

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

Tuesday, August 24, 1993

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

- 1) Discussion - Agricultural Preservation Program.
- 2) Code Enforcement Report.
- 3) Miscellaneous.

10:00 a.m. - 11:00 a.m. Appeal by Kenneth Renner of the Hearing Examiner's Decision Regarding Revocation of Exemption of Shorelines Substantial Development Permit Requirement #APP-93-011, Dock at Lots 60 and 61, Lake Cavanaugh.

The Skagit County Board of Commissioners met in regular session on Tuesday, August 24, 1993, with Commissioners Robert Hart, Robby Robinson and Harvey Wolden present.

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT - DAVE HOUGH, DIRECTOR:

- 1) Discussion - Agricultural Preservation Program.

Kraig Olasen, Assistant Director, reported on his department's efforts to create an agricultural preservation program. An Agricultural Preservation Program would provide the County with an additional land use option to retain large agricultural acreage, while allowing property owners options for utilizing smaller portions for residential purposes. Conservation Easements, cluster housing and trading of development rights are all options which could be incorporated into the Program. He stated that the Department's policy will be to keep the Department's involvement to a minimum. It will inform potential program participants as to the options available, but staff would not instigate contacts or actively solicit potential program participants.

Proposed language the staff would like to present as a work item to the Planning Commission was reviewed. The language would be reviewed and adjusted as needed by the Planning Commission, and the matter would reach the Board as a recommended Ordinance to be adopted into the Skagit County Code. Mr. Olasen stated that a "cluster housing" ordinance will be a companion to this process.

Mr. Olasen's proposed language identified criteria for program participation as follows:

- 1) Priority sites are targeted for the program. Lowland soils, which are considered prime agricultural soils, are required.
- 2) A zoning designation of Agricultural is required.
- 3) Agricultural zone setbacks are observed.
- 4) Parcel which is being traded for preserved land may be no greater in size than one acre.
- 5) The remainder of the property which is traded for a building right is placed in a Conservation Easement which removes all residential development rights on the agricultural property in perpetuity.

Mr. Olasen also suggested that the Conservation Easement be held by a private, non-profit land trust. Mr. Olasen stated that the private land trust should have no ownership interest in the Conservation Easement. Perhaps, he stated, this might be assured through a Memorandum of Understanding with a private land trust.

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The Board further discussed personal experiences with land use practices and the economic benefits of agricultural land preservation.

Mr. Olasen requested that the Board direct a request to the Planning Commission that a report be prepared and returned to the Commissioners regarding an Agricultural Preservation Program. Mr. Olasen stated that the Department has several interested parties, and staff would like to move on this as soon as possible in order to make the program available to those interested.

The Board directed Mr. Olasen to draw up a resolution for the Board's approval, directing the Planning Commission to report on the issue of an Agricultural Preservation Program.

2) Code Enforcement Report.

This item was provided for review and brief discussion.

3) Miscellaneous.

- A. Mr. Olasen presented a personal services agreement with Geomatics International, Inc., for the production of mapping items for various projects for the Planning Department. Critical areas, wetlands mapping, and an improved map of aquifer recharge areas are all allocated within the agreement. The entire contract is for \$50,000, and may be amended to include additional projects. Additional projects might include a new Zoning Map and Comprehensive Plan Map.

Chairman Hart asked that staff assure that mapping products are compatible with the County's current computer applications.

Mr. Olasen assured the Board that this would be accomplished.

Commissioner Wolden motioned to approve a personal services agreement with Geomatics International, Inc., for production of mapping items. Commissioner Robinson seconded the motion, which passed unanimously. (Contract #001752)

- B. Mr. Olasen stated that the WSU Cooperative Extension has asked the Planning Department to endorse a project they are pursuing. The project is to quantify the total number of farmland acres converted to other uses on the west side of the State.

Mr. Olsen presented a letter which endorses the Cooperative Extension's efforts to secure funding for this project, which the Board approved.

- C. 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, August 24, 1993, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

- 1) Vouchers #MW-101069-19 (Warrants #MW-101069-19) in the amount of \$20,000.00, Transmittal #C-39-93.

- D. The Board approved for signature the final plat of Rolling Ridge Estates #5.

