

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

Tuesday, May 17, 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 - Forest Practice Procedures.
2) Code Enforcement Report.
3) Miscellaneous.
- 10:00 a.m. - 11:00 a.m. Appeal - Hearing Examiner's Decision for Partial Denial of Variance #VOYEUR-93-049, 536 and 547, for Clair Brooks and George Bornkamp, Parkridge Place, Sedro Woolley.
- 1:30 p.m. - 2:30 p.m. Appeal by Barbara Bond-Howard of Hearing Examiner's Decision Re: Special Use Permit #SPU-94010H for Gloria Beckstrom, 1060 "C" Street, Bayview.
- 2:30 p.m. - 3:30 p.m. Work Session - Discussion of Realignment of SR20 with Bob Josephson, Washington State Department of Transportation.
- 3:30 p.m. - 4:00 p.m. Discussion - Rails to Trails - Ron Kaaland.

The Skagit County Board of Commissioners met in regular session on Tuesday, May 17, 1994, with Commissioners Harvey Wolden, Robby Robinson and Robert Hart present.

PLANNING DEPARTMENT - Dave Hough, Director.

1. Discussion - Forest Practice Procedures.

Oscar Graham, Planning Department Staff, reviewed the Staff procedures for handling Forest Practice applications. Mr. Graham advised that the way forest practice procedures have been addressed historically is that applications are reviewed and sorted for jurisdiction (conversions, shorelines, etc.), then scheduled for field inspections, together with the necessary filing and tracking of applications. Mr. Graham further advised that forest practice is not limited to timber harvesting, but also includes environmental impacts and mitigation measures. The commitment of County staff resources is substantial. Local government and State government must work hand-in-hand, and currently have a good working relationship.

The County has attempted to enter into a Memorandum of Agreement ("MOA") with the DNR, and a copy of such MOA was reviewed with the Board. There has been a disappointing response from the Commissioner of Lands, Ms. Belcher, and no MOA's with local governments have been signed. Mr. Graham advised that the public could be better served and staff time better utilized if the appropriate MOA's were signed.

Staffing time commitments and particular functions were reviewed, and it was noted that Public Works Staff and the Code Compliance Officer also spend time working on forest practice permits.

In summary, Mr. Graham noted that there is considerable concerns about the time Staff is taking to fulfill the County's responsibilities under SEPA, and that this is a serious commitment the County has made over the past year.

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The Board acknowledged that there is considerable staff time involved in this process, but the continued need to streamline and fine-tune the process is still prevalent. The current processing timeline was determined to be 40-60 days. Several options for improving the timeline were discussed among Staff and the Board.

Kraig Olason, Assistant Director of Planning, noted that the costs for processing these applications are totally absorbed by the County and include such items as site visits.

Mr. Graham advised that this is an accurate review and summary of the Staff time expended, and that the work being accomplished represents the absorption of a full-time position.

Commissioner Robinson queried Staff as to whether the completion of the comprehensive plan will lessen the impact on Staff.

Dave Hough, Director of Planning stated that there is no light at the end of the tunnel until at least January 1995. Implementing the regulations of the Comprehensive Plan will mean heavy involvement of these Staff members assigned to forest practice procedures.

Phil Schmidt, Department of Natural Resources, concurred that this discussion has been held at his office also, and commended Staff on their coordination of the workload with State personnel. Mr. Schmidt noted that an MOA may help with some of the direction needed and provide the boilerplate framework needed to help the agencies involved work cohesively. Mr. Schmidt pointed out that there seems to be a technical group and policy group that occasionally tend to be in conflict. Applications seem to be growing, and the State is looking to remove its jurisdiction from the urban fringe areas. The State really wants to be involved with forest practice in the highlands, such as major timber harvesting and major road building. Mr. Schmidt stated that continuity between officials is necessary.

George Theodoratus, private citizen, stated that lots of regulations are good, but some do not apply or do not make sense and stressed the need to look at subdivisions and conversions happening simultaneously.

Chairman Wolden stated that many things need to be changed, but the County is forced to living with and curing past sins.

2. Code Enforcement Report.

The Code Enforcement Report was reviewed by the Board.

3. Miscellaneous.

Mr. Hough advised the Board that he met with the consultant concerning the preliminary final draft Environmental Impact Statement ("EIS") yesterday. The consultant indicated that he felt there were several deficiencies in the draft and he felt obligated to let the County know the areas of concern which include the impacts and mitigation section. Mr. Hough advised the Board that the consultant felt this further review would require an additional 60 days work to review this section in more detail, and ultimately present a better EIS in its final form.

