

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

Tuesday, May 15, 1990

9:00 a.m. - 10:00 a.m. Ray Melton Appeal of Hearing Examiner's Decision Regarding Special Use Permit Request #SP-89-042.

10:00 a.m. - 11:00 a.m. Alfred R. Kraig Appeal of Hearing Examiner's Decision Regarding Variance Request #V-89-062A of Bud Norris.

11:00 a.m. - 11:15 a.m. Discussion - Antique Farm Machinery Club.

11:15 a.m. - 11:30 a.m. MISCELLANEOUS ITEMS.

1:30 p.m. - 2:00 p.m. Signature - Human Services Department Contracts.

2:00 p.m. - 3:00 p.m. Department of Planning and Community Development - Scott Kirkpatrick, Director:

- 1) Report on - Fire Protection Response in the Forestry Zone.
- 2) Enforcement Update.
- 3) Staffing Update.
- 4) Miscellaneous.

3:30 p.m. - 4:00 p.m. Public Comment Period.

4:00 p.m. - 5:00 p.m. Board of Commissioners Tour of Skagit County Recycling Program.

The Skagit County Board of Commissioners met in regular session on Tuesday, May 15, 1990, with Commissioners Ruth Wylie, W. W. Vaux and Dave Rohrer present.

RAY MELTON APPEAL OF HEARING EXAMINER'S DECISION REGARDING SPECIAL USE PERMIT REQUEST #SP-89-042.

Betsy Stevenson, Assistant Planning Department Director, gave information on the application. She stated that Ray Melton has requested a special use permit to construct and operate a sand manufacturing business at the northwest corner of the intersection of Cook and Green Roads near Burlington. The building would be 20,000 square feet, would house olivine which would be brought from a storage site in Hamilton as needed, and would require 20,000 cubic yards of fill. The western part of the property, approximately 4 acres of a 12 acre site, is zoned Commercial, while the rest is zoned Agriculture. Shipping of the olivine from the upriver site would occur by rail or truck, and six to eight persons would be employed at the site. The facility would utilize an existing septic system and PUD water.

Ms. Stevenson read from the Skagit County Code regarding Agricultural land use, as well as requirements for special use permits. She noted that the Planning Department Staff Findings recommended denial of the request on the basis of incompatibility with the Agriculture area, which is presently being farmed, and an insufficient amount of information provided by the applicant.

Ms. Stevenson stated that the Hearing Examiner held a public hearing on the matter on April 1, 1990, and on April 10, 1990, denied the request. An appeal of the decision was received from Mr. Melton on April 18, 1990.

Ms. Stevenson stated that the Board may exercise any of the following options:

- 1) To uphold the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.

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- 3) To call for the Board's own public hearing to consider testimony on the matter.

Mr. Nielsen, who represented Mr. Melton, was then given an opportunity to speak. He requested that the Board hold their own public hearing on this matter.

Mr. Nielsen stated that Mr. Melton has extensive knowledge of the business of sand manufacturing and wishes to take advantage of the current economic climate to establish his own business. Mr. Nielsen stated that Mr. Melton's enterprise with create a good tax base for the County.

Mr. Nielsen asserted that the reason for Mr. Melton's denial was the fact that one of his representatives did not "get along" with Ms. Stevenson, so he was "blindsided", and did not get adequate representation of his case. Mr. Nielsen's example of this unfair treatment was the fact that Ms. Stevenson refused to accept Mr. Melton's appeal when it was first submitted, as it was, she claimed, improperly presented. Mr. Nielsen implied that Ms. Stevenson withheld information from the Hearing Examiner in order to deter the approval of the request.

Mr. Nielsen further asserted that a special use permit would not change the zoning of the parcel, and is compatible with other Commercial-Light Industrial designation in the area. He stated that the design plans for air pollution control and dust abatement devices which were not submitted and were cited in the Hearing Examiner's denial, were not needed for a decision, and could have been approved at a later date. Mr. Nielsen stated that traffic would not be impacted by the facility, as most of the shipping would be done by rail. Mr. Nielsen did admit, when questioned by Commissioner Vaux, that raw material would be shipped in by truck. Mr. Nielsen stated that a drainage plane should not be required of Mr. Melton, only that he be in compliance with applicable ordinances. Mr. Nielsen stated that the applicant had a letter from the PUD indicating approval of water hook up, but the Hearing Examiner said there was no approved water plan. Additionally, a letter from a septic installer indicated a septic system could be built on the property, but the Hearing Examiner indicated that no septic plan had been submitted.

