

RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, September 9, 1997

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| 7:30 a.m. – 8:30 a.m. | Commissioners' Staff Meeting. |
| 8:30 a.m. – 9:00 a.m. | Work Session – Operations Division Manager/Road District Supervisors. |
| 9:00 a.m. – 10:00 a.m. | Public Works Department – Jan Keiser, Director.

1) Introduction of New Employee.
2) Public Hearing – Disposal of County Surplus Property.
3) Discussion – Request for Lease of Gibraltar Gravel Pit.
4) Miscellaneous. |
| *T 11:00 a.m. – 11:30 a.m.
Rural Library | Presentation of Petitions and Consideration of Resolution Placing a District on the November General Election Ballot. |
| 1:30 p.m. – 2:00 p.m. | Bid Openings:

1) One or More New Latest Model Self-Propelled Sweeper.
2) Install/Replace Guardrail on Lake Samish Road at Friday Creek and Bear Creek, Hoehn Road, and F&S Grade Road. |
| 2:00 p.m. – 3:00 a.m. | Appeal by Stephen L. Green, et al., of Hearing Examiner's Decision Approving a Special Use Permit for Construction of a Cell Tower Located at Outlook Lane, North of Highway 20, at the Top of Bacus Hill (PL-96-022-SPU). |

The Skagit County Board of Commissioners met in regular session on Tuesday, September 9, 1997, with Commissioners Harvey Wolden, Robert Hart and Ted W. Anderson present.

PUBLIC WORKS DEPARTMENT – Jan Keiser, Director.

1. Introduction of New Employee.

Robin LaRue, Solid Waste Division Manager, introduced Doug Merriman, the new Controller for the Public Works Department.

2. Public Hearing – Disposal of County Surplus Property.

Commissioner Wolden opened the public hearing.

Charlie Sisson, Equipment Rental and Revolving Fund Coordinator, stated that this hearing is to declare certain property surplus and will allow for disposal through sale to another agencies or at public auction. Mr. Sisson reviewed with the Board certain property that has already been committed to other government agencies.

Jan Keiser, Director, advised that she had received a telephone call from Terry Christianson from the City of Anacortes asking if any of this property is from the former Incinerator. She indicated that there is no property from the Incinerator included on this list.

There being no public comment forthcoming, Commissioner Anderson moved to close the public hearing, and Commissioner Hart seconded the motion. The motion passed unanimously.

Commissioner Anderson moved to approve the Resolution regarding Disposal of County Surplus Property. Commissioner Hart seconded the motion, and it passed unanimously. **(Resolution No. 16667)**

3. Discussion – Request for Lease of Gibraltar Gravel Pit.

Mr. LaRue asked to postpone this discussion due to additional information recently received.

4. Miscellaneous.

- A. Dave Brookings, Surface Water Management Division, advised that he has submitted an application to FEMA to pursue a community rating that will lower insurance ratings to county residents. A new element that is required is to develop a repetitive loss plan that illustrates the county's intention to deal with repetitive loss properties, and thereby reduce the long-term drain on federal funds. Public Works has coordinated the development of this plan with Corey Schmidt from the Planning & Permit Center. Mr. Brookings presented a Call for Public Hearing in this regard for the Board's consideration. Commissioner Hart moved to call for a publish hearing on the proposed repetitive loss plan to be held on Tuesday, September 23, at 9:00 a.m. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. 16668)**
- B. Ms. Keiser gave the Board a brief update on the Cook Road project.
- C. Commissioner Anderson moved to approve an Emergency Resolution regarding Thomas Creek effective at 8:00 a.m. on Tuesday, September 9, 1997. Commissioner Hart seconded the motion, and it passed unanimously. **(Resolution No. 16669)**

MISCELLANEOUS.

Staff presented a Resolution calling for public hearing to consider the issuance of bonds for the completion of the Family Resource Center. The public hearing will be held at 11:00 a.m. on Tuesday, September 23, 1997. Commissioner Hart moved to approve the Resolution as presented by Staff. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. 16670)**

PRESENTATION OF PETITIONS AND CONSIDERATION OF RESOLUTION PLACING A RURAL LIBRARY DISTRICT ON THE NOVEMBER GENERAL ELECTION BALLOT.

