

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

Tuesday, January 4, 1994

- 7:30 a.m. - 8:30 a.m. Staff Meeting.
- 9:00 a.m. - 10:00 a.m. Planning Department - David Hough, Director
- 1) Discussion - Urban Growth Areas.
 - 2) Code Enforcement Report.
 - 3) Miscellaneous.
- 10:00 a.m. - 11:30 a.m. Appeal of Hearing Examiner's Decision to Deny Shorelines and Zoning Variance Requests #VAR-92-019 and #SHL-92-006 of William J. Thomas, 1386 Green Street, Anacortes.
- 1:30 p.m. - 2:00 p.m. Resolution - Annual Tax Write-Offs - Clyde Williams, Treasurer's Office.

The Skagit County Board of Commissioners met in regular session on Tuesday, January 4, 1994, with Commissioners Robert Hart, Harvey Wolden and Robby Robinson present.

PLANNING DEPARTMENT - Dave Hough, Director

1. Discussion - Urban Growth Areas.

Dave Hough, Director of Planning, advised the Board that the discussions regarding urban growth will continue for the next few weeks. Planning Department Staff met last week with the cities of Sedro Woolley and Hamilton, and will be meeting this week with Mt. Vernon and Anacortes.

Mr. Hough reviewed with the Board the areas of urban growth for the City of Sedro Woolley that had been redefined as displayed in a map shown to the Board. All changes, per Mr. Hough, are within the scope of the urban growth area plans for Sedro Woolley. Planning Department Staff will proceed with an open house in Sedro Woolley on January 11 to promote interest among the citizenry. Chairman Wolden indicated that these types of public meetings will be beneficial and educational to members of the community. Mr. Hough indicated that the negotiations with Sedro Woolley concerning urban growth areas have gone smoothly. Commissioner Hart asked if the Planning Department was maintaining the proposed completion date of March 1. Mr. Hough assured the Board that this is in fact the case.

Mr. Hough advised the Board that on January 13 a meeting with the mayors of the various cities and Planning Department staff will be held. An agenda for the January 13 meeting was previously reviewed with the Board. At the Board's direction, the Planning Department will prepare a draft letter for the Board's consideration and signature that will be presented at the meeting. This letter will address County and city philosophies regarding urban planning, specific amendments to county-wide policies concerning urban growth, and reconfirming the public process relating to county comprehensive planning. Mr. Hough advised that the draft letter will be available to the Board early next week.

2. Code Enforcement Report.

The Code Enforcement Report was provided for review. Commissioner Hart indicated that the Code Enforcement Report is indicative of the public adhering positively to the codes. Mr. Hough indicated that Tim Hoffman is meticulous in maintaining records and following through on code violations.

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3. Miscellaneous.

A. Mr. Hough noted that the issuance of a draft EIS on land issue development will be available next week. The Planning Department has estimated 200 copies of the draft EIS will be needed to circulate, with a total printing of 350 copies. The cost estimate to produce this document is approximately \$15 to \$25 per copy. Mr. Hough queried the Board as to their interest in charging a fee for any additional copies, if needed. Mr. Hough indicated that there would be resource copies available. Commissioner Robinson stated that since this is an initial draft, that 350 copies should be adequate, and that copies would be distributed to every CAC member, which is the group that was very much involved in the development of the project. The Board indicated their reluctance to charge for additional copies since resource copies would be available. It was also noted that newspaper inserts will be available to the public in 20,000 copies of the Skagit Valley Herald and 5,500 copies of the Argus.

B. Mr. Hough advised the Board that there is a strong desire in Planning to develop department goals in 1994 and would like to involve the entire Planning Department Staff in goal development. Mr. Hough proposed to the Board that the Planning Department be allowed to close their office for a half-day in January for an all-inclusive staff meeting committed to developing measurable goals that are accepted and acknowledged by all staff members. Mr. Hough assured the Board that telephone message machines would cover incoming calls, and initial contact could be handled by the Permit Center. The Board indicated that they felt this was a fine idea and Chairman Wolden felt that as long as advance advertising of the office closure is done, this would be an admirable plan. Mr. Hough indicated that the Board would be notified of the date of the proposed off-campus meeting.

C. Chairman Wolden asked if existing personnel are dedicated to Resource Planning while the search to fill the position vacated progresses. Mr. Hough advised the Board that Rob Knable and Kraig Olason would be assuming responsibility for this position until a replacement is found.

D. Oscar Graham advised the Board that the County has been invited to participate in meetings of the President's Council on Sustainable Development in Seattle on January 13 and 14. The Secretary of Interior, representatives of the Environmental Protection Agency, and the Secretary of Agriculture will be in attendance. Mr. Graham encouraged the Board to attend or send a representative of the County. Mr. Graham advised the Board that these meetings will not only address items such as bald eagle matters but will include economic development and eco-efficiency subjects. Commissioner Wolden agreed to attend the meetings with Oscar Graham on January 14th.