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- E. Commissioner Wolden motioned to approve the parking lot lease with Alfco, Inc., to lease property between Gates and Kincaid Streets at \$10 per month per space (24 spaces total) for a three months period. Commissioner Robinson seconded the motion, which passed unanimously. (Contract #001753)
- F. Commissioner Wolden motioned to approve a facility use agreement with the Marbelmount Community Center for purposes of hosting the Best SELF program from June 28 through August 20, 1993, for the sum of \$800. Commissioner Robinson seconded the motion, which passed unanimously. (Contract #001754)

APPEAL BY KENNETH RENNER OF THE HEARING EXAMINER'S DECISION REGARDING REVOCATION OF EXEMPTION OF SHORELINES SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT #APP-93-011, DOCK AT LOTS 60 AND 61, LAKE CAVANAUGH.

Materials supplied to the Board prior to the meeting revealed the following history of the appeal:

Mr. Renner purchased a 20 foot wide easement from the former property owners in 1971 so that Mr. Renner could boat to the Renner island property within Lake Cavanaugh. In 1981, Mr. Renner decided he wanted to build a boathouse and dock on the easement and although the property owners at the time objected and the County agreed with the property owners, Superior Court found in favor of Mr. Renner.

Early in July of last year, Mr. Renner applied to place four galvanized steel pilings 8 feet from each side of his existing dock, apparently to prevent boats from drifting. The Shorelines Administrator quickly responded and issued an exemption from the Shoreline Permit Requirement, as long as Mr. Renner obeyed all associated shorelines rules. A site visit was not made at the time.

Mr. Moses, who owns the property on which Mr. Renner has his easement, also has a dock on his property. In October of last year, Mr. Moses filed a complaint with the Planning Department that the poles nearest his dock make navigation into his dock very difficult. Zoe Pfahl, Assistant Shorelines Administrator, then visited the Renner dock and found that the site plan Mr. Renner submitted in July did not accurately represent the distance between the Renner dock and the Moses dock. Ms. Pfahl agreed that the pilings did present a navigational hazard to the Moses dock, as well as other boaters and swimmers. A particular concern was during periods of high water, when the pilings would be submerged. Ms. Pfahl subsequently sent a letter to Mr. Renner in April, 1993, notifying him that the shoreline exemption had been withdrawn and that he must remove the two pilings on the north side of his dock.

Mr. Renner appealed the decision to rescind his shorelines exemption to the Hearing Examiner, who concurred with Ms. Pfahl. At Mr. Renner's request, the decision was revisited by the Hearing Examiner, and again Ms. Pfahl's decision was upheld.

Chairman Hart called upon Zoe Pfahl to give information first. She reviewed that in June, 1993, she prepared staff findings for an appeal of a decision to revoke a shorelines exemption. The Hearing Examiner, in considering the appeal, made conclusions which indicated that four poles placed by the Renners under a shoreline exemption that was subsequently rescinded were a navigational hazard and that removal of the hazardous poles would mitigate the hazard.

The three options the Board has in this matter were reviewed. They were:

- 1) To uphold the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.

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- 3) To adopt the Board's own conclusions, which are supported by findings of fact made from review of the record and testimony at today's meeting.

James Renner was then given an opportunity to speak. He first requested a copy of a memorandum prepared for the Board by Stephanie Wood.

Mr. Renner began his statement by remarking that land use practices have undergone a great deal of change, and that there is a history of private property disputes between the Renners and their neighbors, the Moses'. He maintained that the Moses' have asked the County, as well as the State, to intervene to settle a private property dispute.

Mr. Renner described a visit by a State official requested by Mr. Moses which resulted in a written statement by the official that the difficulty between the Renners and Moses' constitutes a private property dispute.

Oscar Graham, Shorelines Administrator, interrupted to point out that the matter Mr. Renner was testifying in regard to was not made a part of the record of the Hearing Examiner. He therefore recommended that it be stricken from the record.

The Board reminded Mr. Renner that he must confine his remarks to only those items that were made a part of the record of the Hearing Examiner.

Mr. Renner again made statements that pertained to a letter from the State official, and was interrupted by Oscar Graham.

At that point, Chairman Hart informed Mr. Renner that his line of testimony was irrelevant.

Mr. Renner then began a statement regarding the Fourteenth Amendment right to due process. Mr. Renner felt that substantial due process had not been given to him. Mr. Renner felt that public police powers used to prosecute a private property dispute are a violation of due process. He insisted that Mr. Moses has influenced someone of power within the Planning Department which resulted in the withdrawal of the shoreline exemption.

Mr. Renner stated that in the original Findings of the Hearing Examiner, the reason for finding in favor of the Shorelines Administrator was given as being a hazard to the Moses dock represented by the Renner poles. Later, on reconsideration, the Hearing Examiner noted a public hazard to swimmers, parasailers, and other boaters. Mr. Renner insisted that some type of impropriety existed here.

