

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS**

Monday, February 26, 1990

9:30 a.m. Board of Health:

- 1) Administrative Appeal - Ray Wibbens Solid Waste Violation of December 6, 1989.

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

- 1) Public Hearing - Farmhouse Inn Sewerline Franchise.
- 2) Call for Public Hearing - Speed Limit Reduction on a Portion of Snee-Oosh Road.
- 3) Discussion - Spring Clean-Up.
- 4) Discussion - Intersection of Chilberg Road #4220 and Best Road #4401.
- 5) Discussion - Proposed WSDOT Projects.
- 6) Miscellaneous.

MISCELLANEOUS ITEMS.

1:30 p.m. Continuation - Public Hearing - Additions and Amendments to Skagit County Code's Solid Waste Ordinance, Chapter 12.16, Regarding the Prohibition of Importation of Waste Generated Outside Skagit County.

The Skagit County Board of Commissioners met in regular session on Monday, February 26, 1990, with Commissioners Ruth Wylie, W. W. Vaux and Dave Rohrer present.

BOARD OF HEALTH:

- 1) **Administrative Appeal - Ray Wibbens Solid Waste Violation of December 6, 1989.**

Mike Lewis, attorney for Mr. Wibbens, was given the first opportunity to speak. He presented the Board with a packet containing the following:

- a Registration Certificate with the State Department of Revenue for Raymond R. and Judith L. Wibbens of Ricks Stocking, 405 Friday Creek Road.
- A Tax Identification Number for Raymond R. Wibbens of Rick's Stocking, 405 Friday Creek Road.
- An estimate of \$1,482.00 from Fritz Tractor of Sedro Woolley for 300 feet of polypipe, 60 yards of 1-1/2" drain rock and 10 hours of backhoe labor to cap off the Wibbens open dump site.
- An estimate of \$68,627.14 from Larry's Dozing and Skagit Enterprises of Bow for removal of 4,000 tons of sheet rock and debris from the Wibbens property.
- Product data sheets from Domtar Gypsum on "Domtar AG II Agricultural Soil Conditioner".

Mr. Lewis stated that as a result of the Notice of Solid Waste Violation, Mr. Wibbens has discontinued sheetrock dumping activity on his property. He stated that Mr. Wibbens is prepared to cap the open dump area and perform periodic monitoring.

Mr. Lewis referred to Skagit County Code 12.16.340 and 12.16.350, which provides 18 months for old, non-conforming dump sites to be brought up to standard before action will be taken by the Health Department. He stated that the standards for these old dumps required simply compacting, covering and reseeding.

Mr. Lewis admitted that Mr. Wibbens could not afford to properly license the dump at this time.

Mr. Lewis conceded that Mr. Wibbens has admitted that he does not have a sheetrock haulers permit, but that he used to be permitted, and has allowed his license to lapse.

Mr. Lewis introduced Jim Moe, who he stated would give information on old sheetrock dumps which have been allowed to be capped off instead of excavated. He reasoned that the Board would want to be consistent and allow Mr. Wibbens to do the same. He indicated that there is evidence that injecting the soil with lyme can counteract the effects of sheetrock on the soil.

Mr. Lewis produced the test results of water samples referred to at previous meetings, which were taken by Mr. Wibbens from sites above and below the Wibbens property and tested at the Whatcom County Health Department. Although unable to interpret the results, Mr. Wibbens stated that he has been told that there is no appreciable difference between the two samples. He stated that he understands that the County's own test results, which were gathered at the same places Mr. Wibbens gathered his, show only a slight increase in sulfates, but are still within acceptable limits. The acidity of the water tested as normal.

Finally, Mr. Lewis maintained that Mr. Wibbens will be severely financially impacted if he is made to remove the illegal sheetrock material.