Mr. Nielsen claimed that 20,000 cubic yards of fill is not necessary to bring the plant up to the level required of a flood plain; one quarter of that actually will be needed. Mr. Nielsen stated that Mr. Melton currently only receives \$68 per month to rent the property for Agricultural use, an amount of profit that could be appreciably increased with this alternate use. Mr. Nielsen stated that Mr. Melton's experience should be sufficient to testify to the lack of noise and dust created by this business. Mr. Nielsen refuted statements that Green Road is incapable of handling truck traffic.

Mr. Nielsen stated that Mr. Melton was given two additional days by the Hearing Examiner in which to submit additional information, but this was not sufficient time in which to gather the amount of data needed to secure the request. Mr. Nielsen did not wish to have the matter remanded back to the Hearing Examiner, as the Hearing Examiner is biased in the matter.

Ms. Stevenson objected that a letter which Mr. Nielsen was attempting to submit from Burlington Northern Railroad was not a part of the Hearing Examiner's record and could not be accepted.

Jim Stover a resident of Green Road, stated that Green Road is an old, narrow road in poor condition. The corner of Cook and Green Road is already bad, even without additional truck traffic. Also there is no railroad spur presently, and construction of a new one would have to cross Cook Road. Additionally, part of Mr. Melton's property acts as a natural retainage area for ground water. Mr.

Stover also stated that if this Agricultural zoned land is put to commercial use, it will have impacts on adjacent Agricultural zoned land.

Lisa Nielsen, representing Skagitonians to Preserve Our Farmlands, requested to submit a petition asking for the denial of the appeal. Her petition was not accepted, as it was believed it constituted new evidence.

Ray Melton, the applicant, stated that although the burden of proof is upon the applicant, he did not know that the County departments' information would be so difficult to refute. Some of his information that was submitted, he claimed, was not mentioned in the Hearing Examiner's findings.

The Board discussed Mr. Nielsen's claims, questioning the alleged unfair treatment Mr. Melton received. Commissioner Rohrer motioned to call for a public hearing on the matter on June 12, 1990, at 10:00 a.m. Commissioner Vaux seconded the motion, which received unanimous approval.

ALFRED R. KRAIG APPEAL OF HEARING EXAMINER'S DECISION REGARDING VARIANCE REQUEST #V-89-062A OF BUD NORRIS.

Grace Roeder, Senior Planner, submitted an assessor's map of the Norris property, as well as various photographs of the site.

Ms. Roeder stated that the Board may exercise any of the following options:

- 1) To uphold the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.
- 3) To call for the Board's own public hearing to consider testimony on the matter.

Mr. Roeder stated that on March 21, 1990, the Hearing Examiner considered a request by Bud Norris to construct a residence on property located on Samish Island Road on Samish Island within 20 feet of the front property line, instead of the required 35 feet. The reason for the request was that only a small amount (estimated at 30 to 40 feet by the Planning Department) of useable land exists before the property ends in a steep bank approximately 70 to 90 feet high. By moving the residence forward to within 20 feet of the front property line, it would allow Mr. Norris to construct his home on the available space.

A geotechnical report was considered from W.D. Purnell of Bellingham. The report indicated that the site was stable for building, if certain requirements were met. The Board of Health had previously authorized a variance for a septic system on the property, and the Public Works Department had reviewed the proposal. The Planning Department's Staff Report, which recommended denial of the request, contained the following finding: "...If this Variance is approved, there may be other requests of this type. If future Variances are also approved, based on similar circumstances, the cumulative effect may adversely impact the stability of the bank in addition to the overall area."

The Hearing Examiner gave approval of the request, with the following conditions, which were proposed by W.D. Purnell in his site report dated August 28, 1987, and July 22, 1990:

- Thinning of trees in excess of four inches.
- Maintenance of the understory of brush and grass on the bluff.
- Repair of any erosion at the base of the slope or installation of a seawall.
- Inspection of the foundation by a geotechnical and/or engineering geologist.
- Use of foundation that would allow the residence to be moved back if

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- excessive erosion occurs.
- Drainage from the house collected and diverted onto the beach.
- Maintenance of the understory of shrubs and grass on the bank.
- No debris, soil, lawn cuttings, etc., should be placed on the bluff.
- Review of building site for proper septic tank location.
- Review of building site on a topographic map.
- Review of footing excavations.