John Moffat, Chief Civil Deputy, noted that there were quite a few comments raised during both the public hearing phase and written document phase in response to the draft EIS to the land use element of

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Comprehensive Plan. Mr. Moffat indicated his support of Mr. Hough's recommendation that the County try to get a better product.

Commissioner Robinson asked if in fact an additional 60 days is required to review this document, will the 5 acre moratorium have to be prolonged.

Mr. Hough answered that with the current public hearing process, and next week's hearing on interim controls, if the schedule on the EIS is delayed, the entire schedule is delayed.

Commissioner Hart asked if the consultant would require additional compensation to complete this review. Mr. Hough indicated that the Planning Staff could do the bulk of the work to complete the analysis.

Chairman Wolden indicated his desire to limit the consultant's expense, and that time should be spent with the consultant to determine the extent of his suggested analysis. Mr. Hough stated that the Planning Department has no interest in continuing this process any longer than they have to, and are interested in ending up with a defensible document.

Commissioner Hart advised Staff to take hard look at what really needs to be done by both Staff and the consultant, and stressed the need to have this wrapped up by the end of June.

Commissioner Robinson stated that if it takes another month to make this a legally defensible document, the County should take the time now to make it so, as much as the idea is distasteful. Commissioner Robinson further indicated that this document will stand for the next 20 years and needs to be done correctly at this point in time.

Gary Christianson, Planning Department Staff, noted that the purpose of the EIS is to provide information to the decisionmakers so that decisions can be based on findings of fact and a complete record. Mr. Christianson indicated that the intent is to provide the Board with as much information and as accurate information as possible.

Chairman Wolden noted that this list of questions puts a cloud on the document.

The Board stated that this news is disheartening, but advised Staff to proceed with remedying this situation.

APPEAL - HEARING EXAMINER'S DECISION FOR PARTIAL DENIAL OF VARIANCE #VAR-93-049, 536 AND 547, FOR CLAIR BROOKS AND GEORGE BORNKAMP, PARKRIDGE PLACE, SEDRO WOOLLEY.

Jeff Morgan, Planning Department Staff, provided the Board with copies of the exhibits provided to the Hearing Examiner, and advised that the Board has the following options concerning this matter:

- 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.

Mr. Morgan advised that this application involves two adjacent property owners, each containing 20 acres. Both applicants submitted short subdivision applications and both applications were returned for corrections. Neither application for shortplat contained proposals for construction of any road within the property. Mr.

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Morgan further advised that there is a road leading to the property called Parkridge Place and the existing road is a substandard road for shortplats. The Hearing Examiner denied the variance requests, and reaffirmed this position on reconsideration.

The Board confirmed that the decision made will apply to both pieces of property, due to the joint application.

Mr. Morgan stated that the specific variance request is for the proposed subdivisions to use an existing private road not meeting the Skagit County Minimum Road Standards. The existing road is in excess of 600 feet and has no pavement. Mr. Morgan read the specific section of the Skagit County Code pertaining to minimum road standards (14.08.090(3)(d)).

Chairman Wolden confirmed that there are currently existing homes along this private road. Mr. Morgan confirmed that individual lots along the existing road are required only to comply with driveway standards. A subdivision, on the other hand, must comply with current shortplat subdivision requirements. The Board confirmed that approximately 20 homes or building sites are along this private road. A discussion ensued on the Skagit County Minimum Road Standards.

Louie Requa, Skagit Surveyors, advised the Board that both Mr. Brooks and Mr. Borncamp are present here today, together with the president of the existing Homeowner's Association. Mr. Requa stated that the reason for the appeal is that the pertinent ordinance states that this road must have blacktop, even though it has adequate width and ditches that support the amount of people that live along the road.

Mr. Requa noted that the County now has a situation where privately owned and maintained roads that are served by homeowners' associations are required to be brought up to minimum road standards when a property owner wishing to subdivide and shortplat must pay to have the entire road brought up to minimum County road standards. In essence, the County is now asking people who own 20 acre tracks to pay for the road, when if the development had occurred prior to 1992, no roadwork would have been required.

Mr. Requa produced a road maintenance agreement for the homeowners' association which has been in existence for 12-13 years and requires property owners to participate and contribute to maintenance of the road. Mr. Requa further noted that a petition has been signed by all property owners along the road, and that it is the will of the people to keep the road as it is now. The property owners do not want this private road to be a County road with the County forced to maintain it. Mr. Requa stated that he feels the best interests of the property owners have been overlooked. The property owners by virtue of the petition submitted do not want their road to be paved and do not want a public thoroughfare.