Mindy Coslor, Chairman of the Citizens for Skagit County Library Services, presented petitions with over 4,100 signatures. She stated that there is tremendous support for the possibility of having library services that will support children in school throughout the County. She stated that research has been done regarding taxing and levy figures, and she is positive that there will be no impact on junior taxing districts. There will be no effect on fire districts, according to Ms. Coslor. She stated that it is hoped that grants can be accessed once the district is in place.

Commissioner Anderson moved to adopt a Resolution placing a rural library district on the November General Election Ballot. Commissioner Hart seconded the motion, and it passed unanimously. **(Resolution No. 16671)**

BID OPENINGS.

1. One or More New Latest Model Self-Propelled Sweeper.

Charlie Sisson, Public Works Department Staff, opened the following bids:

Northstar Industries, Inc.
Auburn, Washington
Bid bond is enclosed.
\$35,904.24 (no alternate)

Smith Tractor & Equipment, Inc.
Mount Vernon, Washington
Cashier's check is enclosed
\$27,976.00 (no alternate)

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Western Power & Equipment
Kent, Washington
Bid bond is enclosed.
\$30,070.17 (alternate proposal/equipment \$29,644.80)

Specifications will be reviewed by Staff and a bid award recommendation made shortly.

2. Install/Replace Guardrail on Lake Samish Road at Friday Creek and Bear Creek, Hoehn Road, and F&S Grade Road.

Young Soo Kim, Public Works Department Staff, opened the following bids:

Peterson Brothers
2008 E Valley Hwy
Sumner, Washington
Bid bond attached.
Addenda acknowledged.
\$135,524.57

Coral Construction Co.
PO Box 347
Wilsonville, OR
Bid bond attached.
Addenda acknowledged.
\$108,409.90

Mr. Kim advised that \$97,225 was the Engineer's estimate. Staff will review the bids and make a bid award recommendation within two weeks.

APPEAL BY STEPHEN L. GREEN, ET AL., OF HEARING EXAMINER'S DECISION APPROVING A SPECIAL USE PERMIT FOR CONSTRUCTION OF A CELL TOWER LOCATED AT OUTLOOK LANE, NORTH OF HIGHWAY 20, AT THE TOP OF BACUS HILL (PL-96-022-SPU).

Grace Roeder, Planning Staff, reviewed with the Board the history of this matter and the various hearings and appeals that have been previously heard.

Commissioner Hart asked for clarification of the Board's options today and reminded Staff that the appellants had requested a refund of the appeal fee paid, as this was the second time before the Board due to a lack of proper notification.

Ms. Roeder stated that the Board as the following options:

1. The Board may deny the request and allow the Hearing Examiner's decision to stand.
2. The Board may remand the matter back to the Hearing Examiner for further study.
3. If the Board believes the Hearing Examiner's decision is not supported by substantial evidence, the Board may adopt its own findings, conclusions and decision based upon the record made before the Hearing Examiner.

David Mann, on behalf of the adjacent property owners, reiterated the request for a waiver of the filing fee.

Mr. Mann stated that there have been several procedural wrongs committed and there are appearance of fairness issues. He stated that the record demonstrates that this process has been tainted from Day One. He detailed that on June 10, 1997, which was the date before the Hearing Examiner addressed this case for the third time, that the Hearing Examiner was sent a letter by counsel for AT&T submitting proposed findings. The proposed Findings are in fact included in the Findings made by the Hearing Examiner. Mr. Mann explained that

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this is a direct violation of the Revised Code of Washington, and that this letter was not included in the record before the Hearing Examiner.

At the beginning of the third hearing, Mr. Moser, the Hearing Examiner, was asked to step down and did not offer any potential conflicts. Since that time, Mr. Mann has been made aware that Mr. Moser is working with Buck & Gordon on at least one other major project in Skagit County. Buck & Gordon is the County's attorney for comprehensive plan. Mr. Mann feels this is a conflict of interest and should have been disclosed.

Third, Mr. Mann stated that an issue was raised concerning notice. The record shows that the applicant asked for the matter to be remanded. Without providing public notice, the Board considered a remand, and in fact issued such a Resolution. Even though this was beneficial to Mr. Mann's clients as well as to AT&T, Mr. Mann believes the record and subsequent discovery have been tainted from the beginning. Mr. Mann asked that this matter be remanded for additional hearings before an impartial Hearing Examiner.