Mr. Renner then disputed the finding that the poles were a hazard to any swimmers, boaters or parasailers. Mr. Renner insisted that the Moses dock is a greater hazard to parasailers, although Chairman Hart again reminded Mr. Renner that continued discussion of the problems of the Moses dock is irrelevant to the issue of Mr. Renner's poles. Mr. Renner pointed out that there was never a mention of danger to swimmers or parasailers in the Staff Report or any subsequent testimony at the public hearing, therefore the finding regarding hazards to parasailers and swimmers is arbitrary and capricious.

Mr. Renner stated that the poles he placed conform to all setbacks, including that from the Moses dock, and they are therefore a legal structure.

Glen Moses was then given an opportunity to speak.

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He first objected to Mr. Renner's representation of his testimony at the Hearing Examiner's public hearing.

Answering a question from Chairman Hart, Mr. Moses stated that he was not disagreeing with an earlier Superior Court judgement which allows Mr. Renner to construct a boathouse and dock in conformity with other docks, but stated that Mr. Renner's poles are metal filled with cement, unlike other docks, and are a danger.

Photographs Mr. Moses attempted to enter were rejected as new evidence. Mr. Moses also attempted to demonstrate a boat fuel tank and was prevented from doing so as this was also new evidence.

Mr. Moses spoke at length about the hazards of the poles, and Chairman Hart reminded him that testimony should center around the errors or lack thereof in the Hearing Examiner's findings.

Mr. Moses stated that the Renner dock has no Department of Natural Resources (DNR) lease, a State requirement. In order for Mr. Renner to obtain one, Mr. Isdell of the DNR has required that the poles be removed.

The Board established that while a letter from the DNR which indicates that the Renner dock has no lease is a part of the written record, the requirement to remove the poles is heresay testimony given by Mr. Moses at both the Hearing Examiner's public hearing and today.

Throughout Mr. Moses' testimony, Mr. Renner on many occasions interrupted to object. Mr. Moses objected to Mr. Renner being allowed to object, and once again, Chairman Hart reminded Mr. Moses and Mr. Renner that the purpose of the meeting today is to determine whether the Hearing Examiner erred or did not err.

Mr. Moses objected to not being consulted about the placement of the Renner poles, as he is the underlying property owner. When it was pointed out that the waters on which the poles were placed belong to the State of Washington, Mr. Moses then felt that as an adjoining property owner he should have been consulted.

Commissioner Wolden asked Mr. Moses to verify if a map that was contained in the appeal document submitted by Mr. Renner was an accurate representation of the configuration of the Renner and Moses docks.

Mr. Moses stated that the location of the docks is inaccurate as it portrays them as being too far apart.

Zoe Pfahl stated that the map Mr. Moses was reviewing was the site plan submitted by Mr. Renner.

Mr. Renner asked to make rebuttal statements. He asked the Board to review photograph #10 (under item 7 in the appeal packet submitted by Mr. Renner) and he produced another actual photograph to augment the copies the Board received. The photograph portrayed the locations of the Moses and Renner docks.

Mr. Renner argued that it is the applicant's prerogative to set the boundaries of the site plan, and that the boundaries he set in the site plan are accurate.

Once again, Mr. Renner testified as to the absence of any hazard caused by his poles. The majority of this testimony centered around Mr. Renner's suppositions and opinions on the lack of hazard caused by the poles.

In closing, Mr. Renner read from the Shorelines Management Act which indicates the purpose of the Act.

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Mr. Renner's comments again centered around the County's violation of his substantial due process rights and use of the County's police powers to police a private dispute. As the Hearing Examiner made no findings of "substantial, material public harm", Mr. Renner stated, his substantial due process rights had been ignored.

Mr. Moses then wanted a rebuttal opportunity. He wished to have Mr. Renner's remarks about him "pulling strings" to block his pole placement stricken from the record. More testimony was given about the use of the poles and the benefit of the poles.

Chairman Hart stated that he felt that the original site plan was inaccurate, but felt that the inaccuracy may not be as germane as the possibility of a hazard existing. He stated that given that both parties have testified that the water is shallow near the docks, and given that boating laws prohibit navigation of boats at close distances to docks, Chairman Hart could find no reason to believe that a hazard exists. He felt that Mr. Renner's offer of mitigatory measures in the form of covering the poles with PVC pipe or other padding should be accepted.

Commissioner Wolden agreed.