Mark Menenhall of Domtar Gypsum, was asked by Mr. Wibbens to make comments on the properties of gypsum sheetrock. He stated that calcium sulfate, the mineral from which sheetrock is made, is a natural mineral, which is mixed with starch, sugar, paper fiber, boric acid, and soap, and is layered with paper to form sheetrock. He stated that the State of California has identified gypsum as a naturally organic material; however, the State of Washington has failed to make this identification, presumably because Washington soil does not have as much application of gypsum as a fertilizer.

Bob Moe, a 22-year veteran sheetrocker, explained that 20 years ago, sheetrock was commonly disposed of in landfills located throughout the County. He wondered how these landfills are being handled. He wondered where sheetrock will be dumped once Inman Landfill is at capacity.

John Thayer, Environmental Health Supervisor, then gave his statement. He indicated that the section of the Skagit County Code referenced by Mr. Lewis was written in the 1970's, well before Mr. Wibbens opened his dump, to "grandfather" in old dumps that had been established in the 1960's. He stated that the Health Department is aware of the abandoned dump sites in Skagit County, and is working to address their potential environmental hazards.

Mr. Thayer stated that currently landfill rules require that funds be set aside to monitor abandoned landfills for the next 30 to 40 years. Installation of monitoring wells is very expensive, not to mention the reserves that must be set aside for future monitoring.

Regarding the test results, Mr. Thayer indicated that the tests do show only a slight increase in pH from above and below the landfill, but at this time, when there is a maximum amount of water runoff, there is also a maximum amount of dilution. The tests do indicate a significant increase in sulfates. The allowable concentration of sulfates in water is 250 parts per million (PPM). A reading of 70 PPM was obtained below the dump site; 1.4 PPM above. Tests have not been completed for hydrogen sulfide. Mr. Thayer felt that the potential for chemical contamination would be increased with the site capped off, as dilution from rainwater would not occur.

Mr. Thayer agreed that there may be benefits to agriculture derived from sheetrock, but not when it is landfilled in a boggy area.

Mr. Thayer stated that at other times, some within the last 18 months, when illegal deposits of sheetrock have been discovered by the Health Department, the owners have been made to remove the deposits. Mr. Thayer admitted that this is the largest dump every discovered by the Health Department.

Mr. Lewis and Mr. Thayer argued briefly regarding the date of the adoption of the above mentioned ordinance, Mr. Lewis maintaining that the code is dated 9/83, and Mr. Thayer explaining that 9/83 was the last revision to the chapter dealing with sludge.

Mr. Lewis pointed out that he believed he remembered the representative from DOE who spoke at the last meeting to indicate that "capping off would help".

The Board discussed a statement contained in a letter from Jim Knudson of DOE describing the health hazards of illegally dumped sheetrock which states that sheetrock can be placed in a demolition dump if mixed with demolition

materials.

Commissioner Vaux asked of Mr. Lewis how the Board could allow the sealing off of this dump without setting a precedent for other dumps the County locates.

Mr. Lewis maintained that a precedent has already been set by grandfathering in old dumps. He felt that each occurrence should be decided according to its own special circumstances.

Commissioner Rohrer indicated that he felt the site should be capped off and the water table diverted.

Judith Meadows, Environmental Health Specialist, objected. She stated that if Mr. Wibbens cannot finance removal of the sheetrock, he would not be able to afford proper monitoring and capping. She wondered if the County would then have to assume the costs of monitoring, as well as making sure he upholds his responsibilities and does not sell the property to someone else.

Mr. Menenhall wondered why there was concern if test samples were within acceptable levels after the dump had been in existence for seven years.

Ms. Meadows responded that it has been proven that decomposition occurs for up to 20 years. Additionally, only two substances have been tested for, and there is indication that one is rising.

Mr. Lewis contended that, since the tests obtained by Mr. Wibbens from the Whatcom County Health Department cost only \$8.00 each, the costs of monitoring are being greatly exaggerated.

Mr. Thayer explained the process for groundwater studies, sinking of monitoring wells, and continued monitoring. The process was quite extensive.

Commissioner Vaux established from Mr. Wibbens that only two sheetrockers have dumped at his site over the past seven years.

