

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

**Thursday, June 14, 1990**

- 4:00 p.m. - 5:30 p.m. Tour of Site on Samish Island Road - Alfred Kraig Appeal of Hearing Examiner's Decision Regarding Variance Request #V-89-062 of Bud Norris.
- 7:00 p.m. - 8:00 p.m. Public Hearing - Alfred Kraig Appeal of Hearing Examiner's Decision Regarding Variance Request #V-89-062 of Bud Norris. (Hearing Room C, County Administration Building.)

The Skagit County Board of Commissioners met in regular session on Thursday, June 14, 1990, with Commissioners Ruth Wylie, W. W. Vaux and Dave Rohrer present.

**TOUR OF SITE ON SAMISH ISLAND ROAD - ALFRED KRAIG APPEAL OF HEARING EXAMINER'S DECISION REGARDING VARIANCE REQUEST #V-89-062 OF BUD NORRIS.**

The Board of Commissioners traveled to a site on Samish Island Road, approximately 1/4 mile west of the intersection of Roney Road and Samish Island Road, and on the south side of Samish Island Road. The site visited is the subject property in a variance request by Mr. Bud Norris to allow construction of a single family residence within 20 feet of the front property line, instead of the required 35 feet.

The property was partially treed with deciduous trees of approximately 4" to 12" in diameter. Tall grass and bushes grew on the property. A flat area with a depth of about 35 to 40 feet fronted the road, and stakes had been placed by neighbors which represented the boundaries of the property, showing a length of about 90 feet. At a line of dense bushes approximately 35 to 40 feet from the road, the property dropped off, gradually at first and then more steeply, to the beach below. The beach itself could not be seen from the road or from the flat area of the property. On both sides of the Norris property were parcels of the same description, but with mown grass. On the parcel directly to the west a large wood pile was situated.

Chairman Wylie indicated that, although the visit was in conjunction with the public hearing, public comment should be reserved for the portion of the meeting which will be held at 7:00 p.m. at the Courthouse hearing rooms.

Grace Roeder, Senior Planner, read the entire Staff Findings of the Planning Department.

Mr. Norris demonstrated his property lines. Mr. Neilsen, representing the appellants, disputed the frontage distance cited by Mr. Norris, stating that the deed actually revealed a much shorter distance of frontage.

Mr. Norris, who had previously submitted a letter indicating the same, informed the Board that, since the Samish Island Road has been designated by the Public Works Department as a minor collector, he should only have to conform to a 25 foot setback. He stated that he would go ahead with his request for a variance of the 35 foot setback, but that the Board decision on this request should not prejudice his ability to apply for a variance under the minor collector designation.

Dwight Gillam, an adjacent property owner, made a supportive statement for Mr. Norris' request. He stated that he was allowed to tunnel under the roadway from his property on the north side of the road and tight-line the drainage to the beach.

Mr. Neilsen pointed out stakes set out on adjacent property that demonstrated the 20 foot and 35 foot distances from the Norris front property line. Mr. Nielsen

requested that the Board continue further on Samish Island Road to Samish Point Road to see that other houses do not exist on the south side of Samish Island Road. He also noted that signs had been placed to demonstrate areas where slides have occurred. He asked that the Board follow signs to the Hopley property to view a slide.

Mr. Gillam made statements declaring the County to blame for the slides because of inadequate control of drainage.

Mr. Norris also requested that the Board visit the slide sites, and to note that they are dumping locations, where slides occur because moisture is retained by piles of discarded yard wastes. He also asked that the Board note a residence he alleged is located on the south side, and a mobile unit that is located within 18 to 19 feet of the County right-of-way.

The Board announced their intention to drive further along Samish Island Road, as requested, and Chairman Wylie announced that the hearing would reconvene in Hearing Room C of the County Administration Building at 7:00 p.m.

The Board did travel along Samish Island Road to Samish Point Road, noting signed areas where slides had occurred, but did not find the road leading to the Hopley property.