Chairman Hart clarified those findings which he felt the Board should adopt as follows:

- 1) Laws prohibit boating speed limits that would cause a wake within 150 of the shoreline of Lake Cavanaugh.
- 2) Both parties have established that the average water depth is approximately 2 feet between the two docks.
- 3) Given the speed limit and shallow water, it is unlikely that any boat would be traveling at speeds which would endanger the public safety by contact with the poles.
- 4) If mitigation measures offered by the applicant are put in place this will further protect the boating public from incidental contact with the poles.

Given those findings, Chairman Hart motioned to overturn the Hearing Examiner's findings, adopting the Board's own findings and conclusions based on a review of the record today. Commissioner Wolden seconded the motion.

Tim Hoffman, Code Enforcement Officer, suggested that the Board give a time limit for the installation of mitigation measures.

Mr. Renner asked that the mitigation not be required until after a decision is reached on his application for a DNR lease.

Chairman Hart motioned to amend his motion to require that the mitigation measures be completed either within 15 days of the receipt of the DNR lease or 90 days from the date of this decision. Commissioner Wolden seconded the motion to amend the original motion.

The Board voted on the amendment first, and it received unanimous approval.

The Board then voted on the motion to adopt new findings, and this motion also received unanimous approval.

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ADJOURNMENT:

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

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



Robert Hart, Chairman



Robby Robinson, Commissioner



Harvey Wolden, Commissioner

ATTEST:



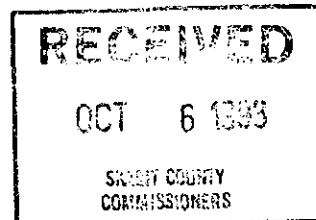
Stephanie Wood, Clerk
Skagit County Board of Commissioners

October 4, 1993

Certified Mail Number: P 197 068 352
Return receipt Requested

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Skagit County Board of Commissioners
Mr. Robert Hart, Chairman
Mr. Harvey Wolden
Mr. Robby Robinson
700 South Second
Skagit County Administration Building, Room 202
Mount Vernon, Wa. 98273



Re: APP-93-011; DISPUTE OF OFFICIAL RECORD

Honorable Commissioners,

On September 10, 1993 Stephanie Wood agreed to correct the official record, (minutes of the August 24, 1993 public meeting), if we sent her a letter pointing out the specific errors contained in the record. On October 1, 1993, when following up an earlier request for the audio tape of the meeting, we learned that she will not be making any corrections to the official record.

The most significant, (from our point of view), errors in the record that we are concerned about, (listed below as #1), are a direct result of the August 13, 1993 memorandum from Stephanie Wood to the Board. This memo was referred to by Zoe Pfahl during her presentation to the Board, as being an accurate representation of the background and issues leading up to the present meeting. We specifically requested a copy during the meeting, but we were not allowed to see the memo until September 9, 1993. Due to the fact that we were not aware of what the memorandum stated during the meeting, we were not afforded the chance to rebut the significant inaccuracies it contained, even though our exhibits presented at the meeting clearly show the memo to be false in many important aspects. Stephanie Wood admitted on September 10, 1993 that the source of information for her memo was the information notebook we had prepared for the Board. Since Stephanie Wood was the author of both the memo and the minutes, many of the errors contained in the memo made it into the record.

SPECIFIC ERRORS:

#1. On page three of the record, under "Materials supplied to the board prior to the meeting revealed the following history of the appeal:" the record quotes a paragraph word for word out of August 13, 1993 memorandum. This historical summary is both inaccurate and prejudicial: The record describes a 1971 easement only to boat to the Renner island, and indicates that in 1981 Renner then decided he wanted a boat house and dock which both

Skagit County and the previous owners objected to, but lost to Renner in Superior Court. First of all: the August 30, 1971 agreement creating Kenneth Renner's appurtenant easement contains specific language creating both the easement and Kenneth Renner's property rights to a dock and a boat house, (a copy of the easement agreement is contained in the exhibits). Second: in 1978 the Jensens, (predecessor property owners to Moses), attempted to extinguish the entire easement, not just the dock or boat house. Third: the county was not involved in any way shape or form, (at that same time, Jensen never even applied for a permit to build the dock now owned by Moses). The County clearly was not a party to the lawsuit favoring the Jensens as the record now inaccurately indicates. The actual court record shows: that this was a lawsuit between two property owners in order to quiet title to the appurtenant easement, dock and boat house. The County was not involved with the easement or remainder of the property until 1985 when the county granted an shoreline permit exemption to build the dock. To our knowledge, there was no complaint or resistance from any one; property owners, (Jensens), or the county. This present matter is the first time that the EASEMENT DOCK has ever been the subject of any appeal or county action, other than the 1985 exemption mentioned.

