

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

Tuesday, July 28, 1992

- 8:30 a.m. - 9:00 a.m. Work Session - Operations Division Manager/Road Superintendents.
- 9:00 a.m. - 10:00 a.m. *Department of Planning and Community Development - Scott Kirkpatrick, Director.*
- 1) Signature - Contract Extension - Swinomish Draft Environmental Impact Statement/Consultant Services Agreement #00926.
 - 2) Code Enforcement Activity Report.
 - 3) Miscellaneous.
- 10:00 a.m. - 11:30 a.m. Work Session - Fire Control Issues in Areas Not Served by Fire Districts.
- 1:30 p.m. - 2:00 p.m. Approval - Recommendation for Acceptance of Proposal for Insurance Carriers of Record.
- 2:00 p.m. - 3:00 p.m. Appeal - Hearing Examiner's Decision Regarding Mitigated Declaration of Non-Significance for Special Use Permit #SPU-91-017 of Tewart, Inc., Beaver Lake Rock Quarry.
- 7:00 p.m. - 9:00 p.m. Public Meeting - Washington State Gambling Commission - Casino Gambling Proposals of Swinomish and Upper Skagit Tribes.
(Hearing Rooms "B" and "C", Skagit County Administration Building.)

The Skagit County Board of Commissioners met in regular session on Tuesday, July 28, 1992, with Commissioners Robby Robinson, Ruth Wylie, and W. W. Vaux present.

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

- 1) Signature - Contract Extension - Swinomish Draft Environmental Impact Statement/Consultant Services Agreement #00926.

Mr. Kirkpatrick reviewed with the Board the need to extend the Swinomish Draft EIS consultant contracting order to complete the final billing at the end of the project. The contract amount will remain the same.

Commissioner Vaux motioned to approve the contract extension for the Swinomish Draft Environmental Impact Statement/Consultant Services Agreement to December 31, 1992, with no contract dollar amount change.

Commissioner Wylie seconded the motion, which carried unanimously. (Contract #00926).

- 2) Code Enforcement Activity Report.

The Code Enforcement Activity Report was presented to the Board.

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3) Miscellaneous

The Board was introduced to and welcomed Ms. Pat Bunting who was hired as an Assistant Planner to work in the Department of Planning and Community Development on the Comprehensive Plan and Growth Management Act.

APPROVAL - RECOMMENDATION FOR ACCEPTANCE OF PROPOSAL FOR INSURANCE CARRIERS OF RECORD.

Dave Fleming, Risk Manager presented a resolution to the Board directing the following commercial insurance policies be purchased for the period August 1, 1992 through July 31, 1993, as recommended by the Risk Management Advisory Committee:

- Rollins, Burdick and Hunter for general/auto liability excess of \$1 million self-insured retention. Premium: \$138,500.00.
- Unity Group for marine hull and liability. Renewal of existing coverage. Premium: \$35,850.53.
- Wycoff Agency for Property (real and personal); and boiler and machinery. Renewal of existing coverage. Premium: \$42,568.00.
- Doorn Agency for Employee blanket bond, and crime coverages. Renewal of existing coverage. Premium: \$4,823.00.

Commissioner Vaux motioned to adopted the resolution as presented.

Commissioner Wylie seconded the motion, which carried unanimously. (Resolution #14436).

MISCELLANEOUS

- A) 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, Tuesday, July 28, 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 91766 through 91919 (Vouchers #91766 through 91919) in the amount of \$267,676.40.
Transmittal #R-15-92.

APPEAL - HEARING EXAMINER'S DECISION REGARDING MITIGATED DECLARATION OF NON-SIGNIFICANCE FOR SPECIAL USE PERMIT #SPU-91-017 OF TEWALT, INC., BEAVER LAKE ROCK QUARRY.

