

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

Tuesday, July 30, 1991:

- 9:00 a.m. - 10:00 a.m. Department of Planning and Community Development - Scott Kirkpatrick, Director:
- 1) Growth Management Act - Proposal by Cities
 - 2) Enforcement Report Update
- 10:00 a.m. - 11:00 a.m. Appeal by Jon Fleurichamp of Hearing Examiner's Decision to Deny Special Use Permit Application #SP-90-012 for Placement of an Additional Residence on a Parcel of Property in the Agricultural Reserve Zone.
- 11:00 a.m. - 11:30 a.m. Parks and Recreation Department - Jon Aarstad, Director
- 1) Resolution - Aquatic Lands Enhancement Grants Cottonwood Island.
 - 2) Discussion Regarding Soliciting and Petitioning at the Fair.
 - 3) Miscellaneous.
- 1:00 p.m. - 1:30 p.m. Executive Session - Personnel.
- 1:30 p.m. - 1:45 p.m. Bid Opening - Installation of Chain Link Fence.
- 1:45 p.m. - 2:00 p.m. Announcement of Public Works Director.
- MISCELLANEOUS ITEMS.**
- 2:00 p.m. - 2:30 p.m. Work Session - Solid Waste Division.
- 2:30 p.m. - 3:30 p.m. Appeal by Dan Brauer of Hearing Examiner's Decision to Overrule the Decision of the Shoreline Administrator to Require Issuance of a Shoreline Substantial Development Permit to Debra Lahr #AP-91-001 for Property Located at 6150 Highway 20, Marblemount.
- 3:30 p.m. - 4:30 p.m. Discussion of Washington State General Administration's Plans for Northern State Property -Nick Cockrell, General Administration.

The Skagit County Board of Commissioners met in regular session on Tuesday, July 30, 1991, with Commissioners W. W. Vaux, Ruth Wylie and Robby Robinson present.

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT - SCOTTKIRKPATRICK, DIRECTOR:

- 1) Growth Management Act - Proposal by Cities.

Mr. Kirkpatrick had scheduled this item at the request of the Board. A letter signed by the Mayors of the Cities of Mount Vernon, Anacortes, Sedro Woolley, and Burlington was reviewed, which lists recommendations for implementing Section 2 of HB 1025 regarding county-wide planning policies. Mr. Kirkpatrick reported that the cities are anxious to begin planning; however, Planning Department staff would prefer to proceed more slowly, in keeping with the work plan they have established to comply with HB 2929. He stated that the cities would prefer that the County interrupt their Comprehensive Plan and District Plans update project to complete regional planning first.

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The recommendations of the mayors were as follows:

1. Begin meetings involving one elected official and one planner from each city and one commissioner and one planner from the County, meeting two times per month. A three-hour period each meeting was suggested.
2. Distribute new population growth in an 80/20 split, with the cities receiving 80% of new population and the County 20%.
3. Disband the Boundary Review Board when the planning policies are in place.
4. Use the RTPO effort undertaken with Island County as the County's effort.
5. Pursue affordable housing through Skagit Council of Governments (SCOG).
6. Build on the existing joint planning agreements.
7. Pursue a county-wide economic development plan through SCOG.
8. Pursue analysis of the fiscal impacts of HB 1025 through SCOG.

Mr. Kirkpatrick suggested several concerns regarding the mayors' suggestions. The Board directed Mr. Kirkpatrick to draft a letter to the mayors for the Board's signature which addresses his concerns and suggests a date for the first meeting.

Audience members Henry Campbell and Carol Ehlers commented on various items.

2) Enforcement Report Update.

Provided for review.

APPEAL BY JON FLEURICHAMP OF HEARING EXAMINER'S DECISION TO DENY SPECIAL USE PERMIT APPLICATION #SP-90-012 FOR PLACEMENT OF AN ADDITIONAL RESIDENCE ON A PARCEL OF PROPERTY IN THE AGRICULTURAL RESERVE ZONE.

Jeff Morgan, Assistant Planner, provided an Assessor's map of the subject property. The appellant, Mr. Fleurichamp, provided an aerial photograph of his property.

Mr. Morgan explained that Mr. Fleurichamp has applied for a Special Use Permit to construct a caretaker residence on his parents' property at 2331 Hoehn Road, east of Sedro Woolley so that he may reside there while he runs his parents' farm. The parcel on which this is proposed contains his parents' residence and is approximately 13.5 acres, zoned Agricultural Reserve. The Department of Planning and Community Development staff recommended denial of the application, and the Hearing Examiner concurred. Mr. Fleurichamp had also applied for a variance from the setback requirements, which was also denied, but due to recent changes in legislation, a variance would no longer be needed.

