

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

Tuesday, October 26, 1993:

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

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

- 1) Discussion - Interim County Review and Processing of Forest Practice Applications.
- 2) Discussion - Fire Protection #8 Annexation.
- 3) Code Enforcement Report.
- 4) Miscellaneous.

10:00 a.m. - 11:00 a.m. Appeal - Variance Application #V-93-021 for Scott and Angela Ogelsbee, 365 South Campbell Lake Road, Anacortes.

11:00 a.m. - 11:30 a.m. Hearing Examiner Recommendation - Denial - Agriculture Variance #AGV-93-029 for Ed Kaptein, 1490 Vaughn Road, Mount Vernon.

1:30 p.m. - 2:00 p.m. Public Hearing - Modifying Storage Fees at County Fairgrounds.

2:00 p.m. - 3:00 p.m. Executive Session - Land Acquisition.

The Skagit County Board of Commissioners met in regular session on Tuesday, October 26, 1993, with Commissioners Robert Hart, Robby Robinson and Harvey Wolden present.

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

- 1) Discussion - Interim County Review and Processing of Forest Practice Applications.

Mr. Hough reported that staff has been working for a number of months to establish a review process, in conjunction with the State Department of Natural Resources, to evaluate Forest Practice Applications through a Memorandum of Understanding.

Jim Cahill, Senior Planner, took over the discussion. He noted that Nancy Nersten, who was present for the discussion, has assumed much of the responsibility for review of forest practice applications within the Department of Planning and Community Development.

Mr. Cahill explained that all Class IV General applications that are identified by the applicant as land conversions require SEPA review. A land conversion is a designation made by the applicant that warns the reviewing agency that the applicant intends to change the use of the land from industrial forestry to another use, such as residential. Mr. Cahill reported that Skagit County has not performed SEPA review on these types of applications in the past, nor have the majority of other counties within Washington State. However, the Department of Natural Resources (DNR) is now becoming more strict in applying their requirements on application reviews; and henceforth, SEPA reviews will be required. Where Skagit County is the lead agency, DNR is now refusing to perform SEPA review, and will refuse permits until the County has completed SEPA review. This will continue at least until Skagit County finalizes its Memorandum of Understanding with the DNR allocating responsibility for forest practice review.

Mr. Cahill reported that as of late July, Ms. Nersten has reviewed 45 forest practice applications. He stated that Skagit County has received over 120 permits for this single year. Mr. Cahill expected to see even more

RECORD OF THE PROCEEDINGS
Tuesday, October 26, 1993
Page #2

forestry conversions in the coming years. The SEPA requirement will add at least 5 hours of review time for each application, he stated. Additional charges will be reflective of those additional staff hours.

Mr. Cahill stated that once Skagit County signs a Memorandum of Understanding with DNR, the DNR will permit the County to exercise a number of review options. The DNR will then allow the County to elect not to go through the SEPA process, instead conditioning the application for a number of items such as critical areas and road standards. This relieves staff of the burden of the SEPA process, Mr. Cahill stated, but burdens staff with reviewing each application for applicable conditions. Another option the County would have is to relinquish all lead agency requirements by not requiring forest practice permits.

The Board strongly opposed eliminating forest practice permits.

Until the lead agency Memorandum of Understanding is signed, Mr. Cahill stated, staff will continue to perform SEPA review on all forest practice conversions.

Mr. Hough and Mr. Cahill warned the Board that because of these additional requirements in time, increases in permit fees of up to \$500 may result, and the Board may receive complaints from applicants.

Mr. Cahill then reviewed an alternative to the more expensive forest practice conversion permit. He stated that the Conversion Option Harvest Plan is a process where the landowner indicates interest to the Planning Department in converting forested land, and a mutual agreement is reached on a site plan. The County then waives the application of a six-year moratorium which is normally its option on conversions, and the plan is submitted to DNR. If the applicant conforms to the site plan, he is charged a reduced fee for review. It is not necessary to await the finalization of the Memorandum of Understanding to begin applying this alternative, Mr. Cahill stated.