David Hough, Senior Planner submitted a summary, labeled Exhibit Q, to the Board regarding the appeal of the Tewalt Special Use Permit, and read it into the record. He reviewed the Board's options to be:

- After examining the written request for appeal, the Board may deny the request and allow the Examiner's decision to stand;

- Remand the matter for reconsideration by the Hearing Examiner pursuant to Section (15), SCC 14.04.240; or
- Set the matter for public hearing and order that the notice of that public hearing be published as provided in Section 13, SCC 14.04.240. At that public hearing the Board may listen to the tape recording of the hearing conducted by the Hearing Examiner and may accept any new information, evidence, or argument offered for reconsideration.

Stephanie Wood, Administrative Coordinator, presented to the Board, correspondence received from appellants and residents in the Beaver Lake Quarry vicinity. Ms. Wood summarized the concerns reflected in the correspondence, for the record, opposing the proposed Special Use Permit. The letters received were as follows: Exhibit G) Leal Johnson, Exhibit H) Rich Ruhl, Exhibit I) Cheryl Harrison, Exhibit J) Bruce Wells, Exhibit K) Ted Maloney, Exhibit L) John Smith, Exhibit M) Bob Johnson, Exhibit N) Susan Juntunen, Exhibit O) Deloris and Scott Herr, and Exhibit P) Mary Ellen Burton.

Ms. Wood also referenced Exhibits A through F to be:

- A) Appeal to the Board of Commissioners.
- B) JGL Acoustics Letter (Appellant Consultant).
- C) Archaeological Report (Appellant Consultant).
- D) Wildlife Biologist Report (Appellant Consultant).
- E) Photocopies of Photographs Submitted by Appellants.
- F) Hearing Examiner's Decision.

- Ted Maloney, 1398 Beaver Lake Road, Mount Vernon, Washington 98273, addressed the Board. Mr. Maloney expressed surprise over the possibility of a rock quarry and heavy trucking operation being allowed in a quiet community without an Environmental Impact Statement (EIS). Mr. Maloney stated that he understood the options available to the Board and felt that the Hearing Examiner did not consider the evidence of the appellants in the reconsideration. He said that there was no mention in his report of the appellants evidence. Mr. Maloney felt that a public hearing should be held in order for the appellants to fully represent their views and evidence. He requested that the Board allow him time to respond to any comments the applicant may have after the other appellants addressed the Board.

- John Smith, P.O. Box 337, Clear Lake, Washington 98235, addressed the Board. Mr. Smith requested that the Board hold their own public hearing. He felt that an EIS was fully warranted. He stated that the quarry was not just a gravel pit, but an unusual rock formation, and that the visual impact of the proposed quarry should be addressed. He felt that the traffic area on the road itself, not just the major intersections should be addressed. Mr. Smith felt that the safety of runners, cyclists, and school children that use the roads should also be addressed. He said that the MDNS was not relevant to the site in regards to noise levels. He stated that the document was very thick, but it contained the minimum information, and did not address the full impact the quarry will have on the area.

- William Kutz, 1436 Caribou Place, addressed the Board. Mr. Kutz stated that his property is east of Beaver Lake Quarry, which he purchased for the quiet and peaceful surroundings. He felt that the document developed by Land Studies was insufficient. It did not address the aesthetic impact or mention the residential view lots to be developed in the area. He stated that there are various endangered birds and other animals that will be affected by the proposed quarry operation. He questioned the request for the long hours of operation if the blasting was proposed for only 3 to 5 times a year. He stated that there are water wells and gas lines on Beaver Lake Road that could be adversely affected by the blasting operations.

Mr. Kutz felt that the Hearing Examiner had not given adequate attention to the impacts related to approving the Tewalt's Special Use Permit. He stated that he is not opposed to the proposed quarry because it is "in his back yard" but because he felt the study lacks in detail and should require an EIS.