Additionally, the Hearing Examiner required the approval of a structural engineer, execution of a hold harmless agreement, and obtaining of all necessary permits.

An appeal of this decision was received in a timely manner from Mr. Alfred Kraig.

Ms. Roeder indicated that the Staff Findings show that the site is zoned residential and is in a V4 flood hazard zone. The findings indicate that the residence would be located on an unstable slope, and that, as only 30 to 40 feet of area is useable before the property ends in a 70 to 90 foot bank, if the residence were placed at the required 35 foot setback, the house would have to be placed over the bank.

The Planning Department believes that the residence would adversely impact Samish Island Road, although the Public Works Department had no concerns regarding the traffic, as Samish Island Road is the major carrier for the area. The Flood Section Manager of the Public Works Department had serious concerns regarding the stability of the site. Additionally, the Planning Department Septic Section indicated approval of the septic system, but with strict conditions for design. The Planning Department felt that if excessive erosion should occur, the residence could fall down the bank before it could be pulled back, as was Mr. Purnell's suggestion. The construction requires not only a setback variance, but a septic variance as well, and careful maintenance is required of the applicant. These factors also figured in the Planning Department's decision to recommend denial of the request.

William Nielsen, representing Mr. Kraig, was then given an opportunity to speak. He requested that the Board hold their own public hearing on the matter at night on Samish Island at the Community Club or the RLDS Church. He stated that no survey has been done to determine the County's right-of-way, therefore it is uncertain where Mr. Norris' front property line is located. He stated that the first letter from W.D. Purnell that is referenced in the findings of the Hearing Examiner is dated 1987, and is therefore outdated. Mr. Nielsen raised some question as to the meeting of all procedural requirements for the sewage system waiver that was granted by the Board of Health. Mr. Nielsen raised additional questions regarding the sketch of the septic system, stating that it shows a location under Mr. Norris' proposed driveway. Mr. Nielsen indicated that although the lot is reportedly 7400 square feet, only about half is buildable area. He stated that a moveable foundation would be a first for Skagit County. Mr. Nielsen indicated that the basis for the Hearing Examiner's approval is a 1987 letter from W.D. Purnell. Recent erosion of the bank, which has been repaired by the County, has changed the characteristics cited in the 1987 letter. The Staff Findings indicate that Mr. Norris' would be the only home located on the Padilla Bay side of Samish Island Road, this would confer a special privilege on the applicant. Mr. Nielsen stated that, because of this approval, the Hearing Examiner has allowed for unrestricted development of the bluff area. The County will be unable to deny future requests because of this.

Chairman Wylie requested that the audience's remarks be kept to the appeal and the request for a public hearing.

Gary Ramey of 705 Samish Point Road pointed out the lack of survey documents to

prove the location of the County's right-of-way. He maintained that an inaccurate right-of-way was considered by the Hearing Examiner, as well as an inaccurate ordinary high water mark.

Mr. Norris was then given an opportunity to speak. He requested that the Hearing Examiner's findings be read for the record. Ms. Roeder read the Hearing Examiner's conclusions, and declined to read the decision, as she had already done so previously.

Mr. Norris requested that the Board uphold the decision of the Hearing Examiner. He stated that the Samish Island Road does not meet the criteria for a major collector, and so will not be impacted. He clarified that no rezone or land division is required for his construction. He stated that alternatives are available to the County to limit development of the bluff area. Mr. Norris refuted any confusion regarding the Purnell letters, as they were submitted at appropriate times, he claimed. He indicated that this is a very large lot, purchased as is, and that the technique of a moveable foundation has been used in other counties. He indicated that the stability of the bank has been proven by a nearby road that was cut within the bank 30 years ago and remains stable.

Jacqueline Stegner, 869 Samish Island Road, requested a public hearing because the area contains unique lands that require special consideration, especially under the new bill (2929) that requires the County to develop new ways of protecting unique lands.

Mary Ann Fletcher of Samish Island and Roger Montz also requested a public hearing based on the lack of a road survey.

Commissioner Vaux indicated his wish to make a site visit, and to hold the public hearing on neutral territory, rather than at Samish Island. He motioned for a public hearing to convene at the Courthouse on 4:00 p.m., Thursday, June 14, 1990, for the purpose of a site visit, and for testimony to be taken at 7:00 p.m. on that same date in Hearing Room C of the County Administration Building. Commissioner Rohrer seconded the motion, which passed unanimously.