Zoe Pfahl, Assistant Shorelines Administrator, stated that if the proposed conversion area is within a Shoreline of Statewide Significance, the County Shorelines Administrator may place a number of conditions on the project, regardless of its size or complexity.

Oscar Graham, Shorelines Administrator, reported that an advantage to a finalized Memorandum of Understanding is that Skagit County would then have the authority to implement ways to streamline the review process in the case of smaller, less significant applications.

Mr. Cahill stated that while no county in the State has yet signed a Memorandum of Understanding with the DNR, Skagit County and the DNR have drafted a proposal, which is being review at this time, and it appears that an agreement is pending.

2) Discussion - Fire Protection #8 Annexation.

Mr. Hough stated that staff has received notice from the Boundary Review Board that a notice of a proposed annexation by Fire Protection District #8 has been received for property north and east of Hamilton on the Morford Road. It is currently zoned residential, except for a portion which is in forestry. Two homes are currently located in this territory.

Mr. Hough stated that staff has no concerns with this proposal at present.

Paul Carr, Capital Facilities Planner, stated that there are some minor clarifications that staff will be making at the Boundary Review Board meeting when this proposal is discussed.

3) Code Enforcement Report.

Tim Hoffman, Code Compliance Officer, and Oscar Graham, Shorelines Administrator, gave a presentation to follow up last week's discussion regarding illegal structures constructed or existing in the floodway.

Under Court Order, Mr. Graham and Mr. Hoffman entered and photographed a structure in the floodway yesterday that is suspected of violating the County's Flood Damage Prevention Ordinance. Mr. Graham provided photographs of the inside of a structure that had been designated by the applicant as a "storage unit". The photographs showed a full kitchen, containing refrigerator and electrical appliances, bathroom facilities, and a sleeping area and living quarters that included decorative wall hangings and furniture.

A second set of photographs also depicted a "storage structure" constructed in Janicki Cove; which was very large, contained sliding glass doors, a deck, and was finished in a manner normally associated with home construction.

Mr. Graham again stressed that permitting these types of structures to remain in the floodway jeopardizes Skagit County's ability to obtain flood insurance. Mr. Graham stated that the implications of these violations for the entire floodway of the Skagit and Samish are significant. He noted that these examples are located in areas where swiftly running water exists in times of flooding, endangering the inhabitants and their property.

Mr. Graham and Mr. Hoffman explained that the second structure had received proper building permits; however, when the County's building inspector performed framing inspections, it was clear that a number of amenities had been added and obviously planned which were not allowed on the building permit. The second structure received a "Stop Work" order following the building inspector's visit.

Mr. Graham stated that staff wishes to keep the Board informed on this issue, as there will be continued enforcement action taken against individuals who own structures such as those depicted in today's demonstration. Staff indicated that State statutes prohibit residential construction in the floodway, and Skagit County has no ability to adopt or practice conflicting policy.

4) 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, October 26, 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) Warrants #97508 through #97652 (Vouchers #97508 through #97652) in the amount of \$203,736.18. Transmittal #R-24-93.

B. Mike Woodmansee, Budget/Finance Director, explained that the three title companies operating in Skagit County currently access the Treasurer's and Assessor's Office records via a computer link. Island Title has requested to link their Anacortes office with this system, and an agreement has been negotiated for this service. The agreement was presented.

Commissioner Hart motioned to approve the agreement with Island Title for computer access for their Anacortes branch for the next 28 months, at a monthly fee of \$70 per month. Commissioner Wolden seconded the motion, which passed unanimously. (Contract #001809)

- C. Mr. Woodmansee presented a resolution calling for a public hearing to consider supplemental budgets for the Current Expense Fund #001 in the amount of \$345,000, and the Solid Waste Operating Fund in the amount of \$1,540,000, to complete transactions within the 1993 budget that exceeded estimates.

