

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

Tuesday, May 19, 1992

- 9:00 a.m. - 10:00 a.m. Planning and Community Development - Scott Kirkpatrick, Director.
- 1) Urban Growth Area - City Proposed Policies.
 - 2) Proposed County-wide Comprehensive Plan Policies.
 - 3) Code Enforcement Activity Report.
 - 4) Miscellaneous.
- 10:00 a.m. - 11:00 a.m. Appeal - Peter Kwast Shoreline Substantial Development/Conditional Use/Variance Permit, 3081 S. Shore Drive, Lake Cavanaugh.
- 1:30 p.m. - 2:00 p.m. Presentation - Padilla Bay National Estuarine Research Reserve 1990-1991 Operations Report, Terry Stevens, Director.
- 2:00 p.m. - 3:00 p.m. Public Hearing - Bill Youngsman Rezone Request #REZ-91-004, West of Blodgett Road and East of Maddox Creek, Mount Vernon.

The Skagit County Board of Commissioners met in regular session on Tuesday, May 19, 1992, with Commissioners Robby Robinson, Ruth Wylie, and W. W. Vaux present.

PLANNING AND COMMUNITY DEVELOPMENT - SCOTT KIRKPATRICK, DIRECTOR.

Urban Growth Area - City Proposed Policies.

Mr. Kirkpatrick discussed with the Board a proposal submitted to Skagit County buy the cities of Skagit County for policies to be followed regarding lands located within the Urban Growth Areas of the cities. Mr. Kirkpatrick stated that until there decisions are made on final urban growth boundarie, the cities proposals cannot be considered. Mr. Kirkpatrick stated that the most disturbing policy proposal submitted by the cities is that if the County wants to take any action, such as annexation decisions or sewer installation, the County will need to have all the cities' approval. Further, the policies suggest that if urban growth is to happen outside the cities, as in the case of planned unit developments, the County must have a policy as to how this growth will happen. The Planning Commission decided on having no policy dealing with new towns in the Comprehensive Plan Policies which will soon be presented to the Board of Commissioners. This should not be a concern of the cities', but they are focusing in on this issue, Mr. Kirkpatrick said.

Mr. Kirkpatrick stated that what the cities have proposed goes beyond anything discussed in the County-Wid Planning Policy Committee meetings or with the Planning Commission during creation of the County-Wide Comprehensive Planning Policies. He feels that their proposals are premature and not well thought out.

Commissioner Vaux asked whether the Growth Management Act provides for a manner to settle differences if the cities and County can't agree.

Mr. Kirkpatrick stated that a the new State Growth Management committee or possibly the Department of Community Development will be acting to resolve differences.

Apparently in setting urban growth boundaries, Sedro-Woolley is dragging their feet, and Anacortes is rushing forward, Mr. Kirkpatrick stated. The interim urban growth boundaries stay in effect until final boundaries are set.

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An example of the cities' uncooperative demeanor, Mr. Kirkpatrick stated, is that Mount Vernon's SeaVan project is still moving ahead with no application yet made to annex County property that is currently part of the project. Mr. Kirkpatrick stated that he has asked the Boundary Review Board to address the issue regarding the city annexing this County property. Historically, Mr. Kirkpatrick stated, the cities choose attractive properties to annex, leaving undeveloped or undesirable properties out of their annexation proposals.

Mr. Kirkpatrick stated that the cities want the County to agree to restrictive policies without providing adequate explanation for the purpose of these policies. Mr. Kirkpatrick stated that he wants to see what Capital Improvements, Urban Growth Boundaries and annexation agreements the cities will come up with before any policies are agreed upon. At that point some of the proposed policies may apply. At present, however, the cities want the County to agree to rules and policies without the adoption of finalized boundaries.

Commissioner Vaux stated that the cities' game plan is to present policies which take away any discretion on the County's part.

Mr. Kirkpatrick stated that Thurston and King County's have good urban growth boundary agreements. He felt that either someone other than himself needs to be sent to the City/County Planner's meetings or his purpose there needs to be changed for negotiations to be effective. He stated that by rejecting the city's proposed policies, the cities will say that the County was not supportive of the concept. The cities have been involved in drafting the proposed policies for six months and did not allow the County any involvement until now. Mr. Kirkpatrick felt that another six months should not be spent battling over something that should have been presented earlier in the process.

