

**RECORD OF THE PROCEEDINGS  
SKAGIT COUNTY BOARD OF COMMISSIONERS  
Tuesday, August 11, 1992**

8:30 a.m. - 9:00 a.m. Work Session - Operations Division Manager/Road Supervisors.

Flag Salute.

9:00 a.m. - 10:00 a.m. Department of Planning and Community Development - Scott Kirkpatrick, Director.

- 1) Proposal from the Office of the Steering Committee of The San Juan Companies for the Completion of the Lake Chiquita Bypass.
- 2) Code Enforcement Activity Report.
- 3) Miscellaneous.

10:00 a.m. - 11:00 a.m. Public Hearing - Application for Preliminary Plat #PPT-91-006 and Shoreline Substantial Development Permit #SHL-91-025 for Skagit Sunset Subdivision, Lusk and Cape Horn Roads, by George Theodoratus.

11:00 a.m. - 11:30 a.m. Public Hearing - Agricultural Variance Request #AGV-92-018 of Lynn Sullivan Diak, 798 Farm-to-Market Road, Bow.

1:30 p.m. - 2:30 p.m. Discussion - Shellfish Protection - Don Leonardson, State Department of Health; Stuart Glasoe, Puget Sound Water Quality Authority, Shellfish.

2:30 p.m. - 4:30 p.m. Cokedale/Helmick Road Site Visit.

The Skagit County Board of Commissioners met in regular session on Tuesday, August 11, 1992, with Commissioners Robby Robinson, Ruth Wylie, and W. W. Vaux present.

**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT - SCOTTKIRKPATRICK, DIRECTOR.**

- 1) Proposal from the Office of the Steering Committee of The San Juan Companies for the Completion of the Lake Chiquita Bypass.

Mr. Kirkpatrick stated that Mr. Joe Vincent of the San Juan Company Steering Committee, contacted him requesting to meet next week regarding the Lake Chiquita Bypass proposal. He stated that the steering committee was meeting this day, and will present the proposal to Mr. Kirkpatrick tomorrow.

Mary Cherberg, stated that the proposal stands as it was received by the Board July 31, 1992. She stated that they are not requesting a loan, but rather a contribution from the County for a portion of the cost to complete the bypass. She stated that Point 3 is not the only development affecting the Lake Chiquita area, so they should not be expected to pay for the full bypass project. She stated that the San Juan Companies feel that the bypass is not a condition of the Point 3 development.

Jim Morrow, Del Mar Community, stated that the primary and only interest of the Community is for the completion of the bypass. They don't care who is funding it, just that it gets done. He said that the time for the high tides is approaching and they will be flooded again if the bypass is not completed. They want it done now.

Ms. Cherberg stated that they have authorized Lee Johnson and Sons to order the materials for the work to be done.

Rich Medved, Public Works Director, stated that he concurred with Mr. Morrow. The Lake Chiquita Bypass project needs to be completed before August 24, 1992. He stated that the Public Works Department will again assist the Del Mar Community with flooding problems and road maintenance if the project does not get completed. It will be a benefit to the Public Works Department and the Community. He requested the Board to make their decision at the present time.

Ernie Armstrong, Del Mar Community, stated that he was the most heavily impacted resident in the Community by the flooding last year. He felt that it was not an unreasonable request that the effort be expended to complete the bypass project. The residents of the Del Mar Community are living in unnecessary fear of the same type of situation as last year occurring. He stated that if the bypass is not completed by early fall, there will likely be legal action taken by the private citizens in the Community.

Commissioner Wylie stated that the resolution signed by the Board on February 18, 1992, required that the Lake Chiquita Bypass be completed in its entirety prior to July 31, 1992, to insure that the Bypass functions as designed prior to the onset of inclement fall and winter weather, and should the applicant fail to perform accordingly, it may necessitate the County completing the project on an emergency basis and thereby making necessary the recovery of project costs through whatever means legally appropriate. She stated that the resolution is no longer in effect.

Chairman Robinson stated that he recalled that the high water table and high tides prevented the work from being done at the first specified time. He stated that it should be taken care of by the August 24, 1992, tide.

Commissioner Vaux stated that the resolution says the County will step in and do the work and bill the contractor. He agreed with the people of the Del Mar Community that they will be in trouble if the rainy season occurs before the bypass is completed. He stated that the work needs to be done now.

