

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

Tuesday, November 1, 1994

- 7:30 a.m. - 8:30 a.m. Commissioners' Staff Meeting.
- 9:00 a.m. - 10:00 a.m. Planning Department - Dave Hough, Director.
- 1) Discussion - Revised Fee Schedule.
 - 2) Discussion - Interim Controls (Industrial Zoning).
 - 3) Discussion - Comprehensive Plan Progress Report and Planning Commission Schedule.
 - 4) Code Enforcement Report.
 - 5) Miscellaneous.
- 10:00 a.m. - 11:00 a.m. Presentation on Guemes Island Groundwater Availability - Dr. John Oldow.
- 11:00 a.m. - Noon Budget Work Session - General.
- 1:30 p.m. - 2:30 p.m. Consideration of Order of Remand re: Bock/Lotz Zoning Variance - Stackpole Road.
- 2:30 p.m. - 3:30 p.m. Appeal by Glen Moses of Administrative Decision #AAP-94-018A for Shoreline Permit of Kenneth and James Renner, Lake Cavanaugh.
- 3:30 p.m. - 5:30 p.m. Budget Work Session - General.

The Skagit County Board of Commissioners met in regular session on Tuesday, November 1, 1994, with Commissioners Harvey Wolden, Robby Robinson and Robert Hart present.

PLANNING DEPARTMENT - Dave Hough, Director.

1. **Discussion - Revised Fee Schedule.**

Dave Hough, Planning Department Director, advised that the present fee schedule that the department is now operating under was adopted in 1988, and consequently does not reflect the costs of processing land use applications at this time. A list of recommended Land Use Fees Proposed Effective January 1995 was briefly reviewed with the Board. Mr. Hough advised that there are substantial increases in some areas due to permit fees being out of line with actual costs incurred to perform that certain service. Specific proposed fee changes were briefly reviewed. It was noted that the fee schedule should be reviewed on a regular basis to avoid this type of major adjustment in the future.

Mr. Hough clarified that these proposed fees represent 90% of the actual time and effort expended.

Commissioner Hart noted the fact that under regulatory reform, many of these appeals may go directly to Superior Court rather than through the appeal and reconsideration process. Mr. Hough indicated that a simplified process of administrative appeals and special use permits may be developed as a result of the Comprehensive Plan. Mr. Hough indicated that the Planning Department would like to explore expanding the administrative process to improve timing and cost-effectiveness.

Brian McGuinness, Skagit Island Counties Builders Association, indicated that he would like to be informed

of proposed fee changes and does not feel that the public is at fault for increased staff time mandated by regulations. Mr. McGuinness suggested that rather than shocking the public with these huge increases, perhaps a graduated increase over a 6-month time period might be more palatable. Mr. McGuinness stated that he is not arguing the amounts proposed, but that perhaps a graduated increase would be more acceptable. Mr. McGuinness proposed having the fees reviewed and adjusted every year, or the institution of an automatic increase of 5% at the first of every year.

Mr. Hough indicated that he would meet with Mr. McGuinness and work up a draft proposal of fee changes and adjustments. The Board concurred with this course of action.

2. Discussion - Interim Controls (Industrial Zoning).

Mr. Hough advised that the City of Anacortes has expressed concerns that the current Industrial Zoning District standards allow a limited amount of retail commercial activity that may impact the viability of the urban commercial core within the City. The Planning Department is recommending adoption of Interim controls that would establish a new industrial zoning district for the March's Point area and would also include amendments to the standards in the Zoning Code.

Specific recommended Zoning Code language and a zoning map outlining the area impacted were reviewed with the Board.

Mr. Hough advised that recommending this language as an interim control under the Growth Management Act does not require a public hearing for immediate implementation. A public hearing must be held within 60 days of such implementation, and the interim control can only be in effect for 6 months.

Specific types of operations within this type of area were discussed. After a brief discussion, Commissioner Hart indicated that he would not feel comfortable implementing this type of interim control without having a public hearing. The Board concurred with this point and directed the Planning Department to schedule a public hearing on this matter at the earliest convenient time.