#2. On page three the record again quotes a passage from the August 13, 1993 memorandum, which contradicts the facts as stated that day to the board, and specifically contained in exhibits: "Ms. Pfahl agreed that the pilings did present a navigational hazard to the Moses dock, as well as other boaters and swimmers." A close examination of the record up to June 23, 1993, (the April 27, 1993 determination and the June 16, 1993 staff report), would show that Zoe Pfahl never found any hazard to "OTHER BOATERS AND SWIMMERS", this was the determination of the Hearing Examiner after the June 23, 1993 public meeting. Written and verbal documentation of this fact was presented August 24, 1993.

#3. On page four the record indicates: "Mr. Renner described a visit by a State official requested by Mr. Moses which resulted in a written statement by the official that the difficulty between the Renners and the Moses' constitutes a private property dispute." The tape recordings prove that it was specifically stated OSCAR GRAHAM arraigned the Department of Ecology's review of the matter not Glen Moses. In the next sentence the record indicates Oscar Graham as "Shorelines Administrator", a position held by Zoe Pfahl.

#4. On page four SUBSTANTIVE due process was denied Kenneth Renner, not "substantial" due process, as the record incorrectly indicates. Substantive is a specific legal term referring to a specific type of due process protected by the 14th amendment to the U.S. constitution.

#5. On page four the record contradicts what was specifically

stated: that the Hearing Examiner DID NOT FIND THE POLES WERE A HAZARD TO THE MOSES' DOCK, but to swimmers, water skiers, boaters and parasailers. Both written and verbal statements as recorded on the audiotape of the proceedings clearly reflect this important point, which is very important to the claim that the Hearing Examiner's decision was arbitrary and capricious. It was consistently stated verbally in the meeting and in written exhibits that the finding of hazard posed by the poles to the Moses' dock was the finding of Zoe Pfahl and Oscar Graham, not the Hearing Examiner.

#6. There is no mention any where in the record of the verbal and written statement to the effect that Zoe Pfahl testified on June 23, 1993 that the original exemption request of July 13, 1992 was approved by her supervisor Oscar Graham, and that Oscar Graham also approved her April 27, 1993 determination to remove the poles. The audio tape recordings and the documents filed with the board prove that this statement was made with the specific intention of making this fact a part of the record.

REQUEST:

We would appreciate the attachment of this letter to the official record, so that in the event of a background review sometime in the future, the reviewing party would be aware that we vigorously oppose the official version of events currently contained in Stephanie Wood's record of the August 24, 1993 meeting, and her August 13, 1993 memo. We also request that the exhibits provided to the Board be retained to allow any interested party in the future to reach their own conclusion as to the accuracy of the official record.

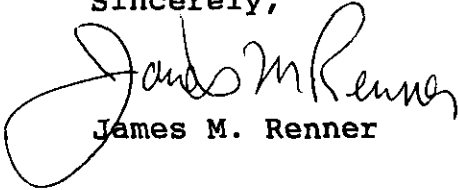
REASON FOR REQUEST:

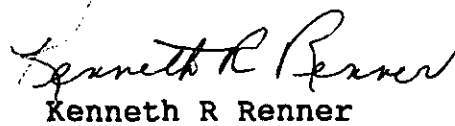
We would urge any interested party to compare the audio tape of the meeting, and exhibits entered with Stephanie Wood's version of events to gain an accurate understanding of the true facts presented and testimony. We specifically point out that SKAGIT COUNTY NEVER OPPOSED KENNETH RENNER'S EASEMENT DOCK or sided with the Jensens or any other predecessor property owner prior to the present issue at hand, (moorage poles). In the event additional private property disputes do arise in the future, we do not want to leave the unopposed impression in the official record that Skagit County has been an adversarial party siding with our opponent in private property disputes we have had in the past. As our June 23, 1993 memorandum on substantive due process contained in the exhibits shows: it would be a violation of due process protection afforded Kenneth Renner if Skagit County arbitrarily and capriciously prosecuted the interests of one property owner over another. Skagit County must fairly and equitably apply the codes to everyone.

We do admit, and did contend that Oscar Graham and others connected with Skagit County Staff did actively agree, support and work with Moses, and on behalf of Moses' private property interests as adversaries to Kenneth Renner's property interests in the present action. This is the primary reason we went to the expense and effort to vigorously contest Skagit County's actions in the present matter!