Commissioner Robinson motioned to adopt the resolution calling for a public hearing on November 8, at 2:00 p.m., to consider a supplement budget for the Current Expense and Solid Waste Operating Funds. Commissioner Wolden seconded the motion, which passed unanimously. (Resolution #15082)

- D. Mr. Woodmansee presented a resolution authorizing budget line item changes for the Current Expense Fund in the amount of \$57,400, the County Road Fund #117 in the amount of \$1,308,600, and the Equipment Rental Fund in the amount of \$50,000.

Commissioner Robinson motioned to adopt the resolution for budget line item changes presented by Mr. Woodmansee. Commissioner Wolden seconded the motion, which passed unanimously. (Resolution #15083)

APPEAL - VARIANCE APPLICATION #V-93-021 FOR SCOTT AND ANGELA OGLESBEE, 365 SOUTH CAMPBELL LAKE ROAD, ANACORTES.

Grace Roeder explained to the Board their options in the matter:

- 1) To uphold the decision of the Hearing Examiner.
- 2) To remand the matter back to the Hearing Examiner for further consideration.
- 3) If the Board deems a change in the Hearing Examiner's decision is necessary, the Board must adopt its own Findings of Fact, supported by evidence contained within the Hearing Examiner's record.

A packet of material containing the appeal and other materials submitted by the Oglesbee's attorney, Robert Carmichael; Staff Findings; the Hearing Examiner's Findings; and the Hearing Examiner's Findings on Reconsideration had previously been submitted to the Board. A second item of correspondence, dated October 25, 1993, from Bradford E. Furlong, an attorney representing the Oglesbee's neighbors, Reed and Trulson, was entered into the record. Copies had been distributed by Mr. Furlong to his clients and to Mr. Carmichael.

John Moffat, Skagit County's Chief Civil Deputy Prosecutor, read for the Board Skagit County Code 14.04.240 regarding the Board's options.

Chairman Hart offered the Oglesbee's attorney, Mr. Carmichael, an opportunity to indicate any evidence which shows that the Hearing Examiner erred in the decision he reached in this matter.

Mr. Carmichael stated that the issues he presented in his appeal were not so much evidence of errors in procedure, but evidence to support a request to review the record before the Hearing Examiner. He agreed that the Hearing Examiner did accept a great deal of testimony and evidence, but that it had only been reviewed by the Hearing Examiner. He stated that the Oglesbees have a right to have the Board take a

"fresh" look at the evidence presented to the Hearing Examiner. Mr. Carmichael maintained that the decision made by the Hearing Examiner was not supported by the record. Mr. Carmichael remarked that since this decision has a significant effect on the Oglesbees, the Board should offer them a "fresh" review of the record.

Mr. Carmichael stated that the Hearing Examiner based his case on the Oglesbee's ability to prove that there was no other buildable spot on the property. Even though consultants hired by the Oglesbees pointed out wetlands and other difficulties with other sites on the property, the Hearing Examiner did not accept this evidence as indicating a "physical impossibility". Mr. Carmichael felt that this refusal to look at the evidence from any other standpoint than the Oglesbee's ability to prove a physical impossibility was indicative of an error on the part of the Hearing Examiner. Mr. Carmichael read the variance criteria to the Board, and referred to the overwhelming evidence contained in his appeal memorandum which shows that the criteria is either not applicable, or the Hearing Examiner ignored evidence that would have permitted the Oglesbees to meet the criteria.

Commissioner Wolden asked Ms. Roeder to provide the original site plan for review, and this was accomplished (Hearing Examiner's Exhibit #1). Mr. Roeder explained that this item was presented with the Variance Application. Commissioner Wolden then asked for the site plan that was contained with the building permit. This request was in reference to a finding by the Hearing Examiner that the Oglesbee home had not been built as specified on the site plan contained with the building permit. This item was produced by Ms. Roeder (Hearing Examiner's Exhibit #4).

Chairman Hart asked Mr. Moffat if the Board's decision could be based on whether or not a different decision-making body might have made a different decision, or whether the Hearing Examiner had adequate evidence to make his decision. Mr. Moffat confirmed the latter.

