

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

**Tuesday, October 19, 1993**

- 9:00 a.m. - 10:00 a.m. Department of Planning and Community Development - Dave Hough, Director:
- 1) Signature - Coastal Zone Management Grant.
  - 2) Discussion - Residential Development in Floodway.
  - 3) Review of Technical Committee Structure.
  - 4) Code Enforcement Report.
  - 5) Miscellaneous.
- 10:00 a.m. - 11:00 a.m. Appeal - Shoreline Substantial Development/Variance #SHL-93-013 of Larry Reed, 2182 Cove Road, Sedro-Woolley.
- 11:00 a.m. - 11:30 a.m. Work Session - Stream Restoration.
- 1:30 p.m. - 2:00 p.m. Hearing Examiner's Recommendation - Approval - Agriculture Variance #AGV-93-004 for Ed Jenks, 599 Chuckanut Drive, Bow.
- 2:30 p.m. - 3:00 p.m. Hearing Examiner's Recommendation - Denial - Agriculture Variance #AGV-93-005 for Stuart and Roberta Bullock, 2172 Cove Road, Sedro-Woolley.
- 3:00 p.m. - 4:00 p.m. Work Session - Adding New Chapter to Skagit County Code Regarding Formation of Drainage Utility.

The Skagit County Board of Commissioners met in regular session on Tuesday, October 19, 1993, with Commissioners Robert Hart, Robby Robinson, and Harvey Wolden present.

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

1) Signature - Coastal Zone Management Grant.

Oscar Graham, Shorelines Administrator, reminded the Board that over the last few months he has spoken several times with the Board regarding a grant available to support Skagit County's review of a number of applications for small hydroelectric projects on Federal lands in Skagit County through development of amendments to the County's Shoreline Management Master Program. He explained that the grant is now ready for signature. It is a 50% matching grant.

Commissioner Robinson motioned to approve for signature Coastal Zone Management Grant #G940002. Commissioner Wolden seconded the motion, which passed unanimously. (Contract #001803)

2) Discussion - Residential Development in Floodway.

Mr. Graham explained that residential development within the designated floodway is prohibited under State statutes RCW 86.16 and Skagit County Code 15.20, the Flood Damage Prevention Ordinance. This includes both new structure development, as well as substantial improvement of existing structures.

The problem staff encounters with enforcing these statutes is in the definition of what constitutes a structure and what defines a residence, he stated. Because it is not always clear whether a structure will accommodate year-round residential habitation, and the applicants are sometimes vague about their intentions, some structures are in violation. There are a number of methods being employed by the public

**RECORD OF THE PROCEEDINGS**  
**Tuesday, October 19, 1993**  
**Page #2**

which circumvent the application of the present definition of a real structure. Kitchen and bathroom facilities have been used as a gauge for a residential structure, but some camping cabins that are later converted to permanent use originally had none of these facilities. Kitchen and bathrooms were later installed, without building permits or official review. Mr. Graham stated that if Skagit County fails to enforce its Flood Damage Prevention Ordinance, it is subject to removal from the Federal Flood Insurance program.

Mr. Graham stated that Cockreham Island, as well as a number of subdivisions like Carefree Acres, Shangri-La and Cape Horn lie either in part or totally within the floodway of the Skagit River.

Commissioner Robinson asked how staff views an application for remodel of an existing home within these subdivisions. Mr. Graham explained that an existing home may undergo remodeling of up to 50% of the present value of the structure and still qualify for a building permit; however, greater structural remodel is not permitted. Mr. Graham gave an example of a method of circumvention. He stated that staff may receive from the applicant information that his structure is designated a storage structure, when his structure may also contain sleeping quarters, bathroom facilities and kitchen facilities. Mr. Graham stated that he does not feel staff should always accept the applicant's designation of a structure as reflecting the intended use of the structure.

Mr. Hough gave information on the historical development of those subdivisions within the floodway. He stated that many of the subdivisions started at recreational camping lots.

In conclusion, Mr. Graham stated that his wish was to notify the Board that staff is experiencing circumvention of the Flood Damage Prevention Ordinance, and that staff is looking at refining policies and procedures to prevent evasions of the ordinance. Mr. Graham warned the Board that they may be asked to consider stiffer policies in future.