Ms. Cherberg stated that the proposal from the Steering Committee is requesting the County contribute \$38,000 to the project plus the manholes that have already been purchased for the project, bringing the contribution to approximately \$48,000. She stated that the drainage is not limited to the Point 3 development, but other areas are involved as well, but they are willing to pay two-thirds of the cost.

Commissioner Vaux motioned to have the Skagit County Public Works Department negotiate with the San Juan Companies for the County to provide no more than \$50,000 to the Lake Chiquita Bypass project and also negotiate how the money will be reimbursed to the County. The work is to be done immediately with the August tides.

Commissioner Wylie seconded the motion, which carried unanimously.

Mr. Medved stated that he would let the Board know the outcome next week.

2) Code Enforcement Activity Report.

The Code Enforcement Activity Report was presented to the Board.

3) Miscellaneous.

Mr. Kirkpatrick submitted the Planning Commission's Report from the August 10, 1992, meeting regarding a Comprehensive Plan Amendment for the Guemes Island Community Club, and the Max and Pearle Jensen Rezone Request.

**PUBLIC HEARING - APPLICATION FOR PRELIMINARY PLAT #PPT-91-006 AND SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT #SHL-91-025 FOR SKAGIT SUNSET SUBDIVISION, LUSK AND CAPE HORN ROADS, BY GEORGE THEODORATUS.**

Oscar Graham, reviewed with the Board that the Hearing Examiner Pro Tem, Bill Nielsen, initially approved both the preliminary plat and the substantial development permit with conditions in a combined written order on April 2, 1992. Mr. Graham submitted for the record a copy of the referenced written order, designated with a red X. A reconsideration was filed by the applicant requesting that the combined order be split into two for clarity. The Hearing Examiner did this but made them identical in content. Mr. Graham submitted a copy of the two orders. All the contested issues relate to the Shoreline Substantial Development component of the proposal. The segregation of the orders is fundamental to the appellants request. The Hearing Examiner's response to the appellant's request for two separate written orders is contained in finding #6 of his reconsideration and reads as follows:

"Because of the inter-relationship of the environmental and the shoreline impacts it is impractical and inappropriate to issue separate decisions and conditions as to the subdivision application and the substantial development permit applications. The project must be considered as a whole and the conditions imposed are necessary for each of the two applications to conform with applicable federal, state and county requirements."

Mr. Graham stated that his references would be confined to the first of the Hearing Examiner Pro Tem's written orders. Conditions a. through k. are associated with the preliminary plat approval with the exception of condition f. relating to structural shore defense works. Conditions l. through r. are associated with the Shoreline Substantial Development Permit. The conditions contended are listed as follows:

- L. The requirement of a tree protection inventory which does not recognize the need to remove trees for residential construction.
- N. Prohibition of residential development south of the shoreline setback line.
- O. The provision that a portion of the property be held as open space/conservancy.
- R. The requirement that community shoreline access be limited to between lots 8 and 9 and the prohibition of individual access facilities for each lot.

Mr. Graham stated that the Planning Department determined that the Hearing Examiner Pro Tem went beyond staff recommendations in conditioning the approval of a Shoreline Substantial Development. The Planning Department is in agreement with the appellant regarding the need for the written orders to be separate. The Planning Department does feel it important to maintain the native vegetation on the subject property. The applicant has proposed to create a buffer area from the river bank to proposed building sites that will be in excess of shoreline set back requirements as well as preserve existing native vegetation. Mr. Graham displayed a vicinity map designating the proposed setback line established by the applicant. The Planning Department agreed to the proposed setback line after a site visit on May 5, 1992. It was also agreed that decks and other appurtenant structures not to exceed a height of two feet above average grade level shall be allowed within the area lying between the setback line south to the top of the bank. Mr. Graham stated that the appellant has proposed that the area recommended for community open space and conservation lying south of the proposed setback line within the immediate shoreline area of the Skagit River can be protected through community covenants and restrictions associated with vegetation removal. The Planning Department concurs with this proposal.

Mr. Graham stated that the appellant objects to the restriction of one single community easement for shoreline access lying between lots 8 and 9. The Planning Department recommended individual access, limited to trails from lots 6 through 12, with no structural developments such as stairways. Mr. Graham stated that there is an existing stable road grade between lots 8 and 9 proposed to serve as access to the shoreline area as well as a 5 foot fishing access to provide shoreline access for lot 5 and lots 1 through 4 of an existing short plat to the north.

