

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

Tuesday, March 15, 1994

7:30 a.m. - 8:30 a.m. Commissioners' Staff Meeting.

Flag Salute.

9:00 a.m. - 10:00 a.m. Planning Department - Dave Hough, Director.

- 1) Discussion - Bald Eagle Management Use Restriction for the Wild and Scenic Portion of the Skagit River.
- 2) Discussion - 1993 Annual Report.
- 3) Code Enforcement Report.
- 4) Miscellaneous.

10:00 a.m. - 11:00 a.m. Appeal - Hearing Examiner's Decision Re: Shoreline Substantial Development Permit #SHL-93-053 for William & Dorothy Bentley, 102A Biz Point Road, Anacortes.

1:30 p.m. - 2:30 p.m. Parks, Recreation & Fair Department - Jon Aarstad, Director.

- 1) Information - ISTEA Grant Application.
- 2) Approval of Budget Allocation for Highway 20 Trail Management.
- 3) Approval - Resolution Allowing Parks Director to Sign Access Permits.
- 4) Information - Railroad Property Use at Birdsvew.

The Skagit County Board of Commissioners met in regular session on Tuesday, March 15, 1994, with Commissioners Harvey Wolden and Robby Robinson present. Commissioner Hart's absence was excused.

1. Discussion - Bald Eagle Management Use Restriction for the Wild and Scenic Portion of the Skagit River.

Oscar Graham, Planning Department Staff, advised that he has been working with the Bald Eagle task force for the past year. Mr. Graham advised the Board that the Forest Service is scheduled to discuss their determinations associated with time and space restrictions on recreational use of the Wild and Scenic portion of the Skagit River. They are mostly concerned with migrating birds from Early December through February. Mr. Graham advised that his sense from the Forest Service is that under the alternatives presented, the Forest Service is looking at restrictions that would involve closing for a greater length of time the surface waters and along the stretch of the river for recreational use. The County should be ready to review this material and decide the response we would like to make to these proposals. This will affect the upper Skagit system rafters, boaters, fishermen, and any one of the alternatives will be objectionable to a number of user groups. Mr. Graham's main concern relative to this process is that a lot of the work done by the Forest Service has been narrow and has not included a large enough portion of the general population. Mr. Graham feels that this information should be sent to the public via a press release. The range of alternatives is expected from the status quo to something quite restrictive.

Mr. Graham advised the Board that the Eagle is approaching its recovery goals throughout the United States. This poses questions of removing it from the endangered list entirely.

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #2

2. Discussion - 1993 Annual Report.

Dave Hough, Planning Department Director, reviewed with the Board a document entitled Skagit County Department of Planning and Community Development Annual Report for 1993 and 1994 Department Goals. The report is in two main sections, one dealing with developed goals from each section, and establishing overall department goals. Mr. Hough advised that the department came up with two main goals:

- A. Inter-Departmental Coordination and Cooperation; and,
- B. Improve Public Service.

Mr. Hough advised that the department has been somewhat remiss in the last five years in the area of providing a review of the previous year and is quite proud of this accomplishment. Mr. Hough reviewed the increased activity in his department in several different areas.

In summary, Mr. Hough stated that this report gives a good overview of 1993 and also gives each section and its goals for 1994. One of the most important items coming out of the all-hands meeting was the request for monthly staff meetings, which should pull the department together and help them share common goals and interaction.

The Board expressed their appreciation for this concise report. A general discussion ensued on impact fees, urban growth development areas, providing city services to rural areas in the future, and a brief review of increased permit and appeal activity.

3. Code Enforcement Report.

The Code Enforcement Report was reviewed.

4. Miscellaneous.

- A. An Out-of-State Travel Request for Nancy Nersten, Planning Department Staff, was presented to the Board for approval to attend a Sierra Computer User Conference in Visalia, California for a total of \$925 to study a new permit tracking system. This will be April 27-29, 1994. Commissioner Robinson indicated the Board's concurrence to Ms. Nersten's attendance at this conference. The Board approved the Out-of-State Travel Request.
- B. Oscar Graham requested signatures on an Addendum to a Consultant Services Agreement #00914 to prepare Draft and Final Supplemental Environmental Impact Statements for San Juan Fidalgo Properties. These changes relate to forest practice activities. This will enable the County to collect approximately \$4,000 from the applicant to go ahead and produce the additional information required. Commissioner Robinson moved to approve the supplemental agreement. Commissioner Hart seconded the motion, which passed unanimously. (Contract #00914)
- C. Staff also reminded the Board of the City/County Officials Planning Meeting scheduled for Friday, March 18, 1994, at 9:00 a.m. in Hearing Room C.