APPEAL OF HEARING EXAMINER'S DECISION TO DENY SHORELINES AND ZONING VARIANCE REQUESTS #VAR-92-019 AND #SHL-92-006 OF WILLIAM J. THOMAS, 1386 GREEN STREET, ANACORTES.

Oscar Graham reviewed with the Board that this appeal deals with a Hearing Examiner's denial of variances and that the Board is limited in their actions to the options listed below. Mr. Graham reviewed the documents and chronology previously presented to the Board in this matter and advised the Board that the Board has the following options:

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

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- 3) The Board may adopt its own findings of fact and decision based on the record of the Hearing Examiner.

Mr. Graham stated that the following materials had been provided by Planning Department Staff: The Hearing Examiner's written order on Shoreline Variance #SHL-92-006, the Hearing Examiner's written order on Zoning Variance #VAR-92-019, the Reconsideration provided by the Hearing Examiner which reaffirmed his decision, a letter of appeal from Mr. Thomas which was timely submitted, and finally, a chronology provided by Code Compliance Officer Tim Hoffman. Mr. Graham advised the Board that they should consider only those chronological items through and including April 21, 1993, the date of the denial on the Hearing Examiner's written order. Mr. Graham advised the Board that there are a number of code issues to be considered regarding the shoreline and zoning ordinances.

A variance was required on the shoreline ordinance because the subject property is located within the dimensional property setbacks contained in the Shoreline and Zoning ordinances. Variances are granted as set forth in Chapter 10 of the Shoreline Ordinance. There are specific criteria that must be met as follows:

- a. That the strict application of the bulk dimensional or performance standards set forth in this master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the same rea and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

The Hearing Examiner also reviews non-conforming uses. In general, non-conforming uses and structures are discouraged through Skagit County ordinances. The existing structural in this case did lie within a setback area and is considered a pre-existing non-conforming use. The applicant, Mr. Thomas, asked to intensify that non-conforming use by extending the residence to a second story. An exception to the regulations on non-conformity is described as:

If the Hearing Examiner and/or Planning Commissioner and/or Board of County Commissioners determines that the enlargement, extension or increase of the non-conforming use of shorelines or structures on shorelines can be accomplished without appreciable threat to the health, safety and general welfare of the public or the shoreline environment and purpose of this Program and the Act, and that to deny the enlargement, extension or increase in the non-conformity would constitute a hardship greater than the public benefit derived from denial of the non-conformity, such proposals shall be permitted subject to terms and conditions established by the Hearing Examiner, Commission or Board and attached to the variance and/or conditional use permit required of the applicant.

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Mr. Graham stated that the Hearing Examiner addressed the above issues in his written denial of the variances.

Mr. Graham advised the Board that the Zoning Code also carries with it provisions as follows for variances and non-conforming structures. Section 14.04.223 states the following conditions for variances to be granted:

- Special conditions exist which are peculiar to the land, structure, or building involved and are not applicable to other lands, structures or buildings in the same district.
- Literal interpretation of the provisions would deprive the applicant of rights enjoyed by other properties in the same district.
- Special conditions do not result from the actions of the applicant.
- Granting of the variance will not confer special privileges on the applicant that are denied by this to other lands, structures, or buildings in the same district.

Mr. Graham advised the Board that the burden of proof is borne by the applicant/appellant, and that the basic two issues are the meeting of variance criteria and the existence of non-conforming use. It was determined by those present that the north property line was encroached upon as the proposed structure is located a distance of 15 inches from the side set-back line, and as such, a variance was required from both the Shoreline Ordinance and Zoning Code.

At this point in the proceedings, Mr. Gary Jones, attorney for the appellant informed the Board that the appellant was present and represented by counsel.

Oscar Graham reviewed with the Board a site plan which was prepared by the applicant. Commissioner Wolden determined the location of the boundaries of the original building and what effect the modifications had to the existing structure. The encroachment existed on the north side of the property as previously discussed.

Tim Hoffman, Code Enforcement Officer, assisted in clarifying the various additions and changes to the property since 1973. At this time, Mr. Thomas advised the Board that he purchased the property in 1985. Gary Jones advised the Board that Mr. Thomas' residence is currently more energy efficient, pollution free, and contains other kinds of upgrades that make it more attractive to the neighborhood. Mr. Jones stated that Mr. Thomas has made every effort to do things that are beneficial to the neighborhood and community as far as building code requirements. Mr. Thomas feels value judgments made by the County have been imposed on him and are unfair to him. It is Mr. Thomas' opinion that there is very minor variation to the ordinances and that the County has been guilty of over-eagerness in enforcing the rules.