Commissioner Vaux stated that he has been inundated by calls from residents west of Burlington, and not one is looking forward to being in the city limits.

Commissioner Wylie stated that the same is true for the Mount Vernon area.

Mr. Kirkpatrick then spoke about the friction between the cities and the County over timely completion of the County's Comprehensive Plan update. Mr. Kirkpatrick stated that Mike McCormick of the Department of Community Development, which administers the Growth Management Act, wants to see a good faith effort from Counties planning under the Act. Mr. Kirkpatrick stated, with respect to completing the update of the Comprehensive Plan by July of 1993, that he would rather have a professionally prepared plan 75% complete, than a fully completed plan that is not well done. The cities do not agree with this proposal. The cities see the County as being derelict in their efforts to complete their Comprehensive Plan update on time.

Mr. Kirkpatrick asked for direction from the Board to respond to the cities.

Commissioner Wylie stated that the Board will send him a memo giving him direction.

Chairman Robinson stated that more information needs to be supplied by the cities before further consideration can be given to their proposed policies.

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Proposed County-Wide Comprehensive Plan Policies.

Mr. Kirkpatrick stated that the Planning Commission has been working very hard to complete Comprehensive Planning. The Planning Commission has performed as required, and the policies will serve as an umbrella for the next step in updating the Comprehensive Plan. Mr. Kirkpatrick suggested having a work session the following week where he could explain each comprehensive plan policy to the Board prior to holding a public meeting to consider the adoption of the policies.

The Board set agenda time on June 1, 1992, at 2:00 p.m. to go over the Draft Comprehensive Plan Policy.

Mr. Kirkpatrick stated that he commends the Planning Commission on the Comprehensive Plan Policies, and their representation of the County.

Code Enforcement Activity Report.

The Code Enforcement Activity Report was presented to the Board.

Miscellaneous.

- A) The Board was introduced to, and welcomed, Rob Knable, who will be working with Jim Freeman, Senior Planner, Resource Planning.
- B) A brief discussion was held regarding the scheduling of a Planning Commission referred item regarding proposed amendments to the Skagit County Code regarding unclassified special uses.

APPEAL - PETER KWAST SHORELINE SUBSTANTIAL DEVELOPMENT/CONDITIONAL USE/VARIANCE PERMIT, 3081 S. SHORE DRIVE, LAKE CAVANAUGH.

Bob McGill, Shorelines Administrator, addressed the Board. He stated that on July 29, 1991, he received a complaint of a dock being constructed without permits. Mr. McGill verified this to be true, and sent Mr. the property owner, Mr. Kwast, a letter requiring him to acquire a shoreline permit for his 20' x 30' addition to the existing 72' x 6' dock. Mr. McGill submitted a site plan and photos into the record of the dock. On September 18, 1991, Mr. Kwast submitted a shoreline permit application. On December 17, 1991, a public hearing with the Hearing Examiner Pro Tem was held, and Mr. Nielsen denied the shoreline development request after the Staff's recommendations. A reconsideration was requested by Mr. Kwast, another hearing held, and the request denied again. The denials were based upon Mr. Kwast's failure to show that his request for a variance for a dock longer than is allowed should be granted.

Mr. McGill stated that Mr. Kwast has claimed that a submerged log renders the existing dock unusable for swimming and diving or boating. The log was claimed to be a significant natural feature that prohibited the use of the dock as it was originally constructed. On April 7, 1992, an appeal was made to the Board, stating that Mr. Kwast was aggrieved by the cost of the removal of the dock. The maximum allowable length of docks at the site is 60 feet, Mr. Kwast's dock is 94 feet long.

The options for consideration are:

- a) to summarily approve the Hearing Examiner's recommendation; or
- b) to remand it back to the Hearing Examiner for further discussion; or
- c) hold a public hearing and adopt findings of fact if the Board deems a change in the Hearing Examiner's recommendation.

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- Brad Furlong, attorney for Mr. Kwast, addressed the Board. Mr. Furlong felt that most variance requests should end with the Hearing Examiner, that it defeats the process to come back to the Board. Mr. Furlong stated that he became involved in this case after the reconsideration and was surprised at the inconsistencies between the Hearing Examiner Pro Tem and the regular Hearing Examiner. He stated that another Lake Cavanaugh resident made a longer than usual dock due to a log prohibiting the use of the existing one and was originally denied. Mr. Schofield later reconsidered and approved the variance. In Mr. Kwast's case, Mr. Nielsen was the Hearing Examiner Pro Tem, and decided differently in the same type of situation.