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

The public hearing convened in Hearing Room C of the County Administration Building, where Chairman Wylie waived the reading of the Notice of Public Hearing, as published in The Skagit Argus.

Chairman Wylie related that a site tour was accomplished of the Norris property on Samish Island Road. She requested that public testimony be restricted to three minutes each. She requested that Ms. Roeder synopsize the correspondence received.

Ms. Roeder first submitted the entire file of the Hearing Examiner for reference. Also submitted was an Assessor's Map of the property, and staff photographs of the site.

Ms. Roeder reviewed the following letters:

- Mary Cherberg, Public Works Department Office Engineer, stating that the Public Works Department road classification of Samish Island Road is that of a minor collector.
- Bob Ratfield, no return address - opposes. Chief concern is the precedence it would set and the possibility of septic system failure.
- Roxanne Michael, Building Inspector, Skagit County - testifying as to what point a professional engineer would be needed to review Mr. Norris' plans.
- Berg Miller - opposing.
- Kenneth Meade - opposed, citing erosion of the bank, inadequate sewage disposal, and changes to the sensitive area.
- Pat Lundgren - 764 S. 293rd, Federal Way, WA 98003 - opposed due to the possibility of slides, sanitation problems and traffic impediment.
- Fred and Helen Ovenell, 935 Blue Heron Road, Bow, WA 98232 - favor denial to prevent encroachment on the water front.
- Richard C. Sackster, 733 Marshall Road, Samish Island - opposed because of the setting of a precedence.
- John M. Pursell - opposed.
- Bill Davisson, 611 West Main Street, Monroe, WA 98272 - opposed. Lack of survey, jeopardy of road, no tie between foundation and structure is

against Uniform Building Code, possibility of septic failure, requirement of too many variances to address problems with the site.

- Robert Lemley - opposed. Addition of affluent to unstable soil conditions, sets a precedent. Photographs were enclosed of the beach immediately below the building site and 1/4 mile to each side showing erosion areas.

Chairman Wylie invited Mr. Norris to present his evidence first. Mr. Norris asked to defer the first presentation to the proponents of the appeal because the Hearing Examiner's decision favored Mr. Norris. Chairman Wylie explained that, because the Hearing Examiner's decision no longer stands in light of the Board's decision to hold their own public hearing, Mr. Norris is the proponent and should make the first statement.

Bud Norris, 3780 College Way, Mount Vernon, again stated that he does not believe he is required to obtain a variance from the 35 foot setback required for major collectors, because the Public Works Department has designated Samish Island Road a minor collector, which has only a 25 foot setback requirement. He demanded to know who classified the Samish Island Road as a minor collector in the Planning Department staff report.

Chairman Wylie requested that Dave Hough, Senior Planner, respond.

Mr. Hough read a section of Skagit County Code Chapter 14.04 which outlines setback requirements. In the definition section, a minor access is defined as a cul de sac, a dead end, or a loop street. Based upon that definition, the Planning Department determined that the Samish Island Road is a major collector.

Mr. Norris persisted in asking questions regarding the designation of Samish Island Road. He was informed by Commissioner Rohrer that the statute was adopted in 1980, at which time Mr. Norris himself was a County Commissioner.

Mr. Norris maintained that there was and remains to be an administrative prejudice on the part of the Planning Department. He wished to register a complaint against the staff of the Planning Department, stating that on two occasions he was told that it would not be in his best interest for Mr. Hough to present his request to the Hearing Examiner. He maintained that Ms. Roeder had indicated this to him. He also objected to the length of time spent in processing his request, which was approximately six months.

Using a map, Mr. Norris demonstrated how he believes Samish Island Road is not a major collector, as it carries only local traffic, and the Public Works Department has stated that it carries fewer than 500 cars per day, with a projected use of only 1,400 cars per day predicted.

Mr. Norris clarified that letters referenced in the Hearing Examiner's decision from Mr. Norris' geotechnical engineer, W.D. Purnell, were a part of the record. Additionally, he clarified that the Hearing Examiner's decision was also a part of the record.