Answering a question from Commissioner Robinson, Mr. Morgan noted that an error was made in the Staff Findings which indicates that the property is located wholly in Flood Zone A. As Mr. Fleurichamp has pointed out in his appeal, the property is actually almost entirely in Flood Zone C, a lower risk category.

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Chairman Vaux asked Mr. Morgan if Mr. Fleurichamp would have received a favorable decision had he requested to place a temporary mobile home on the property in which his parents would live while he cared for them. Mr. Morgan indicated that this use is allowed, as long as the mobile home is removed when it is no longer in use.

Mr. Morgan stated that the Staff did not feel that the application was an appropriate example of farmworker housing, as used in the Skagit County Code, and that it was a circumventive attempt on the part of the applicant.

Kraig Olason, Assistant Planning Department Director, commented that farmworker housing is intended to be multiple unit dwellings.

Mr. Fleurichamp explained that he, along with his wife and new child, currently live with his parents in their home on the farm, caring for the farm while his parents enjoy retirement. With the birth of his child, it has become more difficult to live with his parents, yet he wishes to remain in close proximity to the farm to be available for early morning and late night work and for emergencies. Attempts to purchase surrounding property have been unsuccessful.

At this time, Chairman Vaux explained 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. Fleurichamp indicated that he wished the Board to hold their own hearing, or barring that possibility to remand the matter back to the Hearing Examiner for further consideration.

Commissioner Robinson asked if other instances of secondary permanent residences exist on other farmland in the area. Mr. Morgan replied that they did not; however, Mr. Fleurichamp indicated that many do, and his neighbor Stan Nelson received permission at late as two years ago to build a retirement home on property which already contains a caretaker residence. Mr. Fleurichamp provided a letter from his neighbors supporting his request.

Chairman Vaux asked Mr. Morgan if enough new evidence had been presented by Mr. Fleurichamp to appreciably change the Staff Findings. Mr. Morgan answered negatively, and also indicated that he felt the Hearing Examiner would not alter his decision.

Mr. Olason explained that Mr. Fleurichamp's neighbors probably received permission to build their second permanent residences before the recent abolishment of agricultural variance policies. A policy discussion ensued.

Finally, Commissioner Wylie motioned to remand the matter back to the Hearing Examiner for a second look at the circumstances of Mr. Fleurichamp's request and the application of Skagit County's laws to the request. Commissioner Robinson seconded this motion, which passed unanimously.

PARKS AND RECREATION DEPARTMENT - JON AARSTAD, DIRECTOR:

- 1) Resolution - Aquatic Lands Enhancement Grants Cottonwood Island.

Following a brief presentation by Mr. Aarstad, Commissioner Wylie motioned to approve for signature a grant

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application to the Department of Natural Resources ALEA Program for the purpose of obtaining \$78,260 in grant funding to purchase Cottonwood Island for the creation of a public park. The County's share of the grant would be \$19,565. Commissioner Robinson seconded the motion, which passed unanimously. (Resolution # 13094) (Contract #01077)

2) Discussion Regarding Soliciting and Petitioning at the Fair.

Mr. Aarstad explained that aggressive solicitors, such as some of the animal rights, abortion rights and gay rights activists, are becoming more prevalent at community fairs and, in order to protect the public from harassment, Mr. Aarstad, along with Fair Manager Don Helwig and the Fair Advisory Board, has drafted a policy to address regulation of solicitors.

The proposed policy was reviewed. The policy would prohibit the vendor or petitioner from initiating contact with the public through "verbal approach or solicitous manner". Vendors who are selling or encouraging public participation must contract for booth space, and cannot solicit outside of this space. Petitioners and vendors who operate outside of the Fairground boundaries must maintain a minimum distance of 20 feet from all entry and exit gates. Mr. Aarstad stated that the Fair Board used other agencies' policy in drafting this, and that both John Moffat, Chief Civil Deputy, and Dave Fleming, Risk Manager, have reviewed and approved the draft.

The Board agreed that wandering solicitors and petitioners should not be allowed to initiate contact, but felt that those having a booth should be allowed to engage in activities which attract potential clients. The Board asked Mr. Aarstad to redraft the policy to reflect this intent, and return later for a second review.

3) Miscellaneous.

A. Mr. Aarstad proposed that the Board rescind their emergency declaration of early spring which allowed the Parks and Recreation Department Director to contract individually with septic system installers for installation of a new septic system at the Clear Lake Swimming Beach. Since completion of this project has not been accomplished, Mr. Aarstad proposed that the project be rebid. The Board directed Mr. Aarstad to return with appropriate resolutions to accomplish these acts.

B. Mr. Aarstad provided a conceptual drawing of Pressentin Park, and of the Pressentin Park signage.

BID OPENING - INSTALLATION OF CHAIN LINK FENCE.