Commissioner Robinson stated that he felt that there is substantial evidence present to permit the Hearing Examiner to reach a decision. He motioned to uphold the decision of the Hearing Examiner. Commissioner Wolden seconded the motion, which passed unanimously.

Bradford Furlong asked for a copy of the resolution once it is signed by the Board, and this request was noted.

HEARING EXAMINER RECOMMENDATION - DENIAL - AGRICULTURAL VARIANCE REQUEST #VAR-93-029 FOR ED KAPTEIN, 1490 VAUGHN ROAD, MOUNT VERNON.

Jeff Morgan, Associate Planner, provided photographs submitted by the applicant showing the property and outbuildings that are the subject of the variance request, and a petition signed by area property owners recommending approval of the variance, both of which were recorded as exhibits by the Hearing Examiner.

The Board had previously received copies of the Staff Findings and Hearing Examiner's Recommendation.

Mr. Morgan explained that the applicant is the owner of Lots #20 and #21 in the Plat of Avon Acres, a plat established in 1958 in an Agricultural zoning district. The applicant purchased Lot #20 on May 11, 1982, and Lot #21 on May 18, 1982. Mr. Kaptein constructed a home on Lot #21. Lot #20 had an existing shed and garage on it, and Mr. Kaptein purchased Lot #20 with the intent to construct another residence on it. The lots are approximately 10,700 square feet each (the minimum lot size in the Agricultural Zone is 40 acres), and the Plat contains 30 lots, 28 of which contain single family residences.

Skagit County Code 14.04.190(5) requires that when any person acquires contiguous pieces of property that are each smaller than the minimum lot size, the Assessor must combine the two lots to make one, even if the resultant lot is still substandard. The only exceptions to this rule are short plats divided after March 1, 1965.

Mr. Kaptein has applied for a variance to be exempted from the requirement to aggregate his property, thereby allowing him to construct a residence on both lots. As these lots are extremely unlikely to ever be used for any agricultural purpose, being surrounded by other lots of the same size, Mr. Kaptein feels this is a reasonable use of property.

Planning Staff and Hearing Examiner both recommended denial, being required to strictly adhere to the provision of the Skagit County Code.

Commissioner Hart remarked that the allowance of this exception would certainly alleviate the press to construct homes in productive agricultural areas by providing additional home sites.

Commissioner Wolden motioned to call for a public hearing to consider testimony on the Ed Kaptein Agricultural Variance #VAR-93-029. Commissioner Robinson seconded the motion, which passed unanimously.

The public hearing was set for Tuesday, November 9, 1993, at 10:00 a.m.

PUBLIC HEARING - MODIFYING STORAGE FEES AT COUNTY FAIRGROUNDS.

Jon Aarstad, Parks, Recreation and Fair Director, explained that staff is proposing to raise the fees for storage of vehicles and equipment at the Skagit County Fairgrounds from \$1.25 per foot of storage to \$1.50 per foot. Mr. Aarstad explained that companies that provide a similar service were contacted by Don Helwig, Fair Manager, and a recommendation set based upon their fees. This is an action being undertaken in an attempt to raise funds to support Fair activities, Mr. Aarstad stated.

Mr. Aarstad reviewed some of the policies the Fairgrounds administration staff has established for use of the storage facility, and the security measures utilized at the storage site.

There being no public comment, Commissioner Robinson motioned to close the public hearing. Commissioner Wolden seconded the motion, which passed unanimously.

Commissioner Wolden motioned to raise storage fees at the Skagit County Fairgrounds from \$1.25 per foot of storage space to \$1.50 per foot. Commissioner Robinson seconded the motion, which passed unanimously.

A written resolution, which Mr. Aarstad will prepare, will follow at a later date.

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

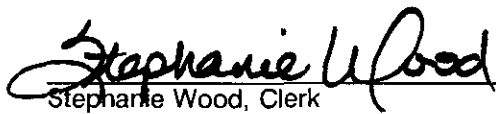



Robert Hart, Chairman


Robby Robinson, Commissioner


Harvey Wolden, Commissioner

ATTEST:


Stephanie Wood, Clerk
Skagit County Board of Commissioners