Mr. Norris stated that the designation of his property as a flood zone pertains only to the shoreline level, not the building site. He claimed that others have built in close proximity to the road, and that neighbors are currently parking on the roadway, as well as locating wood piles, campers and trailers on or near the roadway. He provided photographs of examples. He provided photographs of what he described as structures that are already impacting the beach.

Mr. Norris refuted the staff finding that no houses are as close to the beach as his would be between Roney Road and Samish Point Road, stating that this is not true.

Regarding the further development of the south side of the Samish Island Road, Mr. Norris stated that neighbors on the north side of the road often own the property on the south side. He suggested that the neighbors either request that the County declare their property a conservancy zone or donate it to the Padilla Bay Sanctuary, if they wish it to remain undeveloped.

Mr. Norris clarified that septic testing records were part of the record available to the Board.

Mr. Norris stated that bank erosion has been addressed by W.D. Purnell. Current bank erosion is caused by the lack of tight-lining of drainage to the beach. Organic debris placed there by adjacent property owners have caused moisture retention, which causes the breakdown of the bank.

Mr. Norris proceeded to give his views on the request, stating that other residents would not be taxed at a higher rate, should he locate his home on the south side of the road.

Mr. Nielsen then was given an opportunity to speak.

Mr. Nielsen indicated that most of the people present, which numbered approximately 80, were there to object to the granting of Mr. Norris' request.

Regarding the arguments presented by Mr. Norris in favor of requiring only a 25 foot setback because of the road designation, Mr. Nielsen stated that he was hired by the County in 1980 to create the ordinance in question. He stated that Public Works road classifications and Planning Department road classifications are recognized as being different because of their different purposes. He stated that, for the purpose of determining setbacks, the Samish Island Road is clearly a major collector.

Mr. Nielsen stated that the granting of a variance requires the satisfaction by convincing evidence of four distinct criteria. First Mr. Norris must show that special conditions which are peculiar to his lot exist which are not applicable to other lots. All of the lots on the south side of the road are the same as Mr. Norris'; therefore, that condition is not satisfied. Additionally, it must be proven that the requirement of a 35 foot setback would deprive Mr. Norris of rights that are commonly enjoyed by others. There are no houses on the south side of the road, so there is no one who has been allowed a variance to build closer than 35 feet, as Mr. Norris requests. Also it must be proven that special conditions on the land do not result from the actions of Mr. Norris. Mr. Nielsen stated that there are no special conditions on the land. Last, Mr. Nielsen must prove that the granting of the variance will not give him special privileges. There is no one else who has a home on the south side of the road, therefore, if granted, Mr. Norris will have a special privilege. Mr. Nielsen stated that if the Board allows Mr. Norris' variance, they will be unable to deny any other who requests the same.

Mr. Nielsen pointed out that the correspondence submitted from W.D. Purnell was out dated, having been written in August of 1987, and pertained mainly to a septic system variance which was subsequently granted by the Board of Health.

Mr. Nielsen reviewed specific points of the Hearing Examiner's decision. He stated that the condition which requires that trees of greater than 4 inches in diameter must be thinned, and those of less than 4 inches must be removed will cause almost all trees to be removed, to the detriment of the bank.

The requirement that the front portion of the structure extend 8 to 10 feet into natural soils does not indicate in which direction it should extend, Mr. Nielsen pointed out.

Mr. Nielsen alluded to a statement contained in the decision which indicates that Tom Karsh, the environmental health specialist who inspected Mr. Norris' septic proposal, has serious concerns regarding the ability to locate a sewage system, reduced house setback and driveway on the same lot.

Mr. Nielsen accused Mr. Norris of dumping fill on his property many years back. The presence of old fill had been earlier observed at the site visit.

Regarding the Hearing Examiner's condition that a "hold harmless" agreement be negotiated with Mr. Norris, Mr. Nielsen stated his professional opinion that it could not be defended in court.

The audience was then given opportunity to speak. Chairman Wylie requested that speakers present new information, not repeat old information.

