

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

**Tuesday, July 19, 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) Signature - Impact Fee Ordinance.
- 2) Discussion - Shellfish Closure Report.
- 3) Discussion - Draft Overall Economic Development Plan.
- 4) Code Enforcement Report.
- 5) Miscellaneous.

10:00 a.m. - 11:00 a.m. Appeal by Skagit County Department of Planning and Community Development of Hearing Examiner's Decision Regarding Administrative Appeal #APP-94-005 of Richard Hill, 481 So. Shore Road, Guemes Island.

11:00 a.m. - 11:30 a.m. Friendship Circle Video Presentation.

The Skagit County Board of Commissioners met in regular session on Tuesday, July 19, 1994, with Commissioners Harvey Wolden, Robby Robinson and Robert Hart present.

**PLANNING DEPARTMENT - Dave Hough, Director.**

1. Signature - Impact Fee Ordinance.

Dave Hough, Director of Planning and Community Development, presented to the Board the final Impact Fee Ordinance. Mr. Hough clarified that this document does not establish impact fees per se, but merely establishes the process for implementation of said fees. Commissioner Hart moved to adopt the Impact Fee Ordinance as presented by Staff. Commissioner Robinson seconded the motion, which passed unanimously. (Ordinance #15432)

2. Discussion - Shellfish Closure Report.

Kraig Olason, Assistant Director of Planning and Community Development, briefly reviewed a Draft Sanitary Survey Report for Samish Bay. Mr. Olason reported that a closure response strategy must be developed on an interim basis. Mr. Olason advised that the Department of Ecology and Department of Health will be working with local agencies to develop this strategy. As part of the interim strategy, additional monitoring will be required, according to Mr. Olason. Major input from the Samish River has been discovered and is the primary contributor of fecal coliform. Another interesting conclusion is that some of the drainage discharges may be caused by some of the agricultural areas near the shore. Mr. Olason has been discussing assistance from several different agencies in conjunction with the Samish Watershed Plan in developing these strategies. Additional inventory work will be needed beyond the scope of the Samish Watershed process. Various proposals for assistance were discussed.

Commissioner Hart indicated that it was his feeling that there was nothing new revealed in the survey, but confirmed that there is definitely monitoring that needs to be done on the Samish River.

Chairman Wolden stated that the Skagit Conservation District is working with different agencies and is ready to embark on projects involving the Samish River. Mr. Olason confirmed that the County and State Health Departments will be involved. Commissioner Hart indicated that the County does not need a \$50,000 study to determine where the critical areas are. Commissioner Robinson stated that it would be nice to coordinate all of these different agencies to avoid a duplication of effort. Mr. Hough indicated that this type of coordination will be accomplished.

3. Discussion - Draft Overall Economic Development Plan.

Mr. Hough reviewed with the Board the final draft of the Overall Economic Development Plan (OEDP). Mr. Hough advised that the OEDP serves as a comprehensive statement of local government and economic development organizations plans for Skagit County's economic growth and development over the short term as well as providing a planning framework for linking economic development with growth management over the next 20 years. This plan was developed in conjunction with the Skagit Council of Governments (SCOG).

Mr. Hough explained that the document is excellent and contains much hard work by many different groups. Mr. Hough reviewed specific minor items within the OEDP that should be changed. Mr. Hough advised the Board that the document will be coming before the SCOG Board for approval and adoption in the near future. All in all, Mr. Hough indicated that this is an excellent process and had a good cross-section of members of the community in developing this document.

4. Code Enforcement Report.

The Code Enforcement Report was reviewed.

5. Miscellaneous.

A. Oscar Graham, Senior Planner, briefly discussed the continuing eagle issue with the Board. The Board directed Mr. Graham to develop a forthright response to the recent position taken by the Department of Fisheries and Wildlife concerning the control of access to the Skagit River. Mr. Graham indicated that he will get together with Dave Brookings, Public Works Department Staff, to draft such a letter, and will present the letter to the Board for review. Commissioner Robinson indicated that a recent article in the Skagit Argus expressed his views and that Staff should review this editorial.

B. A brief discussion ensued regarding the City of Anacortes amendment to their capital facilities plan concerning a proposed sewer project.

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, July 19, 1994, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Voucher numbers PDRAWJL05950 through JL06146 (Payroll warrants numbers 049532 through 049728) in the total of \$79,693.49 (Transmittal #P-14-94).

- B. Final closing documents for the purchase of property near the Eagle Hill gravel pit were executed by the Board.

**APPEAL BY SKAGIT COUNTY DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT OF HEARING EXAMINER'S DECISION REGARDING ADMINISTRATIVE APPEAL #APP-94-005 OF RICHARD HILL, 481 SO. SHORE ROAD, GUEMES ISLAND.**

Dave Hough, Planning Department Director, advised that this is an appeal by the Department of Planning and Community Development based on the record of the Hearing Examiner and that the Board has the following options in this regard:

- 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. Hough advised that the Planning Department's appeal is based on an error of law, specifically that the decision is beyond the scope of authority of the hearing Examiner as outlined in Skagit County Code (SCC) 14.04 and RCW 36.70. SCC 14.04.222(4) outlines the scope of authority of the hearing Examiner as it relates to appeals from the administrative official. The section states in part, "...shall have all the powers of the administrative official from whom the appeal is taken, insofar as the decision of the particular issue is concerned.". The decision invalidates the portion of the County Code which is beyond the scope of authority of the administrative official thereby the Hearing Examiner. It is the Planning Department's position that the decision ignores that the Department has aggregated the lots for purposes of zoning even though no notification was provided to the owner. Review of the Court of Appeals' decision in Dodd vs. Skagit County specifically provided that the County was not responsible to inform individuals of all requirements.