Commissioner Hart was present for the remainder of the proceedings.

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #3

APPEAL - HEARING EXAMINER'S DECISION RE: SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT #SHL-93-053 FOR WILLIAM & DOROTHY BENTLEY, 102A BIZ POINT ROAD, ANACORTES.

Zoe Pfahl, Planning Department Staff, advised the Board of the Bentley's intent and reviewed the general proposal to construct a dock on their property on Biz Point Road in Anacortes. Ms. Pfahl submitted for reference the following documents:

1. Staff Report dated February 2, 1994 (for denial).
2. Hearing Examiner's Written Report (Findings of Fact/Entry of Order dated February 17, 1994).
3. Hearing Examiner's Exhibit 1 (site plan).
4. Photographs of the Project
5. Hearing Examiner's Exhibit 3, Concerning Piers and Docks..
6. Hearing Examiner's Exhibits 4,5, 6 and 7 (letters from adjoining property owners).
7. Hearing Examiner's Exhibits 8 - another larger site plan.
8. Hydraulic Project Approval from the Department of Fisheries.
9. Hearing Examiner's Exhibit #12, Notice of Appeal from the Bentleys.
10. Hearing Examiner's Exhibit #13, Permits for Developments of Shorelines.

Ms. Pfahl then gave the Board their three 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.
- 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 the proposed location of the dock and what is existing to date by reviewing photographs and plans with the Boards. Ms. Pfahl reviewed Piers and Docks policies listed as Hearing Examiner Exhibit #3. Ms. Pfahl advised the Board that the Bentleys have requested a shoreline substantial variance, and are trying to demonstrate that their proposal meets the criteria of the Piers & Docks policies.

Chairman Wolden asked if the new landing would be above the high water mark. It was determined that the landing would be above the high water mark. It was discussed that the Bentleys need to show reasonable justification for an additional 45 feet to 69 feet from the ordinary high water mark.

Commissioner Robinson clarified that the proposed ramp and pier will only be used during the summer months or approximately 4 months per year. Staff confirmed that no valid permit has been found for the construction of the existing concrete pier and stairway, which was constructed in 1980 to replace a wooden structure damaged during a storm.

The Bentleys advised that adjoining property owners do have a dock, but it was not on the water during Staff's visit.

Mr. Bentley advised that the 10 feet of water at the current float will not accommodate his boat. Low tide is 1-1/2 to 2 feet of water only, especially during the summer months. The only options available to the Bentleys are dredging the harbor or constructing a pier and dock. The existing neighborhood facility is quite adequate for smaller boats, up to approximately 18 feet. That dock is also removed in the winter months.

Staff clarified that the Board is being asked to make a decision based on the record established before the Hearing Examiner on February 2, 1994. The Bentleys are suggesting a shoreline substantial development.

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #4

Commissioner Hart at this point indicated that he did not see where the Hearing Examiner had erred.

Chairman Wolden ascertained from Staff that no approval has yet been obtained for this project from the Corp. of Engineers.

Commissioner Robinson indicated his feeling that this matter should be remanded back to the Hearing Examiner for further examination of the surrounding area and docks that were not in evidence during the initial review by Staff.

Mr. Bentley indicated his dock will not exceed in length any further than the adjacent docks. Mrs. Bentley indicated they will use the existing piers. They only replaced the concrete work due to destruction caused by a storm and did not obtain the necessary permit because they were under the impression that they did *not need to because the piers already existed.*

Commissioner Robinson moved to remand this matter back to the Hearing Examiner. Commissioner Hart seconded the motion, which passed unanimously.

Staff indicated that new evidence can be submitted at the time the matter is re-heard by the Hearing Examiner.

PARKS, RECREATION & FAIR DEPARTMENT - Jon Aarstad, Director.

1. Information - ISTE A Grant Application.

Steve Colby, Special Operations Manager, advised that through EDASC it has been discovered that there *might be money available to the County from the Washington State Community Economic Revitalization Team* for review and potential funding. There has also been submitted a 1994 ISTE A grant for the same item to see if the County could be successful in coming up with at least one of these grants for the Centennial Trail Master Plan. Don Wick, EDASC, stated that there were over 240 applications, with an award scheduled for June. The RTPO ISTE A funding will be made available within the next three months or so.