The Board discussed with staff how best to define a structure intended for residential use.

3) Review of Technical Committee Structure.

Paul Carr, Capital Facilities Planner, reminded the Board that he recently discussed with the Board capital facilities planning for Skagit County, as well as for local school districts. He stated that he has since met with the School Districts, and they have set a goal of completing capital facilities plans by early 1994.

Mr. Carr stated that the second step in the process of capital facilities planning is to adopt an ordinance which set and administer development impact fees which support the construction and upkeep of infrastructures identified within capital facilities plans. Mr. Carr recommended that a technical committee be established to decide upon and develop the ordinance and the implementation of impact fees collections.

Chairman Hart stated that it is his opinion that there is a two-year "window" from the time a new development is constructed until each household begins to contribute a fair share of tax support. He encouraged staff to look at a program that would address a fair impact fee that reflects the two-year period. Commissioner Wolden agreed, also pointing out that the two-year period begins as soon as the building permit has been issued.

Mr. Carr recommended the following representation on the technical committee:

- Skagit County: Administration, Public Works, Parks, Public Safety/Sheriff, Planning
- Schools

**RECORD OF THE PROCEEDINGS**

**Tuesday, October 19, 1993**

**Page #3**

- Building/Development Interests: Skagit County Association of Realtors, Skagit-Island Builders Association
- Consumer Groups/General Public

The Board approved Mr. Carr's recommendation.

4) Code Enforcement Report.

This item was provided for review.

5) Miscellaneous.

- A. Mr. Hough explained that the developer of the Lawson property, Ken Gentry, who was the proponent for an annexation of the Lawson property to the Town of Hamilton, has lost his option on the property, and the annexation is therefore voided.
- B. Mr. Hough stated that he and City Planners will be meeting later this week to discuss finalization of the interim urban growth boundaries.

**APPEAL - SHORELINE SUBSTANTIAL DEVELOPMENT/VARIANCE #SHL-93-013 OF LARRY REED, 2182 COVE ROAD, SEDRO WOOLLEY.**

Ms. Zoe Pfahl, Assistant Shorelines Administrator, produced staff photographs and a site plan provided by the applicant for his proposal. Copies of the Appeal, the Staff Report, and the Hearing Examiner's Findings had previously been supplied to the Board.

Ms. Pfahl stated that Mr. Reed made application to allow a 12 foot by 20 foot storage shed located 20 feet from the OHWM and two fishing decks within 9 feet of the OHWM to remain. The storage she is 15 feet from the east property line. The fishing deck is within 20 feet of westerly property line. The property is located within the floodway of the Skagit River, and must comply with the Skagit County Flood Damage Prevention Ordinance. Ms. Pfahl read from this legislation.

Ms. Pfahl stated that the staff recommended approval of the shorelines request for the fishing deck, but not for the storage unit, subject to several conditions.

Hearing Examiner Furlong approved the location of the fishing deck as well, but denied the storage shed shoreline setback variance. Ms. Pfahl reviewed those criteria that apply to the granting of variances.

Ms. Pfahl stated that the applicant maintains that the property is too small to permit construction anywhere and still meet the setback requirements.

Ms. Pfahl reviewed the Board's options with them.

- 1) To approve and adopt the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.
- 3) To call for the Board's own public hearing to consider testimony on the matter, after which a revised decision may be adopted

Ms. Pfahl explained that Mr. Reed has requested two separate variances; one from the shoreline setback, and one zoning variance from the side yard setback requirements. Mr. Reed has received approval of the

**RECORD OF THE PROCEEDINGS**  
**Tuesday, October 19, 1993**  
**Page #4**

zoning variance from the side yard setbacks, and received shoreline setback approval for the fishing platform, but not for the shed. Ms. Pfahl stated that because the property is so small, Mr. Reed will need a variance from the side yard setback requirements to construct anywhere on his property.

Commissioner Wolden asked when the structure was constructed, and the applicant replied that it was constructed in 1986. Ms. Pfahl noted that setback requirements have been in effect since 1956. She noted that had the applicant applied for a building permit at the time of the construction, he would have been denied.