Having said this, and assuming our request to include this letter, attachments, and exhibits will be honored; we feel the decision by the Commissioners has ended this present dispute, and we are satisfied with the resulting resolution #15004.

Sincerely,


James M. Renner


Kenneth R Renner

enc: August 13, 1993 Memorandum, flawed direct quotes highlighted in yellow, additional inaccuracies not in minutes highlighted in pink (2 pages and attached sketch)
Pages 3 & 4 "Record of the Proceedings", errors highlighted in yellow

Exhibit # 1

Date Submitted 8-19-93 - Board packet

Submitted by for following week
Stephanie Wood

Case Name Appeal - Renner Dock

Hearing Date 8-24-93

ORIGINAL

M E M O R A N D U M

To: Board of Commissioners

From: Stephanie Wood

Date: August 13, 1993

Subject: Appeal by Kenneth Renner of Hearing Examiner's Decision Regarding Revocation of Exemption of Shoreline Substantial Development Permit Requirement #APP-93-011 Dock at Lots 60 and 61, Lake Cavanaugh

STAFF ASSIGNED: ZOE PFAHL

APPLICANTS: KENNETH RENNER AND HIS SON, JAMES RENNER

NEIGHBORING PROPERTY OWNERS: GLEN AND HEATHER MOSES

HEARING EXAMINER: TOM MOSER

This appeal has a history of contentious problems dating back to the late 1980's. A brief summary of this history will help you understand the present appeal.

Mr. Renner purchased a 20 foot wide easement from the former property owners in 1971 so that Mr. Renner could boat to the Renner island property within Lake Cavanaugh. In 1981, Mr. Renner decided he wanted to build a boathouse and dock on the easement and although the property owners at the time objected and the County agreed with the property owners, Superior Court found in favor of Mr. Renner.

Once again the dock is the subject of an appeal. Early in July of last year, Mr. Renner applied to place four galvanized steel pilings 8 feet from each side of his existing dock, apparently to prevent boats from drifting (see drawing). The Shorelines Administrator quickly responded and issued an exemption from the Shoreline Permit Requirement, as long as Mr. Renner obeyed all associated shorelines rules. A site visit was not made at the time.

Mr. Moses also has a dock on his property. In October of last year, Mr. Moses filed a complaint with the Planning Department that the poles nearest his dock make navigation into his dock very difficult. Zoe Pfahl then visited the Renner dock and found that the site plan Mr. Renner submitted in July did not accurately represent the distance between the Renner dock and the Moses dock. (Note that no actual dimensions are listed on the site plan, but the hand-drawn sketch [attached] does indicate a substantial distance between the poles and the Moses dock). Zoe agreed that the pilings did present a navigational hazard to the Moses dock, as well as other boaters and swimmers. A particular concern

was during periods of high water, when the pilings would be submerged. Ms. Pfahl subsequently sent a letter to Mr. Renner in April, 1993, notifying him that the shoreline exemption had been withdrawn and that he must remove the two pilings on the north side of his dock.

As a side note, staff noted that Mr. Renner does not have a lease from the DNR for the existing dock. To further complicate the matter, it would appear that the Moses' predecessors, the Daniel Jensens, did not obtain a shoreline permit in 1980 to construct the dock the Moses' now own.