- Cheryl Harrison, P.O. Box 337, Clear Lake, Washington 98235, addressed the Board. Ms. Harrison requested that the Board hold their own public hearing in order to require an EIS to analyze and assess all aspects and impacts of the proposed quarry. She stated that big trucks using Beaver Lake Road cannot remain in one lane when negotiating corners and turns. She felt that further impact studies were necessary.

- DeLoris Herr, 2297 Elk Drive, Mount Vernon, Washington 98273, addressed the Board. Ms. Herr stated that she and her husband purchased their property due to the quiet location, but if they had known there was a possibility of a rock quarry and blasting, they would not have. Ms. Herr stated that she had spoken with Hayes Well Drilling regarding the possible impact of blasting on their drilled well. They told her that they could not be certain of the affects without surveying the underlying ground, but it could increase the turbidity in the water. She stated that her well is one of many in the area. Ms. Herr felt that the truck traffic would adversely affect the use of Beaver Lake Road. She has seen children and elderly persons using the road at all times of the day. She felt that the road was inappropriate for the proposed truck traffic as it is narrow, curvy, and has no shoulder space. Ms. Herr noted that the peak construction times are at the same time as school breaks when the road will be in high use by the children and the public. She stated that she knows the rock is needed, but there will be no improvement to the Clear Lake area generated by the allowance of the proposed quarry, just noise, danger and decreased aesthetics.

- Ted Maloney readdressed the Board. Mr. Maloney distributed a summary of the points made by the area residents which was labeled Exhibit S. He stated that the Environmental Checklist is a large volume, but does not address all the necessary points. No on-site visit was made to determine the decibel level, it was an estimate. The appellants supplied a noise study of the area. The ambient noise levels were not given, only estimates. No indication of noise level at the property line was given. The traffic safety issue addressed in the Tewalt's study looked at two intersections not at the road itself and the impact on the users. Mr. Maloney stated that the reason the residents are in the area is due to the quiet and beautiful surroundings. He stated that there was testimony and evidence presented that was *not acknowledged* by the Hearing Examiner. He felt that the impacts of allowing the quarry have not been fully analyzed. He felt that a public hearing is needed to fairly hear all evidence.

- Merle Ash, Land Technologies, addressed the Board. Mr. Ash stated that the County staff members that reviewed the MDNS are professionals and found the study to be adequate. He stated that the trucks were left out of the study as they are licensed and approved under required levels. He stated that TIC made noise predictions which were felt to be accurate as the firm had dealt with this type of study before. He said that the appellants can have recourse if the quarry exceeds the allowed levels. Mr. Ash stated that the Tewalts have found many people in support of their project. He felt that there would be *no significant impact* as the blasting over the past from another quarry and logging operation hadn't seemed to affect the area.

- Mr. Charlie Tewalt addressed the Board. Mr. Tewalt stated that he had a *statement of support from others* that were unable to attend.

Mr. Tewalt stated that no combination trucks will be used as rip-rap cannot be hauled in combination trucks.

The use of a D8 dozer will follow blasting. The blasting will be 6 to 8 times per year, the dozer will run 3 to 4 weeks of the year. Mr. Tewalt stated that there is farm machinery and helicopters in use in the area presently. The farming operations do not have restricted hours, the quarry will have restricted hours for blasting and notification will be required. He stated that if he does not comply with the restrictions the County can have him shut down.

Mr. Tewalt stated that the rock has been worked, and the area surrounding it has been farmed, for many years. There have been no artifacts found. Mr. Tewalt stated that the neighbor closest to the quarry site is in support of the quarry.

- Mr. Maloney readdressed the Board stating that the conclusions do not address relevant impacts. He stated that there was nothing in the conditions limiting the trucks, and there are only vague ideas of impacts on the area.

Commissioner Vaux stated that he would like to review the MDNS before making a decision, and made a motion to hold a decision time on Thursday, August 6, 1992, at the hour of 10:00 a.m., in the Commissioner's Hearing Room, 202A, County Administration Building, 700 S. Second, Mount Vernon, Washington.