Other conditions disputed in the original written order are as follows:

- F. Restriction associated with the placement of structural shore defense works.
- L. Restriction relating to tree removal within 200 feet landward of the ordinary high water mark.
- M. Restriction on construction between November 15, and April 1, in response to potential Bald Eagle conflicts.

Mr. Graham stated the Department of Planning and Community Development recommends approval of a Shoreline Substantial Development Permit subject to the following modified conditions:

1. All development, construction, and use of the site shall be consistent with the Shoreline Management Act, Skagit County Shoreline Management Master Program and all other applicable local, state and federal regulations, and/or permit requirements.
2. Within the area lying 200 feet landward of the ordinary high water mark, no trees shall be removed other than for access to and siting of structures (including fire protection buffers) or to remove dangerous trees. Prior to site clearing, all trees to be removed shall be identified by the owner and approved prior to cutting by the Skagit County Department of Planning and community Development. All other trees and driplines shall be protected from damage by equipment and/or vehicles.
3. A variable width buffer/setback area shall be provided as indicated on the plan submitted to the Department of Planning and Community Development on March 2, 1992. No residential development shall occur south of that line with the exception that decks and similar residential appurtenant structures not to exceed two feet in height above average grade level shall be allowed within the area lying between the setback line and top of bank. Building on lots 5 through 12 will be allowed at any place on or north of that line without further shoreline setback requirements being imposed.
4. From the above referenced variable setback line to the top of the bank ornamental and native vegetation shall not exceed two feet in height. All vegetation shall be maintained to preserve views. From the top of the bank to the River no non-native vegetation shall be planted nor native vegetation removed except to preserve views, control brush and remove dangerous trees. No structural developments shall be allowed on or below the bank. This provision shall be incorporated into plat covenants.
5. Shoreline access shall be limited to trails from lots 6 through 12 and to a 5 foot fishing access located at a the eastern property line of lot #6. Structural developments providing shoreline access shall be prohibited.

6. The placement of structural shore defense and/or flood protection works shall be allowed only under emergency conditions as authorized by the Skagit County Flood Control Engineer.
7. The operation of heavy equipment shall be restricted during the period of November 15 through April 1.

Commissioner Vaux stated that the Planning Department does not have the authority of requiring covenants in developments. He felt that Condition #4 as recommended should not include the requirement of a covenant.

Mr. Kirkpatrick stated that the covenant proposal was voluntary from the appellant.

Commissioner Wylie felt that it was a good idea to have condition #4 included in the development's covenant, and the statement that there will be a covenant included in the condition.

Mr. Brad Furlong, 904 S. 3rd, Mount Vernon, Washington, representing Mr. Theodoratus, addressed the Board. Mr. Furlong thanked the Board for their decision to hold their own public hearing and thanked the Planning Department for their assistance in the matter at hand. Mr. Furlong stated that the recommendations from the Department of Planning and Community Development and Mr. Theodoratus is a good example of how the planning and permitting process should work. He felt that the proposed project was a good combination of economic and environmental planning, and felt confident that the objectives would be met.

Mr. Furlong stated that the easement through the proposed development for access to the shoreline will not be for the general public, but only for the development, which will be 15 lots total. He stated that the actual required setbacks would place the area appropriate for building at the edge of the river bank. The appellants proposal is to further set back using the 500 year flood line to measure from rather than the ordinary high water mark (OHWM). This would put the homes up to 80 feet back from the OHWM. He stated that the desire is to maintain the bank with the natural vegetation. There is no sign of erosion, and no river defense work is necessary at present. If the river should take a destructive course, then it would be up to the individual property owners in the development to have river defense work done. Mr. Furlong stated that it is proposed that there would be no tree removal unless it would be for the structure site or pose a danger. The area is designated as rural according to the Shoreline Management Plan, not conservancy, but the developer desires to preserve the area as naturally as possible. He stated that general access to the shoreline for the development would be between lots 5 and 6, with individual access for the riverside lots being trails only, with no structures. He stated that the concern regarding Bald Eagles in the area would be covered by disallowing the use of heavy equipment from November 15, through April 1.

Commissioner Vaux asked whether the water went over the banks of the river at the proposed development site during the November, 1990 flood.

Mr. Theodoratus stated that it did not, that the water level was well below the bank height and that no root system damage was done to the trees.