DISCUSSION - ANTIQUE FARM MACHINERY CLUB.

Roy Johnson, a representative of the Antique Machinery Club, stated that their antique equipment, part of which is presently stored at the Peth ranch, is partially stored at a building at the County's Bayview Shop. He requested to be allowed to utilize the second shop building for storage of more equipment, and subsequent use for display.

The Board promised to consider the request and recontact the club.

MISCELLANEOUS ITEMS.

- A. Commissioner Vaux motioned to adopt the resolution authorizing a Budget Line Item Change in the amount of \$20,000 for the Current Expense Fund for Data Processing supplies. Commissioner Rohrer seconded the motion, which passed unanimously. (Resolution #12500)
- B. Jon Aarstad, Parks and Recreation Director, indicated that legal counsel has approved the start of work to mitigate hazardous conditions on the Northern State property purchase, to include manhole safety and fence construction. The Board approved proceeding with the safety measures.
- C. Vouchers audited and certified by the auditing officer as required by R.C.W. 42.24.080, and those expense reimbursement claims certified as required by R.C.W. 42.24.090, have been recorded on a listing which has

been made available to the Board.

As of this date, May 15, 1990, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

- 1) Warrants #79752 through #79805 (Vouchers #79752 through #79805) in the amount of \$13,499.74 (PR-09-90).

SIGNATURE - HUMAN SERVICES DEPARTMENT CONTRACTS.

The following subcontracts for the second biennium of the County's DSHS contract were approved for signature:

- Chinook Enterprises (developmental disabilities)
- SPARC (developmental disabilities)
- Sunrise Group Homes, Inc. (dba Community Trades and Careers) (developmental disabilities)
- Rehabco, Inc. (developmental disabilities)
- Skagit Council on Alcoholism (substance abuse)
- Skagit Community Mental Health (substance abuse)
- Skagit Community Mental Health (mental health)
- sub-subcontractors: SeaMar Clinic
Catholic Community Services
- Vera Sullivan (substance abuse)

Additionally a contract amendment was approved for Vera Sullivan's first biennium contract, allowing an additional 200 hours of service time.

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT - SCOTT KIRKPATRICK, DIRECTOR:

- 1) Report on Fire Protection Response in the Forestry Zone.

Mr. Kirkpatrick stated that he and the fire marshall have decided to sponsor a County-wide meeting on fire response in the forestry zone, inviting all representatives of all fire departments in Skagit County.

The Board discussed with Mr. Kirkpatrick fire fighting in areas of the County that are difficult to access, and the liability of the County for issuance of a building permit to a home unprotected by any fire department.

Joe Blazek of the DNR indicated that the DNR is not a home fire fighting agency, and although they will contain a home fire, they will not enter the residence.

Mr. Kirkpatrick clarified that a building permit will be issued to a home within the Forestry zone with a condition that fire apparatus must be able to access before a structure can be constructed. He indicated that the County does not presently advise applicants whether or not they are in a fire district, but that the Public Works Department does notify the fire district when a new residence is addressed.

- 2) Enforcement Update.

Mr. Kirkpatrick provided the Board with a new form his department has developed for recording and keeping track of complaints on permit violations.

- 3) Staffing Update.

Mr. Kirkpatrick stated that his office is now offering an Assistant Planning

position. A Planning Technician for the DOE water quality grant administration has been hired and he is in the process of finalizing a hire for the position of Project Coordinator for the Nookachamps Watershed Management Grant from DOE. He stated that there has still been no hiring for an Administrative Assistant for the Hearing Examiner.

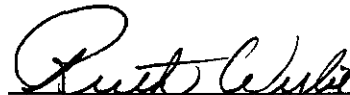
PUBLIC COMMENT PERIOD.

- A. An Ed Hawkings from the Town of Lyman made inquiries as to the process for deannexation from the Town of Lyman. He stated that a request to operate an industrial concern within the city limits was denied, and he wished to have his property deannexed in the hopes that he would then be able to operate his business.
- B. Lisa Nielsen of the Skagitonians to Preserve Our Farmlands presented a request from her group to place signage on County roads to raise the public awareness of agricultural land. She suggested that 10 signs be placed as a pilot project. Her suggestions for verbiage for the signs was "ENTERING AGRICULTURAL AREA - RESPECT FARM VEHICLES", or another similar statement.

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