Commissioner Wylie seconded the motion, which carried unanimously.

Public Meeting - Washington State Gambling Commission - Casino Gambling Proposals of Swinomish and Upper Skagit Tribes. (Hearing Rooms "B" and "C", Skagit County Administration Building.)

A public meeting was held with Floyd Williams, Chairman Upper Skagit Tribe, Andy Fernando, Planning Director, Upper Skagit Tribe, Nick Zaferatos, Representative for the Swinomish Tribe, Bob Tull, State Gambling Commission, Mary Prevost, State Gambling Commission, Gary Frazier, Skagit County Sheriff, and the Skagit County Board of Commissioners.

Mr. Tull addressed the audience, stating that the Gambling Commission polices various gambling activities such as casinos, pull tabs, and State regulated bingo. They also works with local police on illegal gambling. He stated that there have been some questions regarding legal jurisdiction on reservations. Mr. Tull stated that in 1987 it was passed through legislature to allow gambling on tribal land if a compact was negotiated with the State. Many requests were received from tribes. The Commission is the lead agency, appointed by the Governor. This led to the establishment of state agencies being involved as it was important to stay in sync with the local government. Mr. Tull stated that the Governor cannot arbitrarily sign a compact. Hearings are held with the Governor and the Secretary of the Interior.

Mr. Tull stated that he was aware that good efforts have been made in Skagit County to live and get along with the tribes. He felt that relationships of this type should be government to government. The Commission tries to keep the County Commissioners out of direct negotiations on gambling issues. He stated that there have been two compacts fully negotiated and approved by the Governor and the Secretary of the Interior.

Ms. Prevost reviewed the Federal Indian Gaming Regulatory Act gaming classes.

Class I - Traditional Tribal games - can take place without the involvement of the State.

Class II - Pull Tabs, Bingo - the Tribe can regulate with the Federal Government overseeing.

Class III - Horse Racing, Casinos, Off-Track Betting - a compact must be negotiated. If these games are played by anyone, there must be negotiations on a government to government basis in good faith. If the tribe feels that the negotiations are not in good faith, a mediator can be brought in.

Ms. Prevost stated that currently 12 tribes are in negotiations. Colville's compact went to the legislature last week, and a decision will be reached on it by the end of August. Ms. Prevost stated that the Washington State Association of Sheriffs meet monthly in order to be kept informed about what is happening in negotiations with the tribes. The negotiations are not always fast. The first two compacts that were reached took 18 months each. The Colville tribe began three years ago.

Ms. Prevost stated that the Federal legislation impacted all states and that last April, Washington State compiled state legislation adopting the Federal law.

Ms. Prevost stated that the Spokane tribe filed a lawsuit against the state last summer alleging that their negotiations were not in good faith. It is still in process. She stated that a local caucus group is important. When a local group is drawn together and made aware of the negotiations, it is not always known what the compact will be, but issues can be addressed and questions can be asked. Input is important from the local government.

Ms. Prevost stated that the Tulalip Tribe has 24 tables of card games, 80 hours a week, averaging \$10 to \$20 wagers. They can expand in 18 months to 31 tables and the amount that can be wagered can be raised.

Commissioner Vaux stated that when a business locates in Skagit County, the local government receives a percentage of sales tax and money for the road fund to offset for the business and their employees. He asked whether there would be anything in the Tribal gambling revenues to offset costs to local government.

Ms. Prevost stated that the two tribal compacts that have been reached do have 2.5% of their net proceeds contributed to local government, the net proceeds being gross amount wagered less prizes paid out. This is not a tax, the tribes cannot be taxed under federal government regulations. There will be additional people drawn in by the gambling, creating clientele for other businesses in the County as well. She said that the 2.5% contribution to local government may not come up when in negotiations with the other tribes.

Commissioner Vaux asked how the revenues would be paid to the County Treasurer.