Mr. Furlong continued, stating that Mr. Kwast was approached by a contractor who offered to add on to his existing dock. Mr. Kwast accepted, and was told by the contractor that he did not need a permit to add on to the dock. He later found out from the County that he did need a permit and a variance, as the dock was larger than is allowed. Mr. Furlong stated that he felt Mr. Nielsen had been fair, but would be more comfortable if the Board held their own public hearing to review the situation in full and hear further testimony.

- Mr. Robert Eggy, an adjacent property owner to Mr. Kwast addressed the Board. Mr. Eggy stated that he testified at the first hearing on Mr. Kwast's application, and was glad that he was denied his requests. Mr. Eggy stated that his father purchased their property in 1964, and he purchased it from his father 6 or 8 years ago. He stated that he has a vested interest in Lake Cavanaugh. He felt that a disregard of the Shoreline Management Act and County Dock Codes was unacceptable. For whatever the reason, it was an error and he didn't think that the issue should be confused by hiring an attorney. He stated that it is the Board's job to set the law. Mr. Kwast's request did not meet the necessary criteria. Mr. Eggy stated that the log issue is a new one. He has not seen kids using Mr. Kwast's dock for swimming or diving, and the log is not where a propeller would hit it. He wondered why the log was not pulled. Mr. Eggy stated that Mr. Kwast's dock protrudes substantially past his own dock and that it presents a hazard for skiers.

Mr. Eggy stated that he was trying to encourage the Board to follow the Code and consider the cumulative impact if a variance was approved. It would reset the dock length allowable on the lake. Mr. Eggy felt that the laws, rules, and codes needed to be considered.

- Mr. Furlong readdressed the Board, stating that he felt Mr. Eggy presented an unfair argument. He agrees that the Board needs to be involved to get full information, not just what was presented this day. He felt that there were a lot more facts to present.

Commissioner Vaux asked Mr. Kwast why the log wasn't pulled.

Mr. Kwast stated that Mr. Lynch, the previous owner, had tried to pull it with a CAT, but could not. The Department of Ecology will not allow it to be pulled as it provides a habitat for fish. It also would have uprooted the original docks pilings as it is in between them.

- Mr. Furlong stated that the dock was made longer on the landward side in order to access by wheelchair for Mr. Kwast's sister-in-law. (The landward portion of the dock was included in the total length.) It would require a hydraulics permit from the Department of Fisheries to remove the log.

Commissioner Vaux asked Mr. Kwast why he did not apply for a permit in the first place.

Mr. Kwast stated that he was told by the dock builder he hired that no permits were necessary. In the past he has relied on his contractors to obtain necessary permits, and assumed that to be the case this time also. He said that his actions were not blatant or malicious, he was unaware of the need to acquire a permit.

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Commissioner Wylie asked what the purpose of extending the dock was.

Mr. Kwast stated that the dock was extended 20 feet beyond the log because boats cannot be brought on the east side of the dock without hitting it. Also, diving is done off the dock and the log is a danger to swimmers and divers.

Commissioner Wylie motioned to hold a public hearing to consider the matter further.

There was no second, therefore the motion died.

Commissioner Vaux motioned to uphold the Hearing Examiner's decision to deny Mr. Kwast's Shoreline Substantial Development/Conditional Use/Variance Permit, at 3081 S. Shore Drive, Lake Cavanaugh. Chairman Robinson seconded the motion. The motion carried with affirming votes from Commissioner Vaux and Chairman Robinson. Commissioner Wylie cast a dissenting vote.

PRESENTATION - PADILLA BAY NATIONAL ESTUARINE RESEARCH RESERVE 1990-1991 OPERATIONS REPORT, TERRY STEVENS, DIRECTOR.

Mr. Stevens presented to the Board the Padilla Bay National Estuarine Research Reserve 1990-1991 Operations Report. Mr. Stevens stated that the Breazeale Interpretive Center has been in existence for 12 years, and he has been there for 10. They have had one-quarter to one-third million visitors, and 40,000 - 50,000 of those visitors were regional students from Skagit and Whatcom Counties.