Mr. Hough advised that RCW 36.70.970 stresses the point that the Hearing Examiner is allowed to hear issues on proposals of plat approvals. The process required by statute involves going to the Planning Commission and then to the Board of County Commissioners to establish a change in the County Code. The Hearing Examiner in his decision basically said the code is not applicable. This type of ruling is beyond the scope of the Hearing Examiner and is not within his responsibility to decide.

Tom Moser, an attorney representing Richard Hill, introduced himself and advised the Board that Mr. Hill is also present. Mr. Moser noted that this is a highly unusual matter, and wanted to raise a number of issues and questions for the Board's consideration. Ms. Moser objected to the attendance and participation of Paul Reilly from the Prosecutor's Office.

Mr. Moser advised that the lot is worth approximately \$125,000 developed, and that the denial as requested by the Planning Department would render the lot worthless.

Mr. Moser asked the following questions:

1. Does the Skagit County Code allow for aggregation without any action by the County Assessor or the Planning Department? Mr. Moser advised that no one aggregated these lots according to the Hearing Examiner. Does the process allow for aggregation with no official action being taken?
2. Does the legislative body have the authority to establish regulations which other officials

must follow? It was Mr. Moser's opinion that the Board has no authority to direct the Assessor to do the aggregation. The Assessor has not taken any action to aggregate the subject lots.

3. Does the Planning Department have the ability to appeal this decision.
4. Does the Hearing Examiner have jurisdiction over the appeal by the landowner pursuant to SCC 14.04.222?
5. Is the County estopped from denying the landowner use of his property for 6 years after the owner sells one of the two adjoining lots? The lot in question has been determined to be an unbuildable lot by the County. Is it too late for the County to take this action?
6. Is the County required to give notice to property owners regarding aggregation? Is there a requirement for the County to give notice when the sale of property occurred? Is the County required to give people notice of aggregation?
7. Can the County reverse decisions prior to 1965?
8. Has the County contributed to the landowners' damages when the County failed to institute aggregation rules? Mr. Moser stated that neighboring lots were broken out in violation of aggregation rules. Can the County now be inconsistent?
9. Does the County have a nonwritten policy to not enforce the rules of aggregation?

Mr. Moser offered his client's solution. The best and least restrictive solution is to deny Mr. Hough's (the Planning Department's) appeal. Mr. Moser stated that there is no need to make findings, no need to make conclusions of law, no need to set new policy or direction, and that the Board will not be setting a precedent.

Mr. Moser noted that the worst thing to do from his client's position is to reverse the Hearing Examiner's decision. This will mean that Mr. Hough will win the appeal, and that Mr. Hill must accept such a decision which means that his lot has zero value. Consequently, Mr. Hill will have to turn this matter over to Superior Court for a decision. Mr. Hill does not want to have to pay to have these decisions made.

Mr. Richard Hill, owner of the property, stated that he has been through the appeal process twice. Mr. Hill further stated that he first became aware of the issue of aggregation when he attempted to get a septic permit and found out that he was required to go through a lot certification process. At that time a determination was made advising that the lot was unbuildable and must be aggregated. Mr. Hill gave examples of adjoining properties being sold as separate lots during this time period. Mr. Hill further pointed out that through the years he has always received two tax statements.

Commissioner Hart confirmed that SCC 14.04.090, the platting ordinance, has not changed since 1965. The original ordinance was adopted in April of 1966 and included a provision for aggregating substandard lots. Commissioner Hart confirmed that Mr. Hill's main concern is the restriction against building a house on his lot.

Commissioner Robinson noted that if the Hearing Examiner had come up with a different result and decision, that also could have been appealed to the County Commissioners. Commissioner Robinson clarified that

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this particular appeal from the Planning Department of the Hearing Examiner's ability to make this decision, it is not a decision on the buildability of Mr. Hill's property.

Commissioner Hart reiterated that either party has the right to appeal a decision. Commissioner Hart further indicated that the question seems to be whether the Planning Director has the ability to overrule the Board of County Commissioners and does the Hearing Examiner have the ability to change the actions of the Board of County Commissioners by not enforcing County Code. Commissioner Hart indicated that neither body has that capability. Commissioner Hart stated his belief that there is no authority to overrule a ordinance that has been in place for 30 years, or 1 month for that matter.

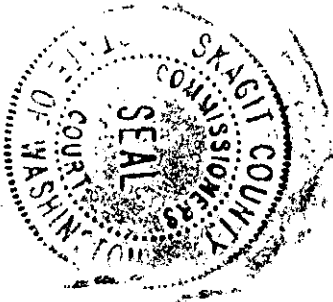
Commissioner Hart moved to 1) grant that the Planning Director does have the right to appeal the Hearing Examiner's decision, and 2) that the Hearing Examiner did not have the right to overturn an action of the Board of County Commissioners and could not make this ruling. This motion was seconded by Commissioner Robinson, and passed unanimously. (Resolution to be provided by Staff at a later date).

Commissioner Robinson indicated to Mr. Hill and Mr. Moser that Mr. Hill could still ask for a variance without having to go back to the Hearing Examiner, and could possibly be allowed to build a house on his lot. If the variance is denied, Mr. Hill could appeal to the Board.

**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