Mr. Furlong continued stating that there are two separate permits being applied for by Mr. Theodoratus. He requested that the Board approve the Preliminary Plat with conditions a - e, and g - k of the initial decision of the Hearing Examiner dated April 2, 1992, with the exception of condition 'c' which requires conditions 1 - 12 in the staff report. He requested that this be modified to include "to the extent non inconsistent with other conditions herein and in the associated Shoreline Substantial Development Permit:".

Mr. Furlong stated that recommendation #4 in Mr. Graham's staff report should have the words and native removed, as the statement would seem to read that anything, including trees, over 2 feet should be removed or reduced to a two foot height. This would defeat the maintenance of natural vegetation for the preservation of the bank.

Mr. Graham concurred.

Mr. Furlong stated that by listing the conditions in the covenant for the development, it would be obvious to a new purchaser that there are mutual restrictions between the owners and the County. This would give new owners full knowledge of any restrictions from the beginning of the purchase process and possibly alleviate future land use problems.

Mr. Furlong stated that Mr. Theodoratus would like to have a maintenance access between lots 8 and 9 on the existing easement.

Mr. Kirkpatrick stated that there was no objection to this from the Department of Planning and Community Development.

Mr. Furlong stated that the request is to have two resolutions, one for each permit. He offered to help with the language of the resolutions.

Mr. Graham stated that correspondence was received by the Forest Service including documents regarding wildlife and potential wildlife in the area, and addressing the Wild and Scenic Rivers Act for the Upper Skagit, if the Board would be interested in seeing it.

Commissioner Vaux asked if Mr. Theodoratus and his attorney, and the Department of Planning and Community Development were in agreement with all the proposed modifications and recommendations.

All the parties involved concurred.

The Board directed the parties involved to prepare the resolutions with the conditions and modifications as discussed and return to the Board the following day, Wednesday, August 12, 1992, at 1:45 p.m. to present to the Board for approval and signature.

Commissioner Wylie motioned to close the public hearing.

Commissioner Vaux seconded the motion, which carried unanimously.

**PUBLIC HEARING - AGRICULTURAL VARIANCE REQUEST #AGV-92-018 OF LYNN SULLIVAN DIAK,  
798 FARM-TO-MARKET ROAD, BOW.**

Mr. Jeff Morgan, Assistant Planner, reviewed with the Board that the Hearing Examiner had recommended denial of the Agricultural Variance Request of Ms. Diak, as had the Department of Planning and Community Development. He submitted a site plan map for the record, which was labeled Exhibit 'A'. The requested subdivision is to separate 1 acre from the 16.6 acre parcel. There is an existing residence on the 1 acre portion as well as a few outbuildings. The applicant hopes to obtain financing to restore the residence. The property is zoned agriculture, and 14 of the 16.6 acres are in production. The one acre Ms. Diak is requesting to be subdivided is a part of the non productive 2 acre portion.

Chairman Robinson opened the public hearing for comment.

- Ms. Lynn Diak, P.O. 1283, Anacortes, Washington, addressed the Board. Ms. Diak submitted photographs of the property, and a handout of her comments regarding her request for the record, which were labeled Exhibits 'B' and 'C'. Ms. Diak stated that it was her desire to restore the old family home which was constructed in 1914 to its original condition. She stated that there would be change in the usage of the land as the 2.67 acres that the homesite rests on has never been farmed. Her mother presently owns the property and wishes to transfer 1 acre to her so that she may have a permanent home, and be close to her mother. She felt that it would be a hardship to she and her mother if this could not be accomplished. She stated that approval of her request would not be detrimental to public welfare or injurious to the neighborhood and she would be continuing to preserve the open space character of the agricultural land. Her family is willing to include on the plat record that no further construction would take place on the property. She felt that as there are few structures in the area like the homestead that it creates a special condition of historical significance. The granting of the variance would not constitute a special privilege as it is use of family lands as is enjoyed by surrounding properties. She stated that the remodel of the home will be compatible with other permitted activities in the area and not cause adverse effects to adjacent properties or shoreline environment designation. Her family members were pioneers to the valley in the late 1800's and have farmed the land since then. She stated that she appreciates the importance of preserving the agricultural land.

- Mrs. Sullivan, 1157 Sullivan Road, Bow, Washington, addressed the Board. She stated that Lynn, her daughter, needs a permanent home for she and her 9-year-old daughter. Lynn's daughter is in the enrolled in Edison Elementary, and the homesite is within the school boundaries. Mrs. Sullivan stated that she may need assistance in advancing years and wants her daughter close to her.