Mr. Tull stated that it would come directly from the Tribe. He stated that the purpose of the gambling is more to address the concern of tribal income, not local, but that is also why there is negotiations.

Commissioner Vaux asked how the gambling situation was working in Whatcom County.

Mr. Tull stated that the Lummi casino was under a grandfather clause. The tribes in existence before a certain date could maintain their casinos. They presently have poker and black jack, but are negotiating for more. No agreement is in effect at this time. Whatcom County receives no revenue from the Lummi Casino.

Commissioner Wylie questioned whether fire protection would be negotiable.

Ms. Prevost stated that it was possible to be part of negotiations. The tribes may also work with agencies separate from the compact for fire control and emergency services.

Sheriff Frazier stated that the Nooksack Tribe negotiated a 2.5 percent contribution to be paid directly from the tribe.

Mr. Zaferatos stated that each tribe has different law enforcement arrangements. The Tulalip tribe has no tribal police of their own. *The Swinomish have their own police force.* Last year was the first year that they agreed with the local fire district to cash contribute \$10,000 for fire coverage. Mr. Zaferatos stated that he appreciated the recognition of the importance of fire and police coverage for the tribes.

Ms. Prevost stated that the gambling is for the economic development of the tribes. Of 26 tribes in Washington State, *half requested information regarding gambling.* Not all the tribes view the gambling as a positive move, but it is an opportunity for economic development in the tribal communities.

Commissioner Vaux asked what experience Whatcom County has had since the Lummi casino opened in December, and if they foresee any problems regarding law enforcement.

Mr. Tull stated that there have been few police problems, minor employee disputes and no problems reported by the Sheriff. One incident that did occur was that a poker dealer was conspiring with a patron. He was fired and poker was ceased until the situation was handled. The casino is open 7 days a week, 24 hours a day. The Tulalip casino is closed from 2 a.m. to 6 a.m. Lummi serves no alcohol, neither does Tulalip, but they have applied for a license. *The casinos are open to those over 18 if no alcohol is served, and over 21 if there is alcohol served.*

Mr. Don Bockleman requested that the law enforcement issues be elaborated on.

Mr. Tull stated that the Deming residents feel that a casino will bring in undesireables, such as drugs and prostitution. He did not think that would happen as there are not many related businesses in close proximity. These are regulated businesses and are in isolated areas. Peripheral problems such as traffic hasn't been a problem either.

Commissioner Robinson stated that it was time to hear the Tribal proposals.

Mr. Zaferatos, representing the Swinomish tribe, addressed the audience. He stated that he did not have detailed proposals, as they were not to that point. *Within the next few months they will develop a proposal and hold a public meeting.* He said that the proposed casino will be modest in size and have a two fold purpose:

1. Create jobs on the reservation. At present there is 25% unemployment. The casino will create 100 jobs.
2. Generate a revenue source. At present there is no reliable tax base to operate programs - education, community development, etc.

Mr. Zaferatos stated that the tentative time frame for the casino to open will be early 1993. *The proposal is to have a smaller scale casino in an existing facility, the Long House Restaurant building.* This will hold 170 patrons. There will be few changes to the building as it is hoped to reopen the restaurant. There will be no traffic or parking problems. It is planned to use this facility for one to two years, then build at the tribal

industrial site on Highway 20. This site is in the process of being developed with plans for a marina included. The casino is projected to be completed no sooner than 1994. It will be a public facility, and experts will be hired to manage and train tribe members in order to turn it over to tribal management. The casino will be closed from 2 a.m. to 6 a.m. An environmental assessment will be done.

Commissioner Vaux asked when the marina is projected to be completed.

Mr. Zaferatos stated that it would be finished 8 years after being permitted. The area will be dredged and drained before any building can be done.

Commissioner Vaux expressed concern regarding traffic heading west desiring to turn left into the proposed marina/casino area.

