party engineer will evaluate the facility and normal wear and tear will be attributed to the County. Repairs over and above normal wear and tear will be paid for by WSH.
- 8) Schedule K rates will be adjusted retroactive to December 1, 1989.

Mr. Spahr stated that the net effect will be that a change order will be prepared to change Schedule K rates, the 20 year operating contract with WSH will be done away with, and three to four pieces of operating equipment will be transferred to the County.

Mr. Spahr stated that he believes the County can do a better job of running the incinerator, achieving maximum energy output during the period of time when the garbage is wet or frozen by instituting local controls.

Mr. Spahr stated that R.W. Beck has been chosen as the independent review contractor, and the costs of an audit of the facility will be split between the County and WSH.

Commissioner Vaux pointed out the need for the agreement to address accounts receivable for operating costs incurred up to the point of transfer. He felt WSH should be obligated to pay these costs. Mr. Spahr agreed that this should be added to the agreement.

Don Bockelman read his response to the news release made by the Public Works Department.

Helen Day, a concerned citizen, asked questions regarding the expertise of the County's current consultant, and the use of the Intalia Grappler.

In answer to these two citizens' questions, Mr. Spahr stated tht the plan has met all 12 guarantees requested by the County. It consistently meets 10 to 11 of these guarantees, and fails to meet power generation thresholds only during the time when wet garbage is burned, approximately 3 to 4 months of the year. Regarding metal separation, 80% is required and the plant achieves 74% virtually all of the time.

Mr. Bockelman stated that the facility is not and never will be capable of achieving the weight reduction required by the contract. He felt the costs of substandard weight reduction would be foisted on the taxpayer for the next 20 years.

Mr. Spahr argued that if the metal separators could be used as they were intended by WSH, 80% reduction could be achieved; however, it is the County's choice to operate the balers in a different manner because of the dusting they cause, resulting in reduced weight reduction.

The discussion was terminated at this point and the Board approved the agreement for signature, with the change suggested by Commissioner Vaux.

PUBLIC WORKS DEPARTMENT - MARK SPAHR, DIRECTOR:

1) **Public Hearing - Vacation of Unnamed Alleyway in Plat of Alger.**

Chairman Wylie waived the reading of the Notice of Public Hearing, as published in The Skagit Argus on January 23 and 30, 1990.

Mr. Spahr located the unnamed alleyway in Block 3, adjacent to lot 7, in the Plat of Alger on a vicinity map. He stated that adjacent property owners have requested the vacation. He stated that at an assessed value of \$168.00 and including the hearing cost, the right-of-way of 140 feet by 20 feet is worth a total of \$236.58, which would be split between the adjacent property owners.

Seeing no public comment, Commissioner Vaux motioned to close the public hearing, which was seconded by Commissioner Rohrer. The motion passed unanimously.

Commissioner Vaux motioned to accept the recommendation of the Public Works Department and grant the vacation of the alleyway in Block 3 of the Plat of Alger. Commissioner Rohrer seconded the motion, which passed unanimously.

2) **Signature - Establish One-Way Traffic on Entner Lane #1393.**

In accordance with action previously taken, the Board approved for signature the resolution establishing one-way traffic on Entner Lane. (Resolution #12382)

3) **Signature - Petition for Tree Removal.**

Jeff Monsen, Assistant Director of the Public Works Department, stated that upon further review of the petition by Mr. Gary VanLuven for removal of 8 trees on County right-of-way known as 10th Street in Anacortes, it was discovered that the location of the utilities was requested by County forces. Therefore, Mr. Monsen recommended the approval of the petition.

The Board concurred and the petition was signed.

4) Discussion - Rock Quarries.

Mr. Spahr stated that a need has been identified for a replacement for the County's rock quarry located on Duke's Hill in Sedro Woolley. He stated that two years of remaining life expectancy is estimated at the Duke's Hill site. He stated that it will take 12 to 14 months to identify and open and a replacement quarry.