Chairman Hart then questioned Mr. Reed. Mr. Reed stated that if he moves the shed 50 feet from the River, the elevation of the property at the new location drops 4.5 feet. He indicated that a slough would flood the property at that point.

Ms. Pfahl noted that Mr. Reed entered this statement into the record of the Hearing Examiner, and was given an opportunity to provide proof of this allegation; however, Mr. Reed failed to provide proof, and therefore the Hearing Examiner was unable to substantiate this finding and could not find in Mr. Reed's favor based on this unsubstantiated testimony.

Commissioner Robinson stated that he was unable to determine that the Hearing Examiner had committed any error in procedure, and motioned to permit the Hearing Examiner's decision to stand. Chairman Hart seconded the motion.

During discussion of the motion, Tim Hoffman, Code Enforcement Officer, asked that the Board place a time limit on the removal of the shed structure. Ms. Pfahl stated that the Board, if they choose to uphold the Hearing Examiner's decision, is not authorized to make changes to the Hearing Examiner's decision.

Chairman Hart then called for the question, a vote was taken, and the motion passed unanimously.

The Board then spoke with staff regarding Mr. Reed's options.

**MISCELLANEOUS ITEMS.**

- 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, October 19, 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) Manual Warrant #MW103198-26 in the total amount of \$6,589.24. Transmittal #C-52-93.
- 2) Warrants #39926 through #40085 (Vouchers #PDRAWOC04442 through #PDRAWOC04601) in the amount of \$63,747.97. Transmittal #P-23-93.

**HEARING EXAMINER'S RECOMMENDATION - APPROVAL - AGRICULTURAL VARIANCE #AGV-93-004 FOR ED JENKS, 599 CHUCKANUT DRIVE, BOW.**

Jeff Morgan, Assistant Planner and Zoe Pfahl, Assistant Shorelines Administrator, were present.

Mr. Morgan reported that Mr. Jenks has applied for a variance to construct a fence along his front property line within the front yard setback. Setbacks for non-residential structures are 35 feet in front, 15 feet on each

## RECORD OF THE PROCEEDINGS

Tuesday, October 19, 1993

Page #5

side, and 35 feet to the rear. Mr. Jenks' home is being built at this time, and he would like to screen his yard from the noise of the traffic on Chuckanut Drive. County Code requires that any fence greater than six feet in height receive a building permit, and in order to build within the front yard setback, Mr. Jenks must receive a variance. Both the Planning Department and the Hearing Examiner have recommended approval of a variance to permit the construction of the fence inside the front yard setback.

After discussion Commissioner Hart motioned to approve for signature a resolution approving the Hearing Examiner's recommendation that an Agricultural Variance #AGV-93-004 be granted to Ed Jenks, 599 Chuckanut Drive, Bow. Commissioner Robinson seconded the motion, which passed unanimously. (Resolution #15070)

### MISCELLANEOUS ITEMS.

Stephanie Wood, Administrative Coordinator, presented the following miscellaneous items for the Board's approval.

- A) Commissioner Robinson motioned to approve for signature a resolution Authorizing a Call for Public Hearing to consider a Supplemental Budget for the Veteran's Relief Fund #107 in the amount of \$12,000. Commissioner Wolden seconded the motion, which passed unanimously. (Resolution #15071)
- B) Commissioner Robinson motioned to approve for signature a resolution to Call for Public Hearing to consider the creation of a new chapter of the Skagit County Code regarding a requirement for burning permits for open burning within the unincorporated areas of Skagit County, and a resolution setting fees for the issuance of said permits. Commissioner Wolden seconded the motion, which passed unanimously. (Resolution #15072)

### HEARING EXAMINER'S RECOMMENDATION - DENIAL - AGRICULTURE VARIANCE #AGV-93-005 FOR STUART AND ROBERTA BULLOCK, 2172 COVE ROAD, SEDRO WOOLLEY.

Chairman Hart and Commissioner Robinson were present. Commissioner's Wolden absence was excused.

Jeff Morgan, Associate Planner, and Zoe Pfahl, Assistant Shorelines Administrator, were also present.

Mr. Morgan reported that Stuart and Roberta Bullock have requested an agricultural variance, which the Hearing Examiner has reviewed and has issued a recommendation to the Board for denial. He advised that the Planning Department is also recommending denial of this variance request.