Mr. Zaferatos stated that it is a priority to plan for a new access ramp to the facility and this plan has been allowed for in the construction budget. The proposed ramp is to be extended and brought under the south side of Highway 20.

Commissioner Wylie asked whether the County would be as heavily impacted if the complex is to be self contained, and if it would affect negotiations for revenue contributions to the County.

Mr. Tull stated that the commercialism will take place without the casino involvement. The federal authority can't be used to regulate all phases of the development, only the gambling portion and its effects. The intention is to hold hearings on compacts as close to the communities in close proximity to the proposed gambling facilities as possible.

Mr. Zaferatos stated that there will be 4.5% of the net contributed to the Swinomish Tribal Police as they will be the first response law enforcement. He stated that from present Bingo proceeds, over \$32,000 in contributions have been made to charities, schools, and the LaConner Fire Department, and those contributions are expected to continue.

Chief Sass questioned whether a liquor license will be requested for the initial Long House Casino site.

Mr. Zaferatos stated that there is no support for it at this time, and that the tribe is moving toward an alcohol free reservation. They have stopped selling alcoholic beverages on the reservation and have refused a tavern license on the tribal land.

Chief Sass stated that the tribe has limited law enforcement authority, and felt that it would be necessary to have a local law enforcement relationship with the restaurant, hotel, and casino when a large portion of the users of the facilities will be non-tribal.

Sheriff Frazier voiced his appreciation to the Gambling Commission, and Tribal members for agreeing to meet to discuss the gambling issues and proposed gambling facilities. Sheriff Frazier stated that the concerns in the local area pertain to how to deal with the tribes on enforcement issues. He felt that the issue of potential peripheral crimes resulting from casino atmospheres cannot be ignored. Protection is important whether it is provided on the facility site or off. He stated that the tribal police have jurisdiction over tribal members on tribal land. The local law enforcement should have jurisdiction over the rest. Sheriff Frazier expressed concern with the impact of expenses to the County and State if an altercation should occur resulting in jailing. He stated that crimes will take place where people are drawn in, and the gambling will draw people.

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Mr. Bockleman stated that money in quantity, such as at casinos, does draw certain types of people that try to take advantage of others. He felt that it was a good point to consider.

Doreen Maloney questioned whether the tribes will be liable for personal injury and whether the jurisdiction would be handled in a federal or superior court. She said that the tribal casino would not be taking in thousands of dollars per hour, as in typical gambling resorts, but security is an issue that needs to be addressed, as the tribe will be risking loss.

Mr. Fernando presented a vicinity map of the proposed sites for the Upper Skagit Tribe gambling facility on Bow Hill. Mr. Fernando stated that the tribes' relationship with the State is still in the early stages. March 1, 1992, was the first time they made their interest known. There have been many discussions held regarding enforcement. He said that it has taken a lot of time and they are not far along, but felt confident that a compact would be reached soon.

Mr. Fernando stated that there is 21% unemployment rate in the Upper Skagit Tribe, and that 33% of the tribal members make less than \$7,000 per year. The main income source for many is from fishing, which yielded an average of \$1,624.00 per person the last season.

He said that negotiations have just begun for a gambling facility, and only after the compact is made will he know the size and impact of the casino. Mr. Fernando stated that if the Upper Skagit Tribes' Casino were to be of the 250 to 300 capacity size, that they would have to hire half of the staff from the local community as there are not enough members of the tribe to fill the necessary work force.

Mr. Fernando stated that the tribal property by the Bow Hill exit is zoned commercial, and the tribe has not been able to develop it for a reasonable and profitable use until the proposal of a gambling facility. In comparing tribal gambling to State gambling, the problems are different with the tribes operating and regulating them. It can work to benefit the people it is meant to serve, and will be of significant benefit to the tribal programs.

The Board thanked everyone present for attending the meeting and for their contributions to the discussion.

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

Connie Carter, Clerk
Skagit County Board of Commissioners