2. Approval of Budget Allocation for Highway 20 Trail Management.

Steve Colby advised the Board that during the budget process for 1994 there was discussion concerning Highways 20 and 9 and the need for restriction of authorized vehicles, vegetation removal and control, and signage, but the Parks Department did not have the actual costs for these items when the budget was developed. Now that the abandonment process has taken place, the Parks Department now has put together a cost estimate for management of these items as the rails and ties are removed. It will be *necessary to construct signage advising the restriction of vehicles and notification that this is now County property.* A gating system will be installed that will primarily be used on those areas that abut public roads. This was discussed approximately 2 weeks ago with the Public Works Department.

Staff is asking for approval of \$47,326 to be able to begin the management of this corridor. The gates are a long-term solution and will be put in on a long-term basis.

Commissioner Hart asked about the proposed public rights-of-way, and if padlocked gates are the most cost effective. Mr. Colby advised that this is a similar system to one in Snohomish County. This particular method is recommended on public crossings. These gates would exist on the unimproved trail, after

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #5

removal of the ties and rails. The gates would allow emergency access by fire and police vehicles.

Mike Woodmansee, Budget/Finance Director, advised the Board that the money for these items had not been set aside during the budgeting process. There is, however, a park acquisition fund that has money that is not committed to a specific project at this time. This could easily be worked through our contingency fund. Mr. Woodmansee confirmed that the money is there and is generated from donations for park improvements or money received from grants after the fact and set aside for more park acquisitions. Mr. Woodmansee agreed to present a resolution to the Board at a future date after confirming that the amounts are available.

Commissioner Robinson advised that he, Mr. Colby and Jon Aarstad, Director of Parks & Recreation Department, had met with a number of citizens present in the audience. There is considerable opposition to this trail, and most citizens along the trail felt they should have received the land themselves. There are additional concerns about privacy and property rights, and these citizens asked if they could come down and have an opportunity to discuss these concerns before the entire Board. Commissioner Robinson asked to open the discussion up to let these people have their say.

Ron Kallen, Sedro Woolley resident, advised that he has a lumbermill near Hamilton/Lyman, and is concerned about the lack of public input. Mr. Kallen stated that to his knowledge only one article in the newspaper appeared discussing the formation of the trail.

Ernie Franks stated his concern over additional insurance required and water infiltration to his home now that the railroad area has been lowered. Mr. Franks advised that in every major flood the railroad right-of-way has prevented the water from coming into his house. Mr. Franks' home is located on the south side of Highway 20. Mr. Franks stressed the need for the County to provide a culvert to re-direct the excess water.

Mr. Kallen stated that there were 97 people at the recent evening meeting attended by Commissioner Robinson of which 100% was opposed to the trail. Mr. Kallen indicated that support is against the trail, and that agriculture and city just don't mix.

Randy Goode, who owns property east of Hamilton, is opposed to this proposal. He stated that his farm borders the railroad for about three-quarters of a mile. His fence has been opened by vandals, and he has had wood stolen. Mr. Goode's concern is that once a trail is in place that there will be more people passing by that will not respect his property rights. This is going to invade Mr. Goode's privacy. Mr. Goode further stated that the lowering of the railroad right-of-way just east of Hamilton will allow water to proceed further. Mr. Goode felt that there are too many negatives for local residents to just sit back and let the trail progress to completion.

Ted Brewer, Robinson Road, mentioned the fact that there is a large herd of 40-45 elk that winter in the area every year. Mr. Brewer's fear is that bicyclers/dogs will terrorize the elk.

Bill Blunt, Lyman-Hamilton Road, stated that his main concern is that nobody knows what the ultimate cost will be. It was Mr. Blunt's opinion that the trail should be maintained by a non-taxed organization. Mr. Blunt asked if the County can afford the paving, restrooms, and signage.

Wynona Kallen stated that she has several of concerns. One concern is being that this is to be a community project, and that people outside of the community will use the trail and not contribute to the maintenance of the trail. Ms. Kallen also asked how adjacent landowners will benefit and/or be protected from the users

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #6

of the trail. Ms. Kallen further indicated her concern over the lack of a financial plan for development and maintenance of the trail.

Ivan Backus, Jr., 2624 Minkler Road, stated that he has over 1 mile of frontage along the railroad right-of-way, with land located on both sides of the tracks. It is Mr. Backus' opinion that the County has inherited a huge headache from this trail. Mr. Backus further stated that when the railroad owned the right-of-way, the railroad supplied the materials to maintain the fences, and the expectation exists that the County will continue this procedure.