Mr. Stevens said that there are educational programs for grades K - 3, and 4 - 8. Ten thousand dollars has been granted from the Texaco Corporation Foundation to develop a high school outreach program. The main schools involved in the piloting of the programs are Anacortes, Burlington, and Mount Vernon. These funds were utilized to match a \$20,000 federal NOAA/OCRM education grant for the project.

There will be a 10-year birthday party for the Center mid-September.

Mr. Stevens stated that there will continue to be weekend programming in natural sciences. There has been 4 to 6,000 kids through the programs on marine sciences and he estimates that 6 - 7,000 have been turned away. There have been many requests for the programs making it necessary to add to staff. There is no charge for the programs.

Mr. Stevens reviewed with the Board that there are many research projects in progress. One of these projects is the creation of maps of Padilla Bay and the sea grasses growing there. The largest contiguous bed of sea grass in the northwest, estimated at 7,500 to 8,000 acres in Padilla Bay. This bed of sea grass provides habitat for juvenile salmon, chinook, and dungeness crab.

Mr. Stevens stated that a two year analysis of the Padilla Bay area has been conducted for the presence of herbicides and pesticides. There was little evidence of contamination.

Commissioner Wylie asked whether the eel grass that is taking over Long Beach is a problem in our area.

Mr. Smith stated that vegetation Commissioner Wylie was speaking of is Spartina, which is a marsh grass. He said that there is a state-wide environmental impact study being developed to combat Spartina, and intensive studies are being done. Mr. Stevens stated that the Spartina in our area is in a vegetative form and has not gone to seed yet. The Spartina grows so dense that it changes the tidal area and takes away habitat for crab, oysters, shrimp, and birds.

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Mr. Stevens stated that late this year or early next year he will be assisting Jim Freeman, Senior Watershed Planner, with the Padilla Bay Watershed project.

Mr. Stevens stated that Hat Island is now DNR owned and he is working with them to include it in the Padilla Bay Reserve. Dot and Saddlebag Islands are already included.

Mr. Stevens closed by saying that he is an employee of the Department of Ecology, Director of National Reserve, and will help the Board get any answers they may have or direct them to the appropriate source for answers.

PUBLIC HEARING - BILL YOUNGSMAN REZONE REQUEST #REZ-91-004, WEST OF BLODGETT ROAD AND EAST OF CEDARDALE ROAD, MOUNT VERNON.

Gary Christensen, Senior Planner, reviewed for the Board that on March 23, 1992, the Planning Commission held a public hearing and forwarded their recommendation to approve Mr. Youngsman's request. The Planning Department had recommended denial of the request. On April 21, 1992, the Board, at a public meeting, decided to hold their own public hearing regarding Mr. Youngsman's request which brings the situation to date.

Mr. Christensen presented photos of Mr. Youngsman's property, which he has retained in his files in the Planning Department. He read into the record, a memo summarizing the issues regarding the Youngsman request. He also submitted the recorded motion from the Planning Commission, the Planning Commissions findings and the Planning Departments Staff Report.

Commissioner Vaux questioned what the property was being rezoned from and to.

Mr. Christensen stated that East of Maddox Creek is being requested to be rezoned from Agricultural to Residential. The area west of Maddox Creek adjoining Mr. Youngsman's Commercial/Light Industrial property is requested to be rezoned to Commercial/Light Industrial as well.

Commissioner Vaux stated that this public hearing was called on a two to one vote. He wanted to approve the rezone the first time it came before the Board and his position has not changed.

- Paul Taylor, attorney for Mr. Youngsman, addressed the Board. Mr. Taylor submitted for the record an outline supporting the rezone request. He also submitted a vicinity map designating the zoning of the Youngsman property and surrounding properties. The zoning on Mr. Youngsman's property is as follows: Commercial-Limited Industrial 660 feet from Cedardale Road to the east; Residential 300 feet from Blodgett Road to the west; and Agricultural in the area between the commercial and residential area, which Maddox Creek runs through dividing it into two separate parcels.

Mr. Taylor stated that the Comprehensive Plan classification for the property is Commercial-Limited Industrial from Cederdale Road east to Maddox Creek; and Residential from Blodgett Road west to Maddox Creek. Mr. Taylor felt the Board had lost sight that the Comprehensive Plan had been amended and only the rezone remains to be approved. Mr. Youngsman's intent is to rezone the property to be in conformance with the previously approved amendment.

Commissioner Wylie stated that there was a different Board when the Comprehensive Plan amendment was made and she voted against it. There has now been a change in commissioners and that is why the public hearing was called. They have not lost site of the issues, but she feels that new Board members should have an opportunity to act on the proposal.