Mr. Spahr reviewed the recommendations of a geotechnical engineer for replacement quarries in Skagit County. He stated that the best site location on the Northern State property will be out of the question because of several complicating factors. Two to three other sites are being reviewed, and will be further discussed with the Board during executive sessions.

Mr. Spahr reviewed the steps necessary to establish a new rock quarry.

5) Discussion - Utility Permit Fees.

Mr. Spahr stated that he and Mr. Monsen have been looking at services provided by the department that could potentially be supported by permit fees. He stated that utility permits are issued at no cost to contractors, and involve varying amounts of staff time for processing and inspection. He recommended that a variable fee schedule be explored for recouping some of the costs of providing the permits, which require a full time inspection person and a 1/2 time processing person. Mr. Spahr indicated that utility permit fees range from very simple problems to very complex ones, such as the Rockport water system permit or the gasoline being installed on Fidalgo Island.

Mr. Monsen stated that if an average of \$65 to \$80 per permit could be charged, it would provide funding for one new person for that portion of the Public Works Department. He suggested possibly \$25 to \$250 as a starting point for discussions. Mr. Monsen requested direction from the Board prior to proceeding with the proposal.

Mr. Spahr stated that other permit review such as access, inspection and addressing will be addressed later.

Commissioner Rohrer indicated his wish that the public not be charged for routine services. Chairman Wylie stated she would rather not charge for addressing.

The Board discussed the addition of new staff for utilities permits and the Board requested that alternatives to new staff be presented at a later meeting.

The Board directed that Mr. Monsen return in two weeks with a proposal for a fee schedule, and that at that time a public hearing be set to consider the proposal.

6) Miscellaneous.

There were no miscellaneous items from the Public Works Department at this time.

MISCELLANEOUS ITEMS.

- A. The Board approved for signature the plat maps of the Cascade Ridge development.

PUBLIC HEARING - LOWELL ENGBERG APPEAL OF HEARING EXAMINER'S DECISION REGARDING SHORELINE APPLICATION #12-89.

The public hearing convened in the Commissioners' Hearing Room. Chairman Wylie waived the reading of the Notice of Public Hearing, as published in The Skagit Argus and in The Skagit Valley Herald on January 30 and February 6, 1990. Chairman Wylie adjourned the meeting to the site.

Present at the site were Bill and Brock Stiles, attorneys for Mr. Engberg; Mr. Engberg; Fred Warberg; Betsy Stevenson, Assistant Director, Planning Department; and Oscar Graham, Associate Planner.

The Board viewed the Engberg property at the site of the fill and road construction work. They also viewed the neighboring property, which was filled much like the Engberg property.

Arguments from the Stiles' revolved around Mr. Graham's alleged misleading of the applicant regarding the need for permits. Mr. Graham maintained that the project, when he first saw it in October of 1988, involved simple brush cutting and dock construction, which he felt was a good recreational use of the property. Although the dock was being constructed without the benefit of permits, it was later exempted in an effort to work out Mr. Engberg's permitting difficulties.

The public hearing reconvened at the Commissioners' Hearing Room.

Bill Stiles spoke first. He went over the information he had previously given at other meetings regarding the steps leading up to the present appeal. He stated that Mr. Engberg felt he would not need a permit if he confined his construction to 200 feet back from the OHWM. He was unaware that his work constituted a landfill or was on wetlands. Mr. Engberg's violation of the stop work orders was a product of miscommunication between himself and Mr. Engberg. He inferred that Mr. Engberg was innocent of any misdeed based on his ignorance of the illegality of his actions. He felt that Mr. Engberg was held up an inordinate amount of time while waiting to be scheduled for a public hearing by the Hearing Examiner. Since he was given to understand there would be no problem in obtaining the proper permits, Mr. Engberg went ahead with the construction. He again stated that Mr. Engberg is willing to remove the fingers of his road, but would leave the parking area as is.

Brock Stiles reviewed the zoning of the Engberg property. He repeated his arguments regarding the lack of documentation that the Engberg property is in a natural wetland. He went over, point by point, the application of the Shoreline Master Management Plan to the Engberg property. He insisted that the project complies with all provisions of the SMMP. He felt that Mr.