Stan Knapp, President of Parkridge Place Property Owners Association, pointed out that under the property owners' association covenants, which run with the land and apply to present and future property owners, if there is a land subdivision, the subdivision would be legally bound to contribute to the maintenance of the road. Mr. Knapp indicated that the association has a proven record of excellent road maintenance since 1981, and in fact has been commended by fire personnel on the quality of the road.

Commissioner Robinson confirmed with Mr. Knapp that all landowners have signed the covenant which runs with the land.

Claire Brooks, one of the property owners, stated that is not fair to ask these property owners to come up with the money to pave the road when the intent was not to pave the road.

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Chairman Wolden clarified with the applicants that if and when this road does become a County Road, there will have to be conditions that the homeowners would be responsible for bringing the road up to minimum road standards.

Commissioner Hart stated that these requirements were put in place to assure that emergency vehicle passage would not be a problem, and that the County cannot be liable if such vehicles cannot make passage.

It was ascertained from those present that the road is a wide road and meets the standards for emergency vehicles.

Commissioner Robinson reiterated that this appeal is based on the ordinance currently on the books, and indicated his unwillingness to set a precedence by granting this variance. Commissioner Hart stated that it would be necessary to change the ordinance to effectuate relief for these property owners from the minimum road standards requirements. Commissioner Hart stated that he cannot find fault with any of the findings of the Hearing Examiner.

The conclusions of the Hearing Examiner were reviewed.

Commissioner Hart indicated that the Hearing Examiner is exactly right, but that an ordinance change might want to be requested. Staff's point has been that the Commissioners cannot change an ordinance or grant a precedent without going through the necessary public hearing process. Commissioner Hart further stated that after reading the Hearing Examiner's conclusion, he can see no option but to uphold the Hearing Examiner's decision.

Mr. Requa stated that variances are granted in conflict with various laws and ordinances, and it seems that the Hearing Examiner erred in judgment in that there are special circumstances that warrant exception.

Commissioner Hart indicated that the Board does not have the leeway to grant a special circumstance. Commissioner Hart moved to uphold the Hearing Examiner's decision. Commissioner Wolden seconded the motion.

After brief discussion, Commissioner Robinson indicated that it is his opinion that there are special circumstances in this situation and that perhaps a variance is in order with possible modification needed to the ordinance in the future.

The question was called for a Commissioners Hart and Wolden voted to uphold the Hearing Examiner's findings, and Commissioner Robinson opposed the motion. The motion carried. (Resolution to be provided at a later date by Staff).

APPEAL BY BARBARA BOND-HOWARD OF HEARING EXAMINER'S DECISION RE: SPECIAL USE PERMIT #SPU-94010H FOR GLORIA BECKSTROM, 1060 "C" STREET, BAYVIEW.

Grace Roeder, Planning Department Staff, advised that this is an appeal of the Hearing Examiner's Decision to develop a single family residence into a duplex on "C" Street in Bayview. Ms. Roeder advised 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) To call for the Board's own public hearing to consider testimony on the matter, after which a revised decision may be adopted.

Ms. Roeder submitted some staff photographs of the subject property for the record, together with a plat map of the subject property noted in green. A copy of a survey of the area as ordered by a previous Board of Commissioners was also reviewed. Ms. Roeder then reviewed the history of this matter. In 1990 Ms. Beckstrom applied for a special use permit. She built the single family residence with amenities for a duplex in the event that her special use permit request was approved after a several month long process was completed.

The application for the duplex resulted in a contentious situation with the neighbors. The application was first denied and then approved by the Hearing Examiner, then denied by the Board of Commissioners on appeal. The items at issue were the setbacks, the access and parking, and the location of the septic drainfield, in addition to the neighbors' concerns about having a duplex in their neighborhood. A survey required by the Board of Commissioners revealed that the Beckstrom building was set at 19.6 feet from "C" street (front property line) instead of 25 feet. The Board decided to deny the permit, reasoning that a non-conforming building should not be granted a special privilege. Mrs. Beckstrom tried unsuccessfully to purchase County right-of-way on C Street to bring her front setback into compliance, and finally was granted a variance from the setback requirement, which variance was unchallenged. Mrs. Beckstrom solved her access/parking problem by obtaining a portion of unopened Fifth Street. Relocation of the drainfield has been accomplished.

Mrs. Beckstrom has again applied for a special use permit on that building which application the Hearing Examiner approved. This is the action that is being appealed by Mrs. Barbara Bond-Howard. Commissioner Hart ascertained from Staff that the variance has been granted and the septic system has been realigned. All of these items have been approved and resolved per the Planning and Health Departments.