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Mr. Taylor referenced some rezones that had been approved for neighboring properties. He said that there have been significant changes, that the area is not usable as agricultural land and hasn't been farmed in 40 years. He felt that the agriculturally zoned portion of the property is harmful to other agricultural land due to the noxious weeds growing there.

Mr. Taylor stated that there was a determination of non-significance signed by the Planning Department at the onset of the project. A traffic study was performed finding that one access on Blodgett would not create a traffic issue. A drainage study was done, septic soils are good, and PUD water is available.

Mr. Taylor stated that the noise concern from the commercial area had been addressed in the buffer and landscape plan. The plan would provide for a twenty-five foot landscaped buffer on each side of the creek easement which means a total buffer area of 80 feet. Commercial buildings will be set back another seventy-five feet from the edge of the commercial buffer, and homes will be set back another twenty-five feet from the edge of the residential buffer. The total buffer and building setback area will be one hundred and eighty feet between the proposed commercial and residential zonings.

Mr. Taylor said that the City of Mount Vernon has no problem with the proposed rezones.

Mr. Taylor said that there has only been one protest to the rezoning from Mr. Pat McMullen, a neighboring property owner.

- Don Sicksteel, Sicksteel Crane, addressed the Board. Mr. Sicksteel stated that he has adjoining property to Mr. Youngsman. When he was first locating his business there, he took his plans around to adjoining property owners to review. He has trees in place for a buffer, and has had no complaints. There is residential property adjacent to his property and everything has been going fine. Mr. Sicksteel doesn't see why Mr. Youngsman's proposal wouldn't work.

- Ken Slater, property owner south of Mr. Youngsman addressed the Board. Mr. Slater stated that the area on either side of the creek could not be farmed and should never have been zoned agricultural. He felt that nothing Mr. Youngsman wants to do is out of line.

- Paul Reilly, representing Mr. McMullen, addressed the Board. Mr. Reilly stated that the first he had heard of this situation was the day prior. He felt that there was a confusion of issues. The concern Mr. McMullen has as a neighbor, is primarily the traffic situation on Blodgett Road. The road is narrow, sight is restricted, and there were two fatalities in two years. He stated that Mr. McMullen had found the average speed to be 43 mph even though it was posted at 35 mph. He said that after trees were removed due to sight restrictions, the average speed had increased to 48 mph. Mr. Reilly stated that with 180 additional transits in or out of the proposed residential district, it creates greater hazard. There would average ninety round trips a day, he was not sure whether that was a figure based on service vehicles as well as residents.

Mr. Reilly stated that he was not sure whether the drainage ditch that was being referenced to was Maddox Creek. If so, it was an erroneous labeling. Maddox Creek is a seasonal salmon stream, and Mr. McMullen is concerned with protecting it.

Mr. Reilly stated that the determination of non-significance was liberal and asked the Board to consider this request carefully.

- Mr. Taylor readdressed the Board, stating that the Planning Commission recommended approval of the rezoned request on a 7 - 0 vote. He said that what was being dealt with is a rezone to make the property conform. There will still be the necessary procedures to follow for any future development.

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Mr. Christensen stated that he differs from Mr. Taylor in that the GMA was effective July 1, 1990.

Commissioner Wylie motioned to close the public hearing. Commissioner Vaux seconded the motion, which carried unanimously.

Commissioner Wylie motioned to deliberate Wednesday, May 27, 1992 at 8:30 a.m., in the Commissioners' Hearing Room, 202A, County Administration Building, 700 S. Second, Mount Vernon, Washington.

MISCELLANEOUS

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 19, 1992, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Warrants #21811 through 21948 (Vouchers #PDRAWMY01757 through PDRAWMY01894) in the amount of \$46,902.37. Transmittal #P-10-92.

ADJOURNMENT

Commissioner Wylie motioned to adjourn the proceedings. Commissioner Vaux seconded the motion, which carried unanimously.

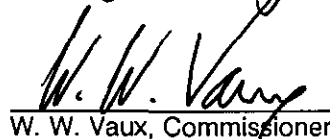
BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



Robby Robinson, Chairman



Ruth Wylie, Commissioner



W. W. Vaux, Commissioner

ATTEST:



Connie Carter, Clerk

Skagit County Board of Commissioners