No bids were received for the installation of chain link fence.

ANNOUNCEMENT OF PUBLIC WORKS DIRECTOR.

The Board announced the selection of Rich Medved as Public Works Director for Skagit County.

MISCELLANEOUS ITEMS.

There were no miscellaneous items at this time.

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APPEAL BY DAN BRAUER OF HEARING EXAMINER'S DECISION TO OVERRULE THE DECISION OF THE SHORELINE ADMINISTRATOR TO REQUIRE ISSUANCE OF A SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT TO DEBRA LAHR #AP-91-001 FOR PROPERTY LOCATED AT 6150 HIGHWAY 20, MARBLEMOUNT.

Oscar Graham, Shorelines Administrator for Skagit County, explained that the Hearing Examiner held a public hearing on this matter on June 12, 1991, rendering a decision on June 20, 1991. He stated that no new evidence may presented to the Board today, and that the Board may exercise any one 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. Graham read from his Staff Reported dated April 18, 1991, and the following chronology of events was noted:

- In 1988, a complaint regarding placement of fill material in the shoreline area of the Skagit River and construction of a barn without proper permits in the Marblemount area was investigated, and resulted in an inability to locate the suspect property, or to recontact the complainant.
- In late spring 1990, inquiries regarding timber harvesting and grading activities within the Wild and Scenic Corridor of the Skagit River were made by the U.S. Forest Services, State Department of Ecology, and State Department of Natural Resources to the Department of Planning and Community Development.
- In early summer of 1990, Planning Department staff and Forest Service staff visited the Lahr property, where timber harvesting and grading activities were apparent. The apparent creation of a stock pond and the obstruction of a side channel of the Skagit River was also apparent. Investigation of the apparent forest practices violation and hydraulics code violation was subsequently performed by the DNR.
- In summer of 1990, letters were exchanged between the Shoreline Administrator and Mrs. Lahr regarding the alleged violations. The Shoreline Administrator's letter required submission of a Shorelines Permit Application. Mrs. Lahr's letter denied the violations.
- A second visit was arranged to inspect the Lahr property with the Department of Ecology. A Skagit County Sheriff's Deputy accompanied staff, but staff was denied access to the property by Mr. Lahr.
- A search warrant was obtained for the Lahr property and was conducted by County forces accompanied by State agencies. The search took place following heavy rains, which emphasized the evidence of the obstruction of the side channel.
- Following the search, the Shorelines Administrator reaffirmed the requirement that the Lahr's obtain a Shorelines Permit. Mrs. Lahr chose to appeal the Shorelines Administrator's determination to the Hearing Examiner.

A review of the Hearing Examiner's Findings of Fact and Entry of Order, in which the Hearing Examiner found in favor of the appellant, yielded the following:

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- The Hearing Examiner felt that no evidence was presented to indicate that 30% or more of merchantable timber was removed.
- The Hearing Examiner felt that no evidence was presented to indicated that the terrain was altered, although before the Hearing Examiner's site visit winter floods had obliterated much of the prior improvements.
- The Hearing Examiner felt that the restoration ordered by the State Agencies was sufficient to correct any damage or terrain alteration that the winter flooding had not obliterated.
- The Hearing Examiner felt that Mrs. Lahr had erred in not obtaining an exemption for the activities accomplished.

Dan Brauer, the appellant, was then given an opportunity to speak. Each member of the Board had previously received a copy of his appeal. Mr. Brauer stated that threats have been and continue to be made towards him and his family by the Lahrs. At this point, Chairman Vaux cautioned Mr. Brauer to confine his remarks to the case at hand, and cautioned Mr. Lahr to refrain from outbursts during Mr. Brauer's speech. Mr. Brauer then stated that he is a Board member of and represents the Focus Group, Audubon Society and Nature Conservancy in this matter. He stated that evidence given at the previous (Hearing Examiner's) public hearing was not duly considered by the Hearing Examiner. Mr. Brauer stated that he had spoken with Commissioner Robinson earlier regarding his personal dispute with the Lahrs. Mr. Brauer was interested in having the County compel the Lahrs to undertake a number of steps to mitigate damages and he enumerated those steps the Lahrs should be compelled to take. Mr. Brauer asked that the Board hold their own public hearing.

Mr. Lahr denied having made threats to Mr. Brauer or his family, but did allude to neighborhood disputes occurring in their area. He stated that no timber was removed from the Lahr property, although he admitted that some cottonwoods had been felled. He stated that a river side channel is undisturbed and only brush was cleared and removed from the property. Mr. Lahr stated that the pond is a natural occurrence which he has augmented somewhat. Mr. Lahr also stated that the fill he used on his property was dumped at his driveway by "the County".