Commissioner Vaux then stated he felt there was too much risk in leaving the material there and capping it off. He motioned to continue the discussion to March 27, 1990, at 9:00 a.m., when discussion could center around how to remove the material. Commissioner Rohrer seconded the motion, and it passed unanimously.

The Board additionally instructed the Health Department to notify the Fisheries Department of the diversion of the stream, to get a firm estimate of the number of yards requiring removal, a second estimate for excavation, and the cost of installation of monitoring wells.

MISCELLANEOUS ITEM.

This item was taken at this time for the convenience of the audience.

Harv Vaux requested that the Board consider renaming the Rainbow Bridge in LaConner as the Lowell R. Hughes Bridge in honor of a man who devoted his time and hard work to the completion of the bridge.

The Board promised to consider Mr. Vaux's request.

PUBLIC WORKS DEPARTMENT - MARK SPAHR, DIRECTOR:

1) Public Hearing - Farmhouse Inn Sewerline Franchise.

Chairman Wylie waived the reading of the Notice of Public Hearing, as published in The Skagit Argus on February 6 and February 13, 1990.

Mr. Spahr explained that all construction undertaken within County right-of-way must be approved by the Board. He stated that the Farmhouse Inn has requested to install a sewer line within County right-of-way from their restaurant, along LaConner Whitney Road from Highway 20 to the LaConner city limits, linking with the City of LaConner's sewage treatment plant. He stated that the Farmhouse Inn Corporation has completed all appropriate steps necessary to receive approval. Mr. Spahr had prepared a standard franchise agreement for the Board's signature, which addresses repairs and restoration of County roads. Mr. Spahr stated that the County would not be involved in future hook ups to the line.

There was further discussion on the bonding of the project, as well as the County's involvement in inspection of construction.

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

Commissioner Vaux then motioned to grant the franchise application of The Farmhouse Inn, Incorporated, for installation and operation of a sewerline along LaConner Whitney Road from Highway 20 to the LaConner city limits. Commissioner Rohrer seconded the motion, which passed unanimously. (Franchise #12387)

2) Call for Public Hearing - Speed Limit Reduction on a Portion of Snee-Oosh Road.

Commissioner Vaux motioned to call for a public hearing on March 12, 1990, at 10:30 p.m., to consider a speed limit reduction on Snee-Oosh Road between the intersection of Parkway/Reservation Road and Swinomish Avenue from 45 m.p.h.

to 25 m.p.h. Commissioner Rohrer seconded the motion, which passed unanimously. (Resolution #12388)

3) Discussion - Spring Clean Up.

Rebecca Voerman, Recycling Coordinator, stated that for several years, the Department of Ecology has sponsored a week long clean up event during the month of April. In conjunction with that event, Skagit County has allowed a free dump day at County disposal facilities.

Ms. Voerman stated that Ken Bechtel of the Public Works Solid Waste Division has estimated that a one-day free dumping event would cost the County \$13,000 in transportation and handling fees. If recyclables are separated from the waste stream, Mr. Bechtel estimated there would be no appreciable reduction. A second alternative would be to require half-pay for disposal, which would decrease the total to \$7,900 approximately. A last alternative would be to limit free disposal to civic organizations only.

Ms. Voerman stated that the Public Works Department is recommending that the free day be amended to a half-pay day, with separation of recyclables, and free dumping for civic clean up projects. She stated that this policy is more consistent with the new stance of the department to try to encourage recycling instead of dumping. This would encourage the phasing out of accumulation of garbage for one year that can be dumped free in the spring.

The Board approved of this recommendation, and instructed that the cities be contacted for coordination with their individual clean up days.

4) Discussion - Intersection of Chilberg Road #4220 and Best Road #4401.