Pete Harrison, 483 Mercer Road, Bow, stated that he is a professional land surveyor with offices in Bellingham who was requested by the neighbors to perform a survey of the site. He produced a topographic survey of the Norris property and offered his professional services to answer any questions the Board might like to ask. He reviewed the map briefly with the Board.

Bill Whitting, CCIM, CRE, 713A Samish Point Road, a two year resident of Samish Island, indicated that he is a professional developer and project manager with experience in constructing over 1500 units. Mr. Whitting stated that he showed plans of the Norris proposal to a professional engineer associated with his business in order to ask questions about the prospects of completing the project as proposed. Mr. Whitting recounted that his engineer, after study, pronounced that the project was like "trying to put a 5 pound cake in a 3 pound box".

Mr. Whitting then asked the engineer, "if the preparer of the plan were allowed to take liberties with the scale and dimensions of the plan, could it work?" The engineer replied that the plan could work if the preparer could move the road and build his septic system within the right-of-way.

Regarding the soil notations, Mr. Whitting stated that, even if the entire bank were sand, Mr. Norris would still not be able to fit his septic system on the property - especially with the requirement that no driveway, parking or structures can be situated over the septic system. Mr. Whitting submitted an illustration of this point, and gave the name of Adams, Hodson, Robinson Engineering of Fife as his source.

Mr. Whitting related that in the soil log, the soil is listed at a loading rate of .2, while the septic system has been figured on a loading rate of .8, indicating a sandbox system.

Regarding the condition which requires that Mr. Norris' house be moveable in case of bank failure, Mr. Whitting stated that this condition is inconsistent with most building codes. Apparently in a clerical error, the Hearing Examiner had even conditioned that the foundation be moveable. Mr. Whitting stated that the recommendation is inconsistent with the requirements of all electrical, water and gas hook ups, which would have to be dismantled, under emergency conditions, before the house could be pulled back from the bluff.

Mr. Whitting having used his allotted time, Chairman Wylie asked that he discontinue his testimony, depending upon another speaker to defer time to him for continued remarks.

Gary Ramey, 705 Samish Point Road, stated that he owns property on the south side of Samish Island Road. He stated that there are four types of structures - those constructed legally, those "grandfathered" because they existed before the rules were set, those allowed by variance, and those constructed illegally. To Mr. Ramey's knowledge, there have been no setback variances allowed in the area. He stated that woodpiles, campers and cars are not structures. He stated that allowing construction on this substandard building site is bad policy, and the Board should not grant variances for bad policy.

John Hopley, 845 Samish Island Road, deferred his time to Bill Whitting.

Mr. Whitting also indicated that special conditions do not exist on the Norris property, as these conditions are shared in common with 12 other similar sites on Samish Island.

Mr. Whitting pointed out that the septic system design is purported to be for a one bedroom vacation home. Mr. Whitting stated that it is his personal knowledge that Mr. Norris has a wife and four children. Vacationing of the entire family in the home would overload the sewage system. Entertainment of guests at the home would cause peak overloads.

Alfred Kraig, 849-B Samish Island Road, complimented the staff. He recommended that the Board review photographs submitted to the Hearing Examiner by the late Jim Wright of the Norris property in times of winter storms. Mr. Kraig pointed out that taxpayers will have to pay Mr. Norris for any damages he suffers from a slide, since he would surely sue the County for his misfortune. Mr. Kraig stated that the requirement of a moveable foundation and a "hold harmless" agreement indicates that there is a danger in building on the lot.

John Guy, 847 Samish Island Road, opposed the variance request. He questioned whether Mr. Norris actually intends to build on the lot, or whether he intends to obtain the variance to build and then sell the lot to an unsuspecting buyer.

Jacqueline Stegner also deferred her time to Mr. Whitting, who passed. Ms. Stegner then stated that she opposes the variance request.

Fred Smith, 764 Samish Point Road, stated that he is a volunteer fireman. He stated that beach fires can cause a danger to the bank and any structure build thereon, which is covered with dry vegetation in summer time and becomes a fire hazard.