3. Discussion - Comprehensive Plan Progress Report and Planning Commission Schedule.

Gary Christensen, Planning Department Staff, advised that the Planning Commission has met 48 times this year to date, and have scheduled 6 more meetings through the end of the year. Mr. Christensen advised that attendance by the Planning Commission members has been phenomenal. Mr. Christensen distributed a Planning Commission Schedule from July 11 through November 1 which showed activities that have already been conducted. This shows that the Planning Commission has been dedicated to reviewing public comment and input on the Comprehensive Plan.

A considerable amount of time has been spent on the elements of Forestry, Rural, Transportation and Land Use. Preliminary action in the review of urban growth boundaries has been taken on Concrete, Hamilton, Lyman, LaConner, Sedro Woolley and Burlington. Mount Vernon was completed last night as well as the independent UGA of Bay View.

A brief discussion ensued on the December 31 date of compliance and the matter of whether or not building permits can be issued after that date.

Mr. Christensen indicated that not one County in the State has received approval of their comprehensive plan.

Commissioner Robinson indicated that the state mandate is somewhat unrealistic given the fact that the monies to proceed along those lines have not been forthcoming and it is not the County's fault that funds are not available.

Mr. Hough indicated that Skagit county is in the top one-third as far as progress goes in development of our Comprehensive Plan. Mr. Hough acknowledged the hard work of the Planning Commission.

4. Code Enforcement Report.

The Code Enforcement Report was reviewed.

5. Miscellaneous.

There were no miscellaneous items for review.

PRESENTATION ON GUEMES ISLAND GROUNDWATER AVAILABILITY.

Ken Willis, Health Department Staff, reviewed with the Board the concerns of seawater intrusion on Guemes Island, and the fact that definitive steps need to be taken. Mr. Willis introduced Steve Orsini, a resident of Guemes Island, who gave a brief history of previous studies on water quality and salt water intrusion. Mr. Orsini indicated that the island community is concerned with the continuing degradation of the water system. Mr. Orsini indicated that a site-specific management program for Guemes Island may become a County mandate, and it may be necessary to adopt County policies to protect the water resource from misuse.

Mr. Orsini introduced Dr. John Oldow, a professor at Rice University and a summer resident of Guemes Island. Dr. Oldow is proposing a study over 3 years time to determine the exact geologic nature and aquifer locations on the island.

Dr. Oldow reviewed the various areas of the island showing where the major aquifers are located and the general composition of the island. Sources of water were briefly discussed and the exact methods and purposes of the proposed study were reviewed.

The specifics of the schedule for this project was briefly reviewed by Dr. Oldow. The Board queried Dr. Oldow on several specifics of the water supply on Guemes Island and the entire group of San Juan Islands.

Commissioner Robinson asked Dr. Oldow about the source of funding for such an intensive study. Dr. Oldow advised that proposals for funding have been made to various sources, and the total expenses for this study expect to be \$200,000 to \$300,000. Dr. Oldow advised that several agencies have expressed interest, but that funds from the Federal Government will not be available until 1996. Dr. Oldow assured the Board that there will be no funding sought from the County, but wanted the Board to be informed of the project and supportive of his efforts in this regard.

The Board indicated their willingness to provide support letters or other such assistance as needed for this very beneficial project.

CONSIDERATION OF ORDER OF REMAND RE: BOCK/LOTZ ZONING VARIANCE - STACKPOLE ROAD.

Jeff Morgan, Planning Department Staff, stated that this is a remand from the Chelan Superior Court to the

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Board for consideration that the Bock's and Lotz' were "innocent purchasers" of the subject property, and therefore had no knowledge that the land was illegally subdivided. Mr. Morgan briefly reviewed the history of this property and the resulting illegal subdivision. The applicants requested a variance from the short subdivision ordinance and the minimum lot size which was denied by the Board on September 22, 1993.

Mr. Morgan noted the section of the Revised Code of Washington Chapter 58.17.210 stating that "The prohibition in this section shall not apply to an innocent purchaser for value without actual notice." Mr. Morgan stated that Skagit County does not have an innocent purchaser ordinance in place. Mr. Morgan advised that the Planning Department does not have a recommendation as to the innocent purchaser status.