Debra Lahr complained that Mr. Brauer had not attended the public hearing of the Hearing Examiner. She stated that she was attempting to comply with the Shoreline Permit requirement until she discovered that it could be appealed.

Vic Gage, a Marblemount resident and neighbor of Mr. Lahr, stated that he has observed dumping and filling on the Lahr property, some of which has occurred in the river channel.

Mr. Graham was asked to again summarize the events. He also explained that the property within 200 feet from the Ordinary High Water Mark (OHWM) of the river falls under the jurisdiction of the County's Shoreline Master Management Program. The OHWM is located at a point where aquatic vegetation gives way to dry land and its vegetation.

Mrs. Lahr stated that during a conversation she had with Mr. Graham in 1990, Mr. Graham said that he drove by the Lahr property while trying to locate the suspect property in the 1988 complaint and "saw no signs of activity". Mr. Lahr explained that fill was placed on her property in 1984 to allow access to her barn, which is allowed under law. She stated that the Department of Fisheries case to require the Lahrs to obtain a hydraulics permit has been dismissed by the Prosecuting Attorney.

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Mr. Lahr stated that some fill was placed by the previous owners of the property. The Lahr's purchased the property in 1984.

Mr. Brauer rebutted, stating that the Lahr property is located in or near a bald eagle nesting grounds. He felt that a public hearing would allow the public to present information that the Lahr's activities are jeopardizing the environment.

Terrance Carroll, representing the Lahrs, stated that all evidence was presented and considered by the Hearing Examiner at the public hearing. He maintained that the appeal is based on a personal dispute and should be denied.

Mrs. Lahr provided photographs of her property which she took.

Kurt Buchanan, representing the Department of Fisheries, stated that he is unaware that the case against the Lahrs brought by his agency had been dismissed.

Mr. Gage stated that his father, Bernard Gage, is ill and was unable to attend the hearing, but that he supports the appeal. Commissioner Robinson disclosed that he had spoken earlier today with Bernard Gage and confirmed his son's statement.

Tom Harding, a gentleman employed by the Lahr's to perform heavy machinery work on their property, stated that at no time was his "cat" ever in the water, and no live trees were ever downed. Only debris were piled and no fill was placed except some at approximately 20 feet from the barn. He did admit that trees were removed in the pasture area.

Mrs. Lahr attempted to submit a notice of dismissal of the Fisheries Department charges, but this was refused by Chairman Vaux on the grounds that it was *new evidence*.

Mr. Graham introduced a memo from the County's Flood Control Engineer dated June 11, 1991, which documents that the property is located within an A Flood Zone, and indicates the Engineer's opinion that a violation occurred and a stream did exist.

Commissioner Wylie questioned whether the matter of replanting of cottonwood trees had been resolved with the DNR. Mr. Graham indicated that it had. Also answering Commissioner Wylie's questions, Mr. Graham stated that it is difficult to discern how much fill may have been brought into the property and where it originated.

Chairman Vaux asked Mr. Graham on what he based his decision that a *Shorelines Permit* would be needed. Mr. Graham stated that the appellant herself indicated within the Administrative Appeal submission that six to eight truck loads of fill were placed on the subject property and that grading took place within the shoreline area.

Commissioner Robinson asked if there is evidence that fill other than what the Department of Transportation provided was placed. Mr. Graham was unable to say where the fill was obtained, only that the appellant admitted to placing it within the shoreline area.

Chairman Vaux stated that it is difficult to believe that the appellant was unaware that permits were needed for the activities that were being undertaken on the property.

The Board agreed that they were distressed at being asked to sanction permit violations because the

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damage has already been committed.

Commissioner Wylie motioned to call for the a public hearing to consider evidence on this matter on Tuesday, September 17, 1991, at 10:00 a.m. Commissioner Robinson seconded the motion, which passed unanimously.

DISCUSSION OF WASHINGTON STATE GENERAL ADMINISTRATION'S PLANS FOR NORTHERN STATE PROPERTY -NICK COCKRELL, GENERAL ADMINISTRATION.

Mr. Cockrell provided each Board member and member of the audience with copies of the Final Draft of the General Administration's report "Blueprint for the Northern State Multi-Service Center". He reviewed the report, which details future plans for the use of the portion of the Northern State property that is owned by the General Administration.

ADJOURNMENT:

Commissioner Wylie motioned to adjourn the proceedings. Commissioner Robinson seconded the motion. The motion was carried unanimously.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON





W. W. Vaux, Chairman

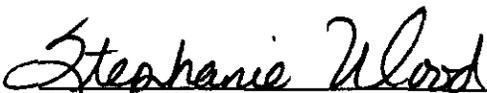


Robby Robinson, Commissioner



Ruth Wylie, Commissioner

ATTEST:



Stephanie Wood, Clerk
Skagit County Board of Commissioners