Richard Threet, 2801 17th, Anacortes, a retired geologist, offered his services to the Board in answering any questions.

Mildred Hopley declined her opportunity to speak.

E.W. Mersereau, 861 Halloran Road, opposed the granting of the variance.

Bill Davisson, 611 West Main, Monroe, stated that a condition of the Hearing Examiner had been to install an 8 to 10 foot foundation wall toward the road cut into the ground. Mr. Davisson stated that an 8 to 10 foot buried structure must have a 1:1 slope to work in. In other words, it must have a 10 foot cut on each side for the safety of the workers. Since the septic system must have a reserve area which was not shown on the plans, it is presumed that this area would have to lie over the 10 feet of uncompacted fill required to construct the 8 to 10 foot foundation wall. A requirement of reserve areas is that they lie in undisturbed soil. Additionally, Mr. Davisson pointed out that a system of drainage would need to be installed around the 8 to 10 foot wall or it will act as a shear instead of a pin, therefore the applicant must "daylight" for drainage. This would have to occur on top of the septic system.

Dan Squires, 942 Samish Island Road, stated that he holds a master's degree in construction engineering from the University of Washington. He stated that during beach walks the past two years, he has found 13 trees that have fallen off the bank. The solid classification of the bank is an ML or clay silt. Its permeability is 10<sup>-7</sup> centimeters per second, or one foot per year. Mr. Squires stated that he has observed failures from ice lancing which exist up and down the bank, including a 25 foot long by 50 foot wide failure on the Norris property. He stated that at the base of the Norris property he found a layer of coarse grain sand, coarser than 50 grain sieve, with coarse rock of less than 3/4" mixed in. This means, Mr. Squires stated, that the site sits on "ball bearings". Further instability would be caused by the disturbance of the vegetation on the bank. Cutting of the trees would further degrade the bank because the tree roots serve to hold the bank.

John Stegner, 869 Samish Island Road, deferred his time to Rob Jones.

Rob Jones, 785 Samish Island Road, stated that, although he does not live adjacent to the site, he is effected by the proposal because it constitutes a change to the area, and alters the fundamental characteristics of the island. He was opposed to the variance on this basis.

Roger Mohns, 801 Samish Island Road, stated that he owns 300 feet of frontage on the south side of Samish Island Road. He has no intentions to develop his property, and does not wish Mr. Norris to be allowed to develop his either.

Chairman Wylie then offered time for anyone who had previously spoken to speak again.

Mr. Whitting stated that, regarding the condition of the moveable house, although the condition is, in Mr. Whitting's view, radical, extreme and exotic, Mr. Norris' consultant still felt it was important, or he would not have made it.

Mr. Davisson referred to Mr. Norris' earlier statements that a moveable foundation has been done in Whatcom County. He stated that he phoned the Whatcom County Building Department. His contact there stated confidently that no one can remember this type of foundation ever being built in Whatcom County. Mr. Davisson invited Mr. Norris to produce examples.

Chairman Wylie then allowed 10 minutes each to Mr. Norris and Mr. Nielsen for closing remarks.

Mr. Norris requested to be allowed to read the letter of his geotechnical consultant, W.D. Purnell. Chairman Wylie reminded Mr. Norris that the letter is already a part of the record and had already been read, but Mr. Norris persisted, stating that he wished to show that the letter was written for evaluation of structure construction, not just septic system permitting. Mr. Norris did read into the record a section of Mr. Purnell's letter which did contain references to structure construction.

Mr. Nielsen, Mr. Norris stated, cannot limit what areas can be considered. Mr. Norris requested that the record be kept open to allow him to submit additional photographs.

Mr. Norris stated that Mr. Nielsen took liberties in quoting other people. He requested that the Board call upon Tom Karsh to give testimony as to the septic permit.

Mr. Norris stated that he did not place fill on his building site, but possibly someone else might have during the 14 years he has owned the site; he does not remember.

Mr. Norris accused the other speakers of engaging in construction of unpermitted structures on their property.