Engberg should be allowed to keep all present construction as it currently stands with the exception of the fingers of the road.

Gene Willet of the Prosecuting Attorney's Office addressed the two criminal citations issued to Mr. Engberg by the Department of Natural Resources and the Department of Game for violation of a stop work order. He stated that the case is pending.

Bill Stiles presented a sign stating "TRAILERS AND CAMPERS". He stated that a friend who was staying on the Engberg property installed the sign as a joke, and that after the sign was up, members of the Planning Department suddenly adopted the notion that Mr. Engberg was trying to develop a commercial campgrounds, and stepped up their efforts to block Mr. Engberg's construction.

Oscar Graham then gave his statement. He reaffirmed the information given in his Staff Report and made the following observations:

- Confusion centers around the initial site visit of October, 1988. At the time of that visit, Mr. Engberg said he had no plans to develop the property except for some brush clearing and dock construction.
- The OHWM was identified for the purpose of the Forest Practices Act and Mr. Graham's identification of it is supported in a letter from the DOE which cites recent case law. Mr. Graham wished to be conservative in his identification of the OHWM to avoid future construction problems.
- It should be noted that throughout the Staff Report when reference is made to wetlands and when fines are assessed and fill removal addressed, it is always noted that the actions are contingent upon the identification of the alleged wetlands by the DOE.

Betsy Stevenson noted that the Hearing Examiner did allow Mr. Engberg a permit to establish fill at any portion of his property outside the wetlands, as designated by DOE.

Mr. Stiles submitted his revised comments to the Staff Report.

Andrea Xaver, a DNR employee, represented previous testimony given by Jeff Gillard of the DNR. She stated that Mr. Gillard wished to convey his concerns for stream protection and filling of wetlands on the Engberg property. Mr. Gillard felt that the cutting of trees and introduction of fill in close proximity to the stream was endangering the fish bearing stream, and that use of brush and logs to bridge the wetlands was endangering the wetlands.

As a property owner in the Big Lake area, Ms. Xaver noted that in the conference notes of Mr. Gillard, signed by Mr. Engberg and his counsel, he commands that Mr. Engberg apply for a Forest Practices Application by October 28, 1988. An application was actually not made until February of 1989. Also on the official notes, Mr. Engberg was noted to make the statement that he would not be using any fill.

Ms. Xaver submitted photos of areas around Big Lake where, she stated, water may develop new areas for natural catch basins if existing wetlands continue to be filled.

Bill Stiles stated that Mr. Engberg did not submit a Forest Practices Application in October because the weather was too bad to work.

Art Stendal of the Department of Wildlife was questioned. He stated that Mr. Engberg might have received the proper permits for diversion of the stream on his property, had he gone through the proper application process.

Seeing no further public testimony, Commissioner Rohrer motioned to close the public hearing. Commissioner Vaux seconded the motion, which passed unanimously. February 13, 1990, at 9:30 a.m., was set for deliberation on the appeal.

MISCELLANEOUS ITEMS.

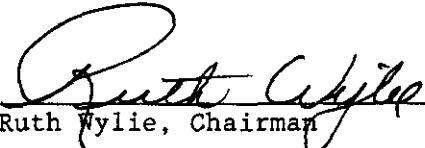
No time remained for Miscellaneous Items.

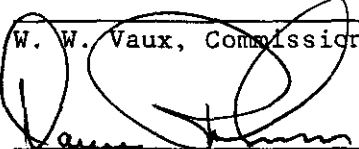
ADJOURNMENT

Commissioner Vaux motioned to adjourn the proceedings. Commissioner Rohrer seconded the motion. The motion was carried unanimously.

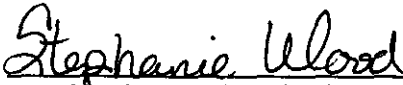
BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON




Ruth Wylie, Chairman

W. W. Vaux, Commissioner

Dave Rohrer, Commissioner

ATTEST:


Stephanie Wood, Clerk
Skagit County Board of Commissioners