Barbara Bond-Howard, Appellant, indicated her belief that the applicant has not presented the truth in her application. Ms. Bond-Howard pointed out to the Board that there appears to her to be inconsistencies in the maps provided, and that there is confusion concerning the location of the drainfield and the effects on her well.

Gary Jones, attorney for Mrs. Beckstrom, reviewed the conclusions of the Hearing Examiner, and stated that Ms. Roeder has confirmed that all of the special conditions required by the Hearing Examiner have been met. In Ms. Roeder's report and the findings of the Hearing Examiner, there is a question whether the County has adopted a policy favoring or disfavoring common wall construction, and has expressed an intention to allow duplexes and commonwall construction so as to increase housing affordability in rural Skagit County. The findings of the Hearing Examiner stated that the application is adhering to the policies of the County. Mr. Jones urged the Board to affirm what the Hearing Examiner approved, noting that all conditions have been met to bring this property into compliance.

Commissioner Hart indicated that the information presented both today and to the Hearing Examiner indicate that all conditions have been met.

Chairman Wolden moved to uphold the Hearing Examiner's decision. Commissioner Robinson seconded the motion, which was unanimously approved. (Resolution to be provided at a later date by Staff).

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DISCUSSION - RAILS TO TRAILS - RON KAALAND.

Chairman Wolden opened the discussion to the group of citizens assembled, and briefly reviewed the history of the this project. Chairman Wolden stated that the entire line belonged to Burlington Northern, with the options to abandon the track or sell the rail bank. Abandonment means that the property goes back to the individual landowners. Chairman Wolden explained that rail banking means that the railroad retains the right to reclaim the rail bank at any time in the future. Burlington Northern chose to rail bank the subject property. Rail banking makes the land available only to a public entity, not to individual landowner, and the land remains in its entirety. Consequently only State, Federal, County, or special interest conservancy groups may acquire the railroad line in its entirety. The Board believed at the time that it was in the best interests of the County to purchase the line rather than have someone else own the property. Chairman Wolden explained that this explanation is given so that the citizenry can fully understand the sequence of events, and noted that it is possible that Burlington Northern may want this line back in the future. Chairman Wolden indicated that the railroad has done this in a number of areas, and that this is one of the smaller, less expensive ones.

Ron Kaaland indicated that others in the audience would be speaking today.

Ed Lipsey stated that he is representing the Citizens Against Rails to Trails, and advised the Board that the group did not come to discuss crossings and rights-of-way. Mr. Lipsey expressed concern that the questions asked of the Parks Department and Commissioner Robinson at previous meetings have not been answered.

Commissioner Hart reiterated that Burlington Northern made the decision to rail bank this line, and that the County purchased this easement for \$300 per acre, as Burlington Northern did not want to abandon the line. There is no option to sell the property to the landowners. This is not the County's decision.

Don Kaaland presented to the Board a petition signed by 652 individuals gathered in 7 days opposing the rails to trails concept. Mr. Kaaland further presented Resolutions from the Towns of Hamilton and Concrete opposing rails to trails, and that one will be forthcoming from Lyman. Mr. Kaaland then quoted from a letter from an attorney in Whatcom County concerning this matter, and presented the Board with a copy of said letter together with pertinent legal citing. Mr. Kaaland stated that he feels that the County has been listening to false information provided by the Parks Department.

Chairman Wolden pointed out that the legal cases cited by the attorney in Whatcom County pertain to rail "abandonment" not "rail banking."

Randy Goode state that he has property that adjoins the railroad, and has information that the rail line was abandoned. Mr. Goode stated his feeling that this entire matter has been handled in a careless, ruthless and dangerous manner. Mr. Goode asked the Board why the Parks Department has been allowed to run wild and take property away from property owners. This transaction went through unquestioned by the County, according to Mr. Goode and it was Mr. Goode's opinion that property owners should have ownership of the railroad right-of-way.

Ivan Bacus, Jr. stated that to summarize this matter, the citizens believe that there has been abandonment because the rails have been abandoned. Mr. Bacus stated that the rights of the property owners are being infringed upon, and the County needs to reach some sort of settlement with property owners, or prepare to go to court soon.

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Travis Martinez stated that a similar Snohomish County project cost \$7,000,000 four years ago.

Commissioner Hart indicated that decisions concerning paving the trail have not been made and therefore costs cannot yet be determined. However, such decisions would have to go through the public hearing process to consider such expenditures.

Mr. Kaaland stated that the discussion was over and that the group of citizens was prepared to go to court over this matter.

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