Mr. Norris stated that his consultant indicated to him that there were Whatcom County sites utilizing moveable homes.

Mr. Norris accused Mr. Whitting of harboring a bias which overshadows his professional opinion. He confirmed that Mr. Whitting's engineering consultant did not visit the site.

Mr. Norris accused Mr. Harrison of trespassing on his land to obtain the survey he produced.

Mr. Norris compared the moveable residence to a mobile home. He admitted that the Hearing Examiner had erred in indicating that the foundation could be moved.

Mr. Norris refuted Mr. Squires' statements regarding bank failure, indicating that his own recent observations had revealed none.

Mr. Nielsen then made closing remarks.

Mr. Nielsen referred to the stakes places on the Stegner lot beside Mr. Norris' lot. He stated that a measurement was taken 20 feet from the center of the road to identify Mr. Norris' property line; however, since no survey has ever been done to establish that the road is in the center of the County's easement, this property line is suspect. The front property line, as defined by Mr. Nielsen, differs from the line indicated at the site visit by Mr. Norris, because Mr. Norris was using the Puget Power pole as a point of reference. Assuming the stakes on the Stegner lot are correct, Mr. Nielsen stated, that is no room for a house, driveway, septic system and reserve area on the Norris property.

Close review of the Norris deed, Mr. Nielsen related, shows that Mr. Norris has only 95 feet of frontage on Samish Island Road. The Hearing Examiner's report stated 100 feet. Mr. Nielsen stated that these measurements will allow 20 feet of buildable property to accommodate a house, driveway, septic tank, and reserve area.

Finally, Mr. Nielsen made closing statements regarding the fundamental changes that would occur to the island as a result of the granting of the variance.

Mr. Norris then again requested that Tom Karsh be allowed to speak.

Mr. Karsh was invited to speak, if he so desired, by Chairman Wylie.

Mr. Karsh stated that Mr. Norris has no approved septic system design. He stated that the initial issue presented for decision by the Board of Health was whether or not a sewage system would fit on this site. After review by the staff, it was determined that a varying soil type existed. The soil texture where the septic system is planned is a sandy loam mixture, as identified by Northwest Septic System, Mr. Norris' consultant. A sand filtered system is appropriate under these circumstances. Mr. Karsh stated that the definition of a bank is the point where the slope breaks 100%; therefore, Northwest Septic System's recommendation is accurate.

Gary Ramey asked whether the fact that the lot is actually 95' by 164' rather than 120' by 350', as was indicated by Mr. Norris, would impact the decision regarding the septic system approval.

Chairman Wylie declared that the answer to the question would not effect the decision on the variance request.

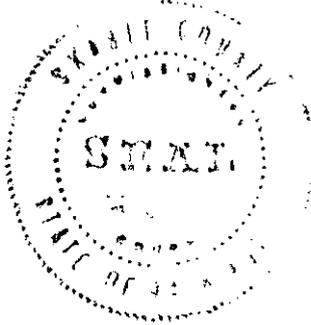
There being no further public opinion, Commissioner Rohrer motioned to close the public hearing. His motion was not seconded, instead Commissioner Vaux motioned to close the public hearing, but leave the record open until June 15, 1990, at 4:30 p.m., for additional written testimony. Commissioner Rohrer seconded this motion, and it received unanimous approval.

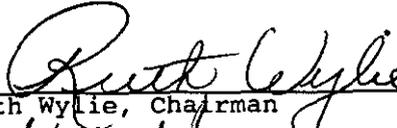
A decision on the variance request was scheduled for Tuesday, June 26, 1990, at 3:30 p.m.

**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

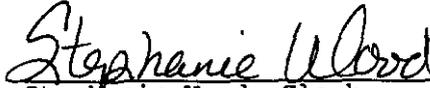


  
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Ruth Wylie, Chairman

  
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W. W. Vaux, Commissioner

  
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Dave Rohrer, Commissioner

ATTEST:

  
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Stephanie Wood, Clerk  
Skagit County Board of Commissioners