Ed Lipsey stated that he owns 1 mile along the railroad tracks. He stated that it is difficult to accept the idea that the Parks Department and Commissioners brought the public right into their backyards without consultation. He further stated that the railroad has been a good neighbor, and that the railroad furnished building materials to maintain the fence at his request. Mr. Lipsey is hopeful that the County can do the same thing.

Mary Welch, 2552 Minkler Road, stressed her concern for the wildlife and natural vegetation in the area and the continued preservation of same.

Ivan Backus, Sr. stated that the best thing for the County to do is the cut their losses, drop the whole idea of the trail, and leave the railroad right-of-way the way it is now. Mr. Backus' feeling is that the County bought a "white elephant." He further stated his concern for privacy along his property, and potential cost of funding the project being borne by the taxpayers.

Judy Lipsey, 3381 Lyman-Hamilton Road, stated she has several concerns regarding fencing, location of restrooms, use of the trail by those residing outside of the County, destruction of an existing benchmark, and rotting trestle ties falling into the creek running through her property.

Rose Harper, 110 W. Main, Lyman, expressed her concern over transients using the corridor, and feels that an unsafe situation exists and will worsen. Ms. Harper stated that representation upriver has been put on the backburner and left behind, that it is time that the Commissioners take notice of people upriver, that the citizens deserved notification of the development of this trail that will directly affect their property taxes and wellbeing.

Travis Martinez asked how the County could start this trail project without knowing the entire cost of the project.

Amos Ensley would like to know who will pay for the the damage when it floods now that the railroad right-of-way has been lowered more than one foot. Commissioner Robinson clarified that the railroad right-of-way is not a dike, but is merely a barrier.

Chairman Wolden noted that regardless of who acquired the right-of-way, the railroad is removing the ties and rails, not Skagit County. He further stated the Board's appreciation for the information received at this type of informational discussion.

Larry Hern stated his concern for policing of the trail and the fact that the area is already short of deputy sheriffs.

Randy Goode stated he wants to clarify if there are going to be further public hearings. Chairman Wolden stated that before the development of the trail, there will be many public hearings. Commissioner Hart

RECORD OF THE PROCEEDINGS

March 15, 1994

Page #7

confirmed that the only thing done to this point has been preservation of the right of way.

Rose Harper asked if an environmental impact statement was prepared. Chairman Wolden stated that an EIS has not been done and would have to be done. Commissioner Hart stated that development could be 2, 3 or even 5 years down the road.

3. Approval - Resolution Allowing Parks Director to Sign Access Permits.

Steve Colby advised the Board of details regarding a resolution Establishing Special Use Permit to Cross County Park Property and Authorizing the Parks Director to Execute Permits on Behalf of County Commissioners. There will be an initial \$25 fee for a five year period to cover administrative fees. The lack of confirmation of the ability to determine whether previous payments to Burlington Northern was discussed.

The second issue concerning this matter is insurance coverage. Utilizing documentation that the County has received from other entities and after conferring with Dave Fleming, Risk Manager, the Parks Department has tried to come up with an appropriate method for dealing with the railroad crossings. Property owners and Mr. Fleming feel they own the property, and the need to retain all of the accesses people have to their private property is paramount. It is the County's intent to not eliminate an access that is currently there. The Department of Transportation is concerned about allowing new accesses.

Mr. Colby confirmed that the county is not asking that someone take out new liability insurance, that this can be carried on either an existing homeowners or automobile insurance policy currently in place.

Staff was advised that it would be necessary for them to present further information on this issue before approval will be given.

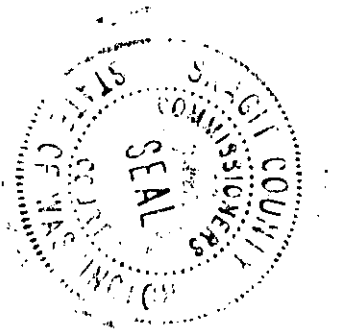
4. Information - Railroad Property Use at Birdsvew.

Staff discussed with the Board the possible purchase of the Richard Nipper property in Birdsvew which is adjacent to the Burlington Northern right-of-way owned by the County. The property consists of 21.93 acres and contains two buildings previously used for shake storage and machinery storage.

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

Harvey Wolden, Chairman

Robby Robinson

Robby Robinson, Commissioner

Robert Hart

Robert Hart, Commissioner

ATTEST:

Patti J. Owen

Patti J. Owen, Clerk
Skagit County Board of Commissioners