Mr. Jones expressed that the purpose of the submission of his recent letter concerning these issues and addressed to John Moffat, Skagit County Prosecutor, was not submitted to blindsides the Commissioners. The Commissioners noted that they had not received a copy of the letter and its enclosures.

Mr. Jones stated that Mr. Thomas had understood that he could bring his property into compliance and that 15 inches would have an insignificant effect on the Shoreline and Zoning ordinances. The footprint of the existing house is identical to the house originally built. The house was there long before the shoreline act and zoning code were adopted. According to Mr. Jones, the denial of Mr. Thomas' use of his residence is a hardship that comes about not through his client's actions, but through excessive regulation by the

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County. The home is still a 1-bedroom home as originally built.

Mr. Jones pointed out that the Hearing Examiner erred in not acknowledging that this is a pre-shorelines act lot. Mr. Jones suggests that the decision of the Hearing Examiner granting the shoreline variance would not be to the public's detriment and is not a grant of a special privilege. Mr. Jones stated that it is presently not illegal to build on this lot. In order for Mr. Thomas to be denied a variance, there would have to be some greater indication that this use is not in harmony with the Zoning Code in general. Surrounding property owners are comparably situated on their lots and make use of access similar to Mr. Thomas according to Mr. Jones. Therefore, the granting of this variance will not change Mr. Thomas' relationship with his neighbors.

Commissioner Hart asked Planning Department Staff if the variance would restrict access of emergency vehicles to either side of the property. It was determined that the property was accessible. Commissioner Hart stated that the damage to the appellant is much more than any damage to the good of the public in upholding the Hearing Examiner's decision.

Commissioner Hart therefore moved that because the aforementioned 15 inch variance is not overwhelming, and because granting the Shoreline and Zoning variances on this property does not damage the public good, that the Board of Commissioners grant the request to overturn the Hearing Examiner's denial of the Shoreline and Zoning variances requests #VAR-92-019 and #SHL-92-006 of William J. Thomas.

Before a second was heard on the motion and a vote taken, Mr. Graham asked to have clarified the exact nature of the change to the roofline of the structure. He asked if the roofline change was simply a matter of changing pitch, or did the change create some additional living space. Mr. Jones stated that some living space was gained, approximately 100 square feet in area.

Tim Hoffman reviewed with the Board additional pictures of the residence for their review and for clarification of the changes made. The Board ascertained from Planning Department Staff present that the only reason the appeal of the denial was necessary was because of the 15 inch set-back encroachment. Commissioner Robinson indicated that the 15-inch variance on this property does not seem to be a major concern and that the upward building was not in violation of shoreline or zoning ordinances. Mr. Jones pointed out that alterations were made to the existing structure that were not in adherence with the Shoreline and Zoning ordinances, but that a valid building permit did exist. Mr. Thomas did not ignore the County regulations, and, in fact, began the alterations to the property by trying to conform to County regulations by obtaining a building permit.

Commissioner Hart restated his earlier motion to reverse the Hearing Examiner's decision and adopt the County Commissioner's own findings of fact which indicate that the 15-inch encroachment into the north setback was not significantly detrimental to public interest and certainly denied the applicant the reasonable use of his property. Because of the foregoing reasons, the Board of Commissioners overrules the Hearing Examiner's denial of the Shoreline and Zoning variances. The motion was seconded by Commissioner Robinson, and unanimously passed.

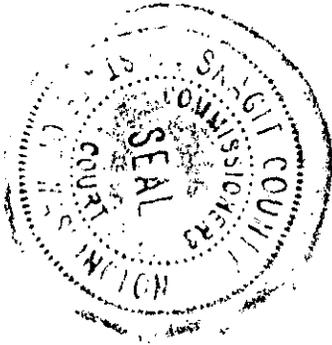
RESOLUTION - ANNUAL TAX WRITE-OFFS - CLYDE WILLIAMS, TREASURER'S OFFICE

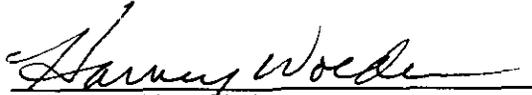
Jerry McInturff, County Auditor, presented a resolution to the Board concerning cancellation of uncollectible taxes. Commissioner Robinson moved to approve treasurer's office 1993 write-offs for a total of \$1,020.23. Commissioner Wolden seconded the motion, which passed unanimously. (Resolution #15191)

ADJOURNMENT:

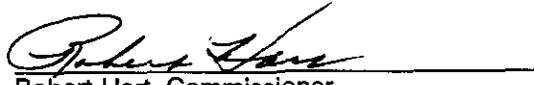
Commissioner Robinson motioned to adjourn the proceedings. Commissioner Hart seconded the motion. The motion was carried unanimously.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON




Harvey Wolden, Chairman


Robby Robinson, Commissioner


Robert Hart, Commissioner

ATTEST:


Patti J. Owen, Clerk
Skagit County Board of Commissioners