

RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS

Wednesday, May 4, 1994

9:00 a.m. - 10:00 a.m. Executive Session - Personnel, Litigation and Land Acquisition.

10:00 a.m. - 11:00 a.m. Appeal by Pat McMullen of the Decision re: Preliminary Plat of Skyridge West #PPT-004, #VAR 92-039 (Youngsman), 1740 Blodgett Road, Mount Vernon.

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

APPEAL BY PAT McMULLEN OF THE DECISION RE: PRELIMINARY PLAT OF SKYRIDGE WEST #PPT-004, #VAR 92-039 (YOUNGSMAN), 1740 BLODGETT ROAD, MOUNT VERNON.

Chairman Wolden opened this matter for discussion, and Stephanie Wood, Administrative Coordinator, introduced Eugene Knapp, who will be representing the County in lieu of the Prosecutor's Office.

Mr. Knapp advised that the notice of appeal was invalid on its face as it was received more than 14 days after the Hearing Examiner's decision. Mr. Knapp advised that the various aspects of the timeliness issue should be addressed prior to the Board hearing the appeal. Mr. Knapp recommended taping the preliminary portion of the verbatim record of the timeliness discussion. Staff advised that the entire matter will be taped.

Pat McMullen, appellant, stated that his counsel, Paul Reilly, advised Grace Roeder, Planning Department Staff, via letter dated June 5, 1992, that Mr. McMullen wanted to be a party of record in this matter and be advised of all proceedings in this matter. A copy of such letter was submitted as an exhibit. Mr. McMullen stated that the Skagit County Code does require an appeal to be filed within 14 days. According to Mr. McMullen, the code is unclear as to who is entitled to a copy of the Hearing Examiner's decision. Adjoining property owners would have no way of knowing the end results of items before the Hearing Examiner. The appellant's counsel called several times inquiring as to what the status was in this matter, and each time was told Staff would call back, and consequently a decision was made with no call back to Mr. McMullen or his counsel. Mr. McMullen advised that the argument is that the code is defective in that an interested citizen cannot take appropriate steps due to lack of notice, even when requested. When the decision was made available to Mr. McMullen, an appeal was filed within 14 days. Mr. McMullen advised that there has been no work done on the subject property to date.

Paul Taylor, the attorney representing Mr. Youngsman, stated that his client's appearance today does not constitute a waiver of the jurisdictional issues involved. Mr. Taylor stated that he feels the code is clear as to the 14-day appellant rights. Mr. Taylor noted that he and counsel for Pat McMullen were at the hearing and it is evident that the hearing examiner is the party to be contacted to receive a copy of the results of the hearing. Obviously, there was a lack of diligence on behalf of the appellant to determine what the code requires, according to Mr. Taylor. The appeal is almost 6 months after the decision and the code clearly says if not received within 14 days, the appeal is not timely. Mr. Taylor further stated that the duty is on the citizen to be diligent in contacting the hearing examiner's office. Commissioner Hart ascertained that both attorneys were present at the original hearing. Mr. Reilly stated that he was present at the hearing and did not recall when the decision was rendered following the hearing, but estimated it was 5-6 weeks after the hearing.

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Chairman Wolden asked if the decision was made in a timely manner. Grace Roeder, Planning Department Staff, advised that the decision was timely and was within 4-5 weeks after the hearing. Documents in the file indicate that the Public Hearing for the preliminary plat was held on October 6, and the decision was made on November 2, and therefore November 16 was the final day for appeal. Commissioner Hart queried staff as to the existence of a record from the Hearing Examiner stating when the decision would be rendered. Ms. Roeder explained that a notation was made at the final hearing stating that the plat and variance were approved, with certain changes to the conditions as presented by Staff.

Mr. Reilly indicated that he was not placed on the distribution list even though he was present at several hearings concerning this matter. Mr. Reilly stated that he assumed he was going to be kept abreast of the status of this matter. Mr. Reilly noted that he wrote a letter to Mr. McMullen 2 days after the hearing advising that the application would be approved with certain changes. Mr. Reilly clarified for the Board that his letter was written after Christmas and before mid-January. Chairman Wolden stated that this was an untimely request, since the 14 day appeal period expired on approximately November 15.

Mr. McMullen stated that the County Code and the decision itself state that notice must be given to property owners within 300 feet of the property. All adjacent property owners, perhaps dozens, received notice. To Mr. McMullen's knowledge, no one received a notice of the decision. In Mr. McMullen's opinion, this is a defect in the code.

Commissioner Hart ascertained from Staff that the Hearing Examiner makes an announcement at each hearing stating that if anyone other than the applicant wants a copy of the written order, they should sign up with the Clerk in order to receive a copy of said order. Staff indicated that many people sign the list and receive copies of the order when it is issued.

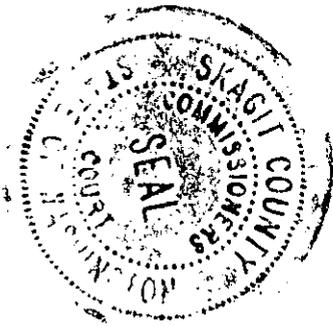
Commissioner Hart indicated that his feeling is that the appeal is untimely. Commissioner Hart further indicated that it is apparent that Mr. Reilly did not execute due diligence in pursuing the results of this matter, and that the appeal should be denied. Commissioners Robinson and Wolden indicated their concurrence with Commissioner Hart.

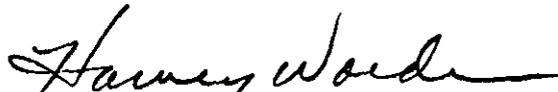
Commissioner Hart moved to deny hearing the appeal of Pat McMullen of the decision re: preliminary plat of Skyridge West #PPT-004, #VAR 92-039 (Youngsman) 1740 Blodgett Road, Mount Vernon. Commissioner Robinson seconded the motion, which was unanimously approved.

ADJOURNMENT.

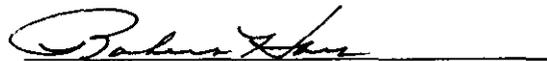
Commissioner Robinson motioned to adjourn the proceedings. Commissioner Hart seconded the motion. The motion was carried unanimously.

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