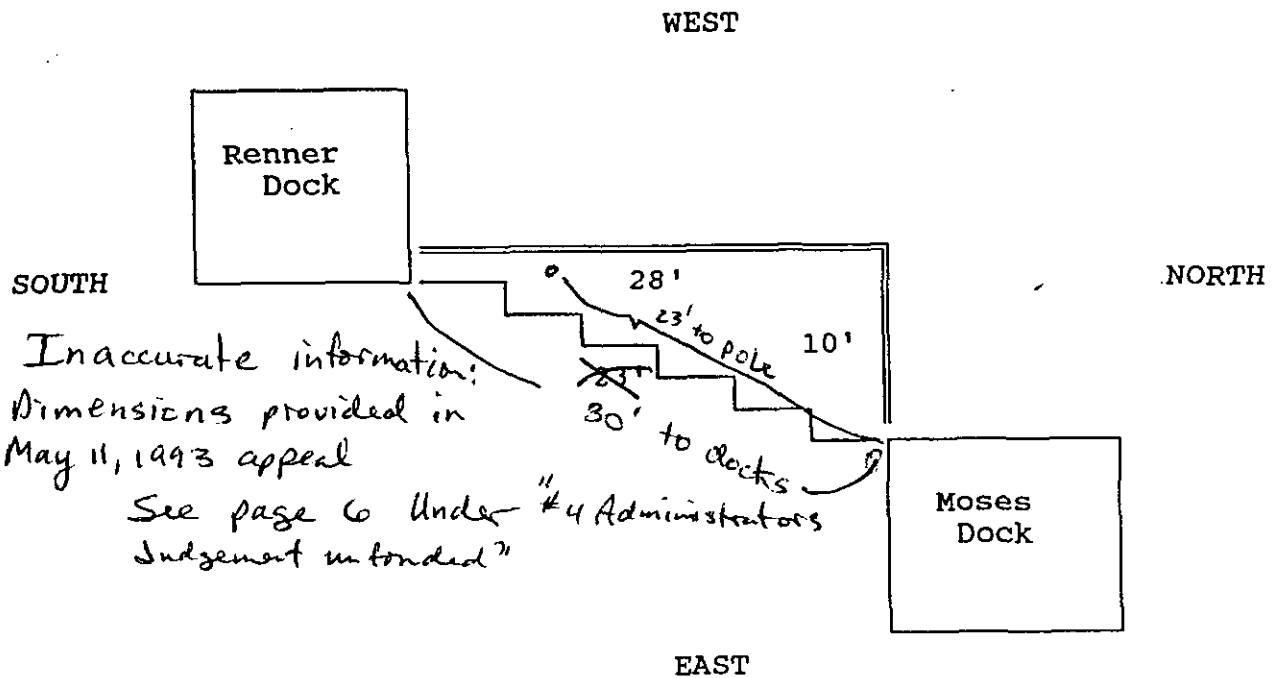
The first shoreline official whom Mr. Renner contacted was Bob McGill, who has since left Skagit County. Mr. Renner argues that Mr. McGill assured him that a site visit would be made as part of the review for his permit application; however, no site visit was made. Mr. Renner feels that the burden should have been upon the County to determine the distance from the neighboring dock, especially since his application was accepted without the measurements required by the Code. In the absence of any review, Mr. Renner feels he is not to blame for the error. When Zoe Pfahl did make the site visit after the complaint from Mr. Moses, she still took no measurements on which to base her decision, according to Mr. Renner. Finally, Mr. Renner says that the water to the west of the Moses dock is shallow, and this limits the docking of boats on the side toward the Renner dock anyway. Additionally, Mr. Renner maintains that no public navigation hazard can be asserted, since no one else is complaining and there is no evidence to this fact. Besides, Mr. Renner states, his dock meets the side setback requirements. Mr. Renner has engaged in copious correspondence with the Hearing Examiner and Planning Department about this matter, and has involved Oscar Graham and Tim Hoffman, both of whom have agreed with Zoe Pfahl.

Mr. Renner appealed Zoe Pfahl's decision to the Hearing Examiner, who upheld Zoe. He then asked for a reconsideration and was again denied. At the time of the Hearing Examiner's public hearing, Mr. Renner introduced a videotape showing boats docking at the two docks.

As mentioned earlier, there is a multitude of correspondence to and from Mr. Renner. I have left Mr. Renner's submittal intact, minus the items he submitted that were not allowable. I felt Mr. Renner's submittal was in a very confusing order, so I have made a packet like I usually make for you in the order you are accustomed to, attaching Mr. Renner's submittal to the back.

MR. RENNER'S MEASUREMENTS

SHORELINE



Sketch by Stephanie Wood
Skagit County Commissioners' Office

County regulations for setbacks for docks:

- SIDE SETBACK: At least 8 feet
- HEIGHT: Cannot exceed 3 feet above OHWM
- LENGTH: No longer than average length of other docks within 300 feet
- WIDTH: No more than 10 feet

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- F. Commissioner Wolden motioned to approve a facility use agreement with the Marbelmount Community Center for purposes of hosting the Best SELF program from June 28 through August 20, 1993, for the sum of \$800. Commissioner Robinson seconded the motion, which passed unanimously. (Contract #001754)

APPEAL BY KENNETH RENNER OF THE HEARING EXAMINER'S DECISION REGARDING REVOCATION OF EXEMPTION OF SHORELINES SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT #APP-93-011, DOCK AT LOTS 60 AND 61, LAKE CAVANAUGH.

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Mr. Renner purchased a 20 foot wide easement from the former property owners in 1971 so that Mr. Renner could boat to the Renner Island property within Lake Cavanaugh. In 1981, Mr. Renner decided he wanted to build a boathouse and dock on the easement and although the property owners at the time objected and the County agreed with the property owners, Superior Court found in favor of Mr. Renner.