Gary Jones, an attorney representing Marianne and Conrad Bock, owners of one of the two lots subject to review this afternoon, gave a brief history of the purchase of the property and the transference of title to the two lots over the years. Mr. Jones advised that the order from Chelan County Superior Court has narrowed the Board's role, and Mr. Jones urged the Board to consider that there is an exception to the general rule that no permits will be issued for any land in violation of RCW 58.17.210. Mr. Jones indicated that there was no consideration given to the fact that the Bock's were "innocent purchasers" under RCW 58.17.210. Mr. Jones further indicated that the State Supreme Court states that there is an exception that can be granted to those people who in good faith buy a lot which was not validly created. Mr. Jones stated that his clients firmly believed and assumed that these were individual lots.

Mr. Jones reviewed with the Board title company information, Health Department information and an assessor's map that was referred to by the title company when the purchase took place in 1978.

Marianne Bock, 19100 NE 21st Street, Vancouver, Washington, reviewed the history of her purchase of the property and the fact that she did not know that she had purchased an illegal lot until a building permit was applied for.

Mr. Jones indicated that the title insurance policy did not indicate that the land could not be subdivided. Mr. Jones also noted that the transactions of Bock and Lotz were conducted totally independent from each other.

Mrs. Bock indicated that she read the escrow instructions and perk test and assumed that everything else concerning the land was correct.

The Board queried Mrs. Bock on her recollection of the real estate agent's name, and Mrs. Bock could not recall the name of the real estate agent.

It was determined that the purchase price of the 3.8 acre parcels was around \$7,000 per acre, and the Board indicated this would have been a high price to pay for agricultural land at that time.

John Moffat, Chief Civil Deputy, clarified that if they were not aware that this was an illegally subdivided lot and if they paid value for the land without knowing that it was an illegally subdivided lot, then the law finds that they are innocent purchasers. Mr. Moffat indicated that RCW 58.17.210 exempts those types of people from the otherwise prohibition within the statute of issuance of a building permit, so those "innocent purchasers" could get a building permit.

A brief discussion ensued on the cost of agricultural land during that time. It was determined that \$3,000 to \$6,000 per acre at that time (1980) was the norm.

Mr. Morgan indicated that the lot certification process is required prior to any type of development permit, and was not effective until 1990.

On query from Commissioner Hart, Mr. Morgan indicated that a septic tank permit would be not possible if the lot was not certified as a buildable lot.

Conrad Bock, 19100 NE 21st, Vancouver, Washington, concurred with his wife's comments on the purchase of the property. Mr. Bock was satisfied that the lot would perk. Mr. Bock indicated that he was never told that his plans to build a house were in jeopardy or in doubt. It was Mr. Bock's opinion that the lot appeared to be in middle of a block with houses on either side, and he thought that there was no question that the two parcels were buildable lots.

Mr. Bock further indicated that the tax assessment on the property has increased approximately 20% since purchase, and that each lot is assessed separately.

Steve Murray, representing David Murray who owns property in the area, confirmed that the Board had received and reviewed David Murray's letter to the Board. Mr. Murray urged the Board to keep the land zoned agricultural.

Keith Morrison, 1750 Johnson Road, Mount Vernon, stated that he is a property owner directly south of the subject property and in fact rents property from the Bock for farming purposes. Mr. Morrison indicated that he believes that the Bocks were innocent of the conditions of the illegal subdivision and expressed his hope that this matter can be resolved in their favor.

Millie Markus, 1903 Cedardale Road, pointed out the flooding concerns for the subject property.

Jean Olson, Cedardale Road, urged the Board to keep the subject property zoned agricultural and expressed her concern for drainage problems in the area.

Mr. Jones indicated that the issue is whether there has been evidence produced to show that the Bocks and Lotz were not innocent purchasers. Mr. Jones stated that the Bocks and Lotz went to a realty, had title insurance, had totally separate purchase transactions and were innocent purchasers thinking they could build a house on the subject property. A series of transactions predated their purchase. Mr. Jones further stated that this transaction happened almost 20 years ago, at a time when subdivision laws and enforcement of zoning codes were much more relaxed than now.

Commissioner Hart indicated that there is legitimate reason to consider these are innocent purchasers under State law, and permission should be granted to issue a building permit.

Commissioner Robinson indicated that the price paid indicates this was a residential lot not farm property.