Robin LaRue, Design and Construction Section Manager, reviewed the vicinity maps of the three options for reconstruction of the intersection of Chilberg and Best Road. He stated that discussion on the matter has been ongoing for the past 1-1/2 years, and that two public meetings have been held with residents of the area. The Public Works Department continues to support construction of new road to the north to a "T" intersection at Chilberg/Best/Calhoun Roads. Mr. LaRue reviewed capacity calculations for such an intersection during peak capacity hours, an issue identified at the last public meeting. He concluded from the results of the survey that, even at peak hours, an intersection at Calhoun/Best/Chilberg Roads such as is described in the third alternative would operate at only 10% of design capacity. Mr. LaRue stated that his design recommendation for such an intersection would have a through street on Best Road and stops on Calhoun and Chilberg. A right turn lane would be built on Calhoun and Chilberg.

The Board directed that the matter be set for discussion on their agenda

during the Public Works Department presentation on Monday, March 19, 1990, at which time a decision will be announced on the recommendation of the Public Works Department.

5) Discussion - Proposed WSDOT Projects.

Mr. LaRue indicated that he has discussed the following State Highway projects with representatives of the WSDOT:

State Highway 20

- Deception Pass Bridge to Gibraltar Road (widen roadway) - anticipated ad date 1994.
- Christensen Road to SR 237 (signalization, possible closure of some intersections) - anticipated ad date 1991.
- Commercial Avenue to Swinomish Slough (asphalt overlay) - anticipated ad date 1992.
- Marblemount West 5 miles (widen roadway) - anticipated ad date 1997.

State Highway 9

- Big Rock to Howey Road (widen roadway) - anticipated ad date 1997.
- Lake Cavanaugh Road Intersection (revise intersection) - anticipated ad date 1991.

6) Miscellaneous.

- A. Mr. Spahr provided the Board with a Notice of Closure for the Bayview-Edison Road for Wednesday, February 28, 1990, from 7:30 a.m. to 4:30 p.m., for the purpose of culvert replacement.
- B. Robin LaRue, in response to the Board's previous request for a cost summary for each option being considered for the Country Club RID, provided the following figures:

- a) For construction of a 26 foot roadway only: \$325,000
This is the option chosen by the property owners. The cost is slightly higher than originally stated because of the identification of a need to excavate more of the current roadway to save property owners' landscaping and driveway slope.
Cost allotment: \$4,780 each property owner or \$697 per year, \$58 per month financed at 8%.
- b) For construction of a 26 foot roadway plus some drainage work: \$388,000. The County could subsidize the difference of \$63,000 from a), amounting to an amortization of \$9,000 per year.
- c) For construction of a 26 foot roadway plus curbs, a drainage system and optimal paving: \$525,000. Skagit County could subsidize the difference of \$200,000 from a) at \$29,000 per year.

Mr. LaRue recommended that c) be considered by the County, because if only the roadway construction is addressed before the road is turned over to the County, the County will inherit the area's drainage problems and be forced to address them at a later date anyway.

Discussion ensued and it was noted by Mr. LaRue that the property owners are reluctant to put up any more money than option a) requires. Commissioner Rohrer opposed option c), stating that other taxpayers should not be required to pay for the Country Club's problems.

Mr. LaRue indicated that piecemeal drainage systems now exist in the development. When the development was originally established, the property owners did not want their roads designated as belonging to the County. The platting ordinances at that time did not require road standards, as they do now.

Precedent setting for other RID's was discussed. Mr. LaRue stated that it is important to finalize a decision within the next week in order to allow enough time to advertize for a contractor and begin construction in the spring. Were a decision to be delayed, it would mean construction could not take place this year.

Commissioner Vaux felt that at meetings with the area property owners, options for road improvements were given, and the property owners chose the least expensive. These people now have expectations that the County will respond, and the County has indicated a willingness to approve of an RID.

Mr. Spahr suggested that the Board could create a sub-flood control zone to create a revenue stream to offset the costs for drainage improvements.

Chairman Wylie stated that at no time when the RID was being discussed was she under the impression that the County would be required to subsidize any part of the project.

It was noted that a sub-flood levy would not be available for about two years. Until that money becomes available, another source would be required to fund the drainage improvements that would have to be installed at the time of road construction.

As time had run out for the discussion, the Board directed that the matter be continued to Monday, March 5, 1990, at the 10:30 a.m. Public Works Department standing time.