- Mr. John Sandell, Ershig Road, Bow, Washington, addressed the Board. Mr. Sandell stated that he felt restoring the beautiful old homestead was a good idea.

- Mr. Art Johnson, 1148 Boe Road, Bow, Washington, addressed the Board. Mr. Johnson stated that he lives about half a mile away from Ms. Diak's requested homesite. He couldn't see any reason not to approve the variance request. The homesite had never been farmed, and it would improve the area visually. He stated that he was in favor of the requested variance.

Seeing and hearing no further comment from the audience, Commissioner Vaux motioned to close the public hearing.

Commissioner Wylie seconded the motion, which carried unanimously.

Commissioner Vaux motioned to approve the Agricultural Variance #AGV-93-018 of Lynn Sullivan Diak, 798 Farm-to-Market Road, Bow, Washington.

Chairman Robinson seconded the motion, which carried and was so ordered.

**DISCUSSION - SHELLFISH PROTECTION - DON LENNARTSON, STATE DEPARTMENT OF HEALTH;  
STUART GLASOE, PUGET SOUND WATER QUALITY AUTHORITY, SHELLFISH.**

Oscar Graham addressed the Board stating that Paul Blau, Blau Oyster, Bill Dewey, Taylor United, Inc., Commissioner Vaux and he met to discuss shellfish protection a couple months ago, and decided to schedule Mr. Lennartson, and Mr. Glasoe today to discuss the mechanics of establishing shellfish districts

and the potential of those districts.

He stated that Ms. Debbie Sergeant from the Department of Ecology Shellfish Program was present for the discussion also.

- Mr. Lennartson addressed the Board stating that the restoration program for shellfish has two major functions; the attempt to bring downgraded shellfish districts up to specifications; or being proactive in the attempt to keep from being down graded.

He said that currently Samish Bay has an APPROVED status but could potentially be downgraded. Mr. Lennartson reviewed with the Board, Commercial Shellfish Classification Definitions. An APPROVED growing area is one in which the sanitary survey and the bacteriological water quality data indicates that no dangerous concentrations of poisonous or harmful substances are present in dangerous concentrations. A CONDITIONALLY APPROVED growing area is subject to intermittent but predictable contaminations. A RESTRICTED growing area is one in which the bacteriological water quality does not meet the standard for an APPROVED classification. A PROHIBITED growing area is one in which the sanitary survey and the bacteriological water quality data indicate that no dangerous concentrations of poisonous and harmful substances are present. Growing areas that have not been surveyed are considered to be classified PROHIBITED until a shoreline sanitary survey and an intensive water quality study have been completed.

Mr. Lennartson stated that a with category that is APPROVED but threatened as Samish Bay is, monthly sampling is done to determine the cause and source of the threats. He submitted a map designating various testing stations in water sources affecting Samish Bay, and stations in the Bay. He stated that the data was collected over a relatively dry period for the area and that the waters over the oyster beds meet water quality standards. The test sites at Blanchard, Edison, and the Samish River Bridge have shown high levels of fecal coliform. He stated that there is a potential for reclassification on Samish Bay if levels of bacteria, etc., increase enough to affect water quality in the Bay. The testing occurred over a two and a half to three year period and the bacteria, etc., levels have remained consistent from wet to dry weather.

It was discussed that in 1988, a study found the water quality problem to be a combination of the effect of towns and livestock.

Mr. Lennartson stated that in the event a waterbody is declassified, it is the Department of Health's mandate to protect public health. Investigations would be done to determine the source(s) of the pollution and attempt to solve the problem.

#### **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, August 11, 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 #91920 through 92044 (Vouchers #91920 through 92044) in the amount of \$315,527.72.  
Transmittal Number R-16-92.




- B) The Board signed a Confirmation of Intent to Propose for Nutrition Services - congregate and Home Delivered Meals with the Northwest Regional Council for Skagit County Senior Services.
- C) The Board signed a Contract for Professional Services with Eric Gustafson for noxious weed control on the Sauk and Sueattle Rivers at the rate of \$150.00 per day beginning June 15, 1992, and terminating August 31, 1992. (Contract #01392).

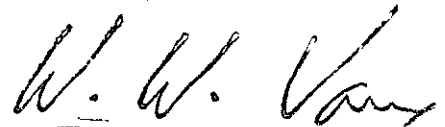
**ADJOURNMENT**

Commissioner Vaux motioned to adjourn the proceedings. Commissioner Wylie 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