Mr. Morgan stated that the property in question is designated as agricultural and is located in the floodway of the Skagit River. The Bullock property is approximately 100 feet wide and 121 feet deep. There is an existing lean-to located about 6 feet from the west property line, and a shed located 7' from the east property line. The legal setback from the side property lines is 15 feet. After an enforcement action revealed that these buildings had not received buildings permits, and had been constructed inside the side yard setbacks, the applicant applied for a variance to allow these buildings to remain.

Planning staff compared the application to the variance criteria established by the County Code, and recommended denial of the request for a variance from the front yard setback based on the absence of any topographical hardship which would prevent the applicant from moving his shed to another location on the property.

**RECORD OF THE PROCEEDINGS**  
**Tuesday, October 19, 1993**  
**Page #6**

Mr. Morgan provided photocopies of photos of the site, which he reviewed with the Board.

Mr. Morgan reviewed the options of the Board:

- 1) To adopt the recommendation of the Hearing Examiner;
- 2) To remand the matter back to the Hearing Examiner for further consideration; or
- 3) To call for the Board's own public hearing to consider testimony on the matter.

Mr. Morgan noted that the Hearing Examiner did reconsider his decision, at the applicant's request, and reaffirmed his recommendation for denial.

Mr. Bullock stated that at the time he built the little shed he was told he did not need a permit. He said he was told later that he needed a permit due to the rough area. He said that a neighbor had received a variance and he felt it would be fair if he received the same consideration.

Mr. Morgan verified that the issues Mr. Bullock referred to were all contained in testimony before the Hearing Examiner.

Commissioner Robinson explained that the Board can receive comments at this time but no new information.

Commissioner Robinson asked about the setbacks and whether there was any reason Mr. Bullock could not move the shed in to meet the 15 foot setback on both sides. Mr. Bullock stated that the movement of the structures could be accomplished, although he still does not understand why he could not leave them at an 8 foot side setback.

An audience member stated that the 8 foot side yard setback seems to be a common use in Janicki Cove. He said he believes there are two that exist now and that Lot numbers 36 and 33 each have one.

Commissioner Hart asked Mr. Morgan and Ms. Pfahl if the County Planning Department has issued permits for an 8 foot setback to other property owners. Mr. Morgan replied that the Planning Department had not, to his knowledge. Mr. Morgan stated that the basis for granting approvals is not that there are other existing structures in violation of the setback ordinance.

Commissioner Robinson suggested the possibility that the lots that have been cited have been built upon illegally. Mrs. Bullock noted that the properties referred to do have permits.

Ms. Pfahl explained that the properties may have a shoreline variance, although she did not believe there were any that were less than 8 feet or even 15 feet. After further discussion, she added that the shoreline permitting process regulates the side yard as well as the shoreline setback. Zoning officials also regulate construction setbacks and it is necessary for an applicant to comply with both requirements.

Mr. Morgan emphasized that there have been no zoning variances granted for Janicki Cove in the last four years regarding side yard variances. Commissioner Hart noted that it is possible that individuals received a permit for a 15 foot setback and then built at 8 feet and no County official discovered the discrepancy.

Mr. Bullock stated that he wishes to build another structure and is willing to move the lean to and also the shed.

RECORD OF THE PROCEEDINGS  
Tuesday, October 19, 1993  
Page #7

Commissioner Hart said he did not see any justification to allow the Board to do anything but agree with the Hearing Examiner. Commissioner Robinson said he could see no way to overrule the Hearing Examiner and permit the buildings to remain.


Commissioner Robinson motioned to approve and adopt the Hearing Examiner's recommendation for denial of the Agricultural Variance #AGV-93-005 for Stuart and Roberta Bullock. Commissioner Hart seconded the motion, which was carried. (Resolution #15073)

Mrs. Bullock expressed concern about the bureaucratic process she and her husband had just experienced.

**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*  
Robert Hart, Chairman

*Robby Robinson*  
Robby Robinson, Commissioner

*Harvey Wolden*  
Harvey Wolden, Commissioner

ATTEST:

*Stephanie Wood*  
Stephanie Wood, Clerk  
Skagit County Board of Commissioners