MISCELLANEOUS ITEMS.

This was continued to following the 1:30 p.m. session.

CONTINUATION - PUBLIC HEARING - ADDITIONS AND AMENDMENTS TO SKAGIT COUNTY CODE'S SOLID WASTE ORDINANCE, CHAPTER 12.16, REGARDING THE PROHIBITION OF IMPORTATION OF WASTE GENERATED OUTSIDE SKAGIT COUNTY.

Mike Rickert, Skagit County Prosecuting Attorney, reviewed the next steps planned in the public hearing regarding this matter. It was decided that after today's discussion, the public hearing would be continued to 7:00 p.m. on Tuesday, March 27, 1990, in Hearing Rooms B and C of the County Administration Building.

Mr. Rickert summarized the three areas of concern expressed by citizens at the first public hearing.

- 1) A number of citizens asked for additions to the "WHEREAS" section to address environmental concerns, and a number asked for additional verbiage to the definition section such as "contaminated medical wastes". Mr. Rickert stated that his office feels there is no legal objection if the Board wishes to include these suggestions.
- 2) Regarding the Special Circumstances clause, Mr. Rickert stated that limitation or deletion of this clause from the ordinance is a policy decision that must be made by the Board.
- 3) Finally, the issue of requests for additional language which prohibits importation of wastes for public and private facilities was discussed by Mr. Rickert. He stated that the County presently owns the only disposal facility in Skagit County, therefore the ordinance addresses only those facilities. There was, however, concern that new construction may occur in the form of private landfills and incinerators. Mr. Rickert stated that, in reading between the lines and by the testimony of many citizens, it was clear that many signed the "Don't Dump on Skagit" petition in an effort to block construction of a private tire incinerator in Skagit County.

Mr. Rickert elaborated on issue #3. He stated that two areas of concern arise during an analysis of the constitutionality of legislation prohibiting importation of wastes for disposal in public and private facilities.

Pre-emption means that State laws take precedent over County laws. RCW 70.105.240 addresses State laws for handling of hazardous wastes. Had Skagit County's proposed ordinance dealt solely with hazardous waste, it would have been pre-empted by RCW 70.015.240.

The Commerce Clause of the Constitution regulates foreign trade, and also limits the States from enacting laws that effect interstate and intrastate commerce. The clause applies to laws enacted by all levels of government with equal force. Mr. Rickert stated that it does also apply to garbage.

Mr. Rickert cited a 1978 Supreme Court case, Philadelphia v. New Jersey, as being the landmark case which denies government the right to restrict use of a privately owned disposal facility. In Shane Brothers v. Prince George County (1983) the Supreme Court made clear that garbage prohibition ordinances cannot apply to both public and private facilities. This notion was again upheld in Charles County v. Stevens and in Evergreen Waste v. Metro Service System. It was established in these cases that governments cannot act as market regulators by ordaining that prohibition will exist on all waste disposal. Government can act as a market participant, controlling the use of their own facilities.

Mr. Rickert informed the Board that in a recently filed Whatcom County Federal lawsuit, BFI Medical Waste Systems has objected to the Executive Branch's prohibition of importation of medical wastes at all Whatcom County facilities.

BFI had been collecting medical wastes from a large area outside Whatcom County and transporting them to be destroyed at Whatcom County's Thermal Reduction. Violations of State pre-emption and the Commerce Clause have been implicated in the suit.

Mr. Rickert stated that the outcome of this case may provide some guidance on the issue, in view of the fact that the solid waste environment has undergone some change in the years since Philadelphia v. New Jersey; however, his opinion is that inclusion of private facility prohibition in a Skagit County ordinance would probably not pass constitutional muster.

Mr. Rickert stated that other options may be available to deter construction of private disposal facilities in Skagit County. Land use regulations, zoning regulations and SEPA regulations may be made very stringent, so as not to regulate private disposal facilities out of business, but to make permitting and construction very difficult. Mr. Rickert stated that zoning regulations that make construction of private facilities impossible would also be unconstitutional, but that rules that make their construction very difficult and remain within the confines of the Constitution are acceptable.