Early in July of last year, Mr. Renner applied to place four galvanized steel pilings 8 feet from each side of his existing dock, apparently to prevent boats from drifting. The Shorelines Administrator quickly responded and issued an exemption from the Shoreline Permit Requirement, as long as Mr. Renner obeyed all associated shorelines rules. A site visit was not made at the time.

Mr. Moses, who owns the property on which Mr. Renner has his easement, also has a dock on his property. In October of last year, Mr. Moses filed a complaint with the Planning Department that the poles nearest his dock make navigation into his dock very difficult. Zoe Pfahl, Assistant Shorelines Administrator, then visited the Renner dock and found that the site plan Mr. Renner submitted in July did not accurately represent the distance between the Renner dock and the Moses dock. Ms. Pfahl agreed that the pilings did present a navigational hazard to the Moses dock, as well as other boaters and swimmers. A particular concern was during periods of high water, when the pilings would be submerged. Ms. Pfahl subsequently sent a letter to Mr. Renner in April, 1993, notifying him that the shoreline exemption had been withdrawn and that he must remove the two pilings on the north side of his dock.

Mr. Renner appealed the decision to rescind his shorelines exemption to the Hearing Examiner, who concurred with Ms. Pfahl. At Mr. Renner's request, the decision was revisited by the Hearing Examiner, and again Ms. Pfahl's decision was upheld.

Chairman Hart called upon Zoe Pfahl to give information first. She reviewed that in June, 1993, she prepared staff findings for an appeal of a decision to revoke a shorelines exemption. The Hearing Examiner, in considering the appeal, made conclusions which indicated that four poles placed by the Renners under a shoreline exemption that was subsequently rescinded were a navigational hazard and that removal of the hazardous poles would mitigate the hazard.

The three options the Board has in this matter were reviewed. They were:

- 1) To uphold the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.

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- 3) To adopt the Board's own conclusions, which are supported by findings of fact made from review of the record and testimony at today's meeting.

James Renner was then given an opportunity to speak. He first requested a copy of a memorandum prepared for the Board by Stephanie Wood.

Mr. Renner began his statement by remarking that land use practices have undergone a great deal of change, and that there is a history of private property disputes between the Renners and their neighbors, the Moses'. He maintained that the Moses' have asked the County, as well as the State, to intervene to settle a private property dispute.

Mr. Renner described a visit by a State official requested by Mr. Moses which resulted in a written statement by the official that the difficulty between the Renners and Moses' constitutes a private property dispute.

Oscar Graham, Shorelines Administrator, interrupted to point out that the matter Mr. Renner was testifying in regard to was not made a part of the record of the Hearing Examiner. He therefore recommended that it be stricken from the record.

The Board reminded Mr. Renner that he must confine his remarks to only those items that were made a part of the record of the Hearing Examiner.

Mr. Renner again made statements that pertained to a letter from the State official, and was interrupted by Oscar Graham.

At that point, Chairman Hart informed Mr. Renner that his line of testimony was irrelevant.

Mr. Renner then began a statement regarding the Fourteenth Amendment right to due process. Mr. Renner felt that substantial due process had not been given to him. Mr. Renner felt that public police powers used to prosecute a private property dispute are a violation of due process. He insisted that Mr. Moses has influenced someone of power within the Planning Department which resulted in the withdrawal of the shoreline exemption.

Mr. Renner stated that in the original Findings of the Hearing Examiner, the reason for finding in favor of the Shorelines Administrator was given as being a hazard to the Moses dock represented by the Renner poles. Later, on reconsideration, the Hearing Examiner noted a public hazard to swimmers, parasailers, and other boaters. Mr. Renner insisted that some type of impropriety existed here.

Mr. Renner then disputed the finding that the poles were a hazard to any swimmers, boaters or parasailers. Mr. Renner insisted that the Moses dock is a greater hazard to parasailers, although Chairman Hart again reminded Mr. Renner that continued discussion of the problems of the Moses dock is irrelevant to the issue of Mr. Renner's poles. Mr. Renner pointed out that there was never a mention of danger to swimmers or parasailers in the Staff Report or any subsequent testimony at the public hearing, therefore the finding regarding hazards to parasailers and swimmers is arbitrary and capricious.

Mr. Renner stated that the poles he placed conform to all setbacks, including that from the Moses dock, and they are therefore a legal structure.

Glen Moses was then given an opportunity to speak.