Commissioner Hart then moved that the Bocks and Lotz be considered innocent purchasers and be issued a building permit. The motion was seconded by Commissioner Robinson and passed unanimously. (Resolution to be provided by Staff at a Later Date).

APPEAL BY GLEN MOSES OF ADMINISTRATIVE DECISION #AAP-94-018A FOR SHORELINE PERMIT OF KENNETH AND JAMES RENNER, LAKE CAVANAUGH.

Zoe Pfahl, Planning Department Staff, advised that this is an appeal of an administrative decision for a

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shoreline permit. Mr. Moses, the appellant, is represented by attorney Paul Taylor. The property description was reviewed by Ms. Pfahl and it was noted that the property is located on Lake Cavanaugh and is zoned residential. A non-exclusive easement allows the Renners ingress and egress to the lake. A brief history of this appeal was reviewed by Ms. Pfahl.

Ms. Pfahl advised that the Renners allowed the time extension to expire without notification to Skagit county, pursuant to Resolution #15004 previously passed by the Board. This resolution dealt with the installation of steel pilings which were subject to various conditions. Consequently, due to the violation of the conditions of the Resolution, the shoreline permit was withdrawn.

Ms. Pfahl 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.
- 3) To call for the Board's own public hearing to consider testimony on the matter, after which a revised decision may be adopted

Paul Taylor, attorney for Glen and Heather Moses, questioned the authority of the Hearing Examiner to overrule the Board's resolution. Mr. Taylor indicated that he initially thought there would be an enforcement action against the Renners. Mr. Renner had been ordered to institute mitigation measures and failed to fulfill his obligations under the Resolution of the Board.

Mr. Taylor indicated that his clients were denied due process and that no investigation from the Shoreline Administrator resulted. Mr. Taylor briefly reviewed the history of this matter.

Mr. Taylor proposed that in order for the Board's resolution to have any meaning, Mr. Renner must remove the subject poles. Mr. Taylor urged the Board to enforce their previous Resolution. Mr. Taylor suggested that Mr. Renner could be given the option after removal of the poles to use the area and reconsider installation of the poles after receiving approval of the required lease from the Department of Natural Resources. Mr. Taylor stated that this proposal does not give any special consideration to the Renners and gives proper notification to his client.

James Renner, appellant, gave a lengthy review of the history of this matter and several exhibits that he had previously submitted to the Hearing Examiner. Mr. Renner stated that the crux of the matter is that there is no material harm posed by the four moorage poles. This is nothing more than a private property dispute, according to Mr. Renner. Mr. Renner noted that public resources do not need to be spent to resolve this private property dispute. Mr. Renner pointed out that Mr. Moses owns his own dock and that such dock is not constructed to code.

Chairman Wolden clarified that the issue is whether the Hearing Examiner erred, and urged Mr. Renner to please draw his conclusions at this time.

Mr. Renner indicated that Mr. Schofield, the Hearing Examiner, properly ruled. Mr. Renner stated that he is committed to the installation of the mitigation measures and, as there is no public hazard, the moorage poles actually benefit the environment. Mr. Renner stated that only Mr. Moses is aggrieved by the poles and this is only due to the fact that Mr. Moses' dock is constructed in such a manner as to cause this concern.

Mr. Taylor urged the Board to enforce the previous ruling and Resolution.

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Oscar Graham, Planning Department Staff, clarified that Resolution #15004 speakd clearly to the Institution of the mitigation measures and timeline, and the required timeline for obtaining the lease from DNR. The timeline was extended, at the Board's direction, by Ms. Pfahl as Shoreline Administrator.

Mr. Renner again urged the Board to uphold the Hearing Examiner's decision and indicated that this matter will ultimately be resolved in Superior Court.

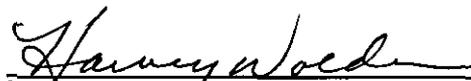
Chairman Wolden indicated that no matter what is decided at this point, this matter will end up in Superior Court, and that the fact remains that the timeline has not been adhered to. Commissioner Hart moved that the Hearing Examiner erred, and that the former action and Resolution #15004 of the Board should be enforced. Commissioner Robinson seconded the motion, which was unanimously approved. (Resolution to be provided by Staff at a later date).

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