Chairman Wylie suggested that perhaps reference to State hazardous waste legislation should be made in our solid waste ordinance. Mr. Rickert felt this was not entirely necessary, since pre-emption requires that County's comply anyway. He reminded the Board that if sued on a Constitutional issue, the loser is liable for the other party's legal costs.

The Board thanked Mr. Rickert for his information. The Board determined to meet once again on Wednesday, March 21, 1990, at 1:30 p.m., to discuss their decisions on Mr. Rickert's recommendations prior to presentation of the final draft to the public on March 27 at the public hearing.

MISCELLANEOUS ITEMS.

A. The following Petitions for Property Tax Refunds were approved for signature:

- 1) First American Title, 1301 Riverside Drive, Mount Vernon, WA 98273, in the amount of \$3133.29, due to a manifest error. (000790)
- 2) Washington Loggers Corporation, 119 N. Commercial, Bellingham, WA 98227, in the amount of \$5,133.58, due to a reduction in values by the Board of Equalization. (000590)

B. The Board approved for signature a Profession Services Contract with Richard Weyrich for provision of public defense services for the year 1990.

C. The Board approved for signature an Amendment to the AIDSNET Agreement between the Snohomish Health District and Skagit County, making budget changes for special high risk supply materials to the AIDS program funding.

D. Commissioner Rohrer motioned to adopt resolutions clarifying the appointment of Board members to the Fair Advisory Board as follows:

- 1) Chris Loughlin, term expiration 12/31/93 (Resolution #12389)
- 2) Mitch Johnson, term expiration 12/31/92 (Resolution #12390)
- 3) Louis Requa, term expiration 12/31/93 (Resolution #12391)

Commissioner Vaux seconded the motion, which passed unanimously.

E. Jerry McInturff, Skagit County Auditor, pointed out that there are a number of contract change orders that are not being approved by the Board, and are just being signed by the Public Works Director. Although Mr. Spahr, the Public Works Director, states that he is allowed that authority under the CRP, Mr. McInturff stated that he needs some way of keeping track of the total contract costs so that the contractor is not overpaid.

Robin LaRue, Design and Construction Section Manager, reviewed the approval steps necessary to complete a CRP. He stated that construction funds usually have a 10% contingency built in to account for minor changes in the contract. If specific contract items are greater than or less than 25% of the original contract, either side may request a change order, or if a new item is required that was not bid, a change order is required. He stated that if all change orders require the Board's signature, in many cases work will cease until the change order can be

approved, causing unnecessary delays and costs.

Mr. McInturff agreed that he could require further documentation of Board approval only if cost over rides are greater than 10%.

The Board directed Mr. McInturff, Mr. Spahr and Mr. LaRue to create a policy that would satisfy both Department's requirements, and to bring it to the Board for approval. Additionally, Commissioner Vaux felt that the Public Works Department should be accountable to the Board for changes that exceed an agreed upon amount.

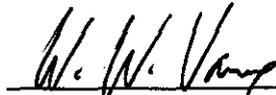
- F. Mr. McInturff discussed with the Board a bid offering for a van for the Auditor's Office's elections section. The Board agreed to accept bids with specifications for an all-wheel-drive package.

ADJOURNMENT

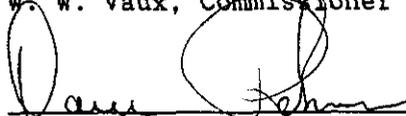
Commissioner Vaux motioned to adjourn the proceedings. Commissioner Rohrer seconded the motion. The motion was carried unanimously.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Ruth Wylie, Chairman

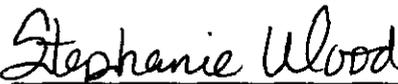


W. W. Vaux, Commissioner



Dave Rohrer, Commissioner

ATTEST:

Stephanie Wood, Clerk
Skagit County Board of Commissioners