Mr. Mann reviewed the provisions of the County Comprehensive Plan regarding the placement of towers. Mr. Mann discussed the intrusion of privacy to the adjacent neighbors, especially Mr. Green, who suffers from post-traumatic stress syndrome. The Hearing Examiner noted that there is no medication available to assist Mr. Green. Mr. Mann gave the Board the definition of the word "privacy." The purpose of a Special Use Permit is to assure compatibility with adjoining properties, according to Mr. Mann.

Mr. Mann then discussed the impacts on adjacent property values and pertinent appraisals done.

Mr. Mann stated that after careful review of the record, the proposal is not compatible and a special use permit should not be granted.

Brent Carson, Buck & Gordon, attorney for AT&T Wireless Services, stated that the fore-mentioned letter suggesting findings was hand delivered at the hearing on the 11th and is identified in the Hearing Examiner's exhibit list. Mr. Carson stated that all parties were allowed to review this exhibit. He stated that this procedure is similar to a judge who asks for findings from plaintiff and defendant, and then gleans the language he needs to make findings. The Hearing Examiner made his own independent judgment on what to include in his findings, according to Mr. Carson.

Mr. Carson stated that Mr. Mann is asking the Board to substitute their judgment for the Hearing Examiner's. The findings are supported by all of the evidence. He noted that a medical condition is not adequate to stop a land use situation. Mr. Carson indicated that there are standards that have been reviewed by a Hearing Examiner and determined compatibility. There are other outright permitted uses that would be more intrusive to the adjoining neighbors. Mr. Carson asked the Board to affirm the Hearing Examiner's decision and deny the appeal. Mr. Carson stated that he has no position on the waiver of the appeal fees. He further stated that there is a serious lack of coverage by AT&T Wireless in the vicinity of the proposed cell tower, and this facility is needed and of a benefit to the community.

Patty Christison, 2724 Outlook Lane, stated that Bacus Hill is teeming with wildlife, and that the proposed cell tower will be an intrusion to her neighborhood and quality of life. Ms. Christison reviewed four alternative sites that are available for lease for tower sites. Ms. Christison stated that the Bacus Hill site was chosen for cost-effective reasons and no one has forced AT&T to consider less intrusive alternatives. The local private roads including Outlook Lane will not handle the construction of this project. Ms. Christison commented briefly on the possible proliferation of towers in the immediate area.

Mr. Carson asked for clarification of the rules for Hearing Examiner decision appeals and that this is a close record appeal. He raised a standard objection to any new evidence.

Commissioner Wolden indicated that this is a closed record hearing and no new information is allowed..

John Moffat, Chief Civil Deputy, indicated that there is no new documentation or evidence allowed at this appeal.

Don Christison, resides slightly east of the proposed tower., stated that the property values determined by AT&T were inflated and are not accurate. Mr. Christison gave examples of how these values are incorrect. He stated that the effect on the community is not being considered.

Stephen Green, 2700 Outlook Lane, apologized for statements made to the Board at the last appeal. He indicated that his *health issue of post traumatic stress syndrome must be considered*. He urged the Board to protect him and his family from this intrusion to their health and privacy. Mr. Green stated that AT&T should guarantee the fair market value of his house. That is the only fair thing to do. Mr. Green suggested that the parties mediate their situation to come up with a win-win situation for all concerned.

Commissioner Hart stated that it is appropriate to waive the filing fee. Commissioners Anderson and Wolden agreed.

A discussion ensued on the lighting for the tower and FAA recommendations.

Chairman Wolden indicated that this is the second time this matter has been before us and that the evidence has not changed that much.

Commissioner Anderson stated that he is a veteran of conditional use permits now called special use permits. He stated that one of the overriding factors is who was there first, will this adversely impact the surrounding neighborhood, and is it compatible with the surrounding neighborhood. He stated that he has given this much thought, and in his opinion, *even though he does not want to stand in the way of progress, he does not feel these towers belong among houses and neighborhoods.*

Commissioner Anderson therefore moved to overturn the Hearing Examiner's decision based on several factors. He stated that there are other alternative sites available to AT&T. He stated that the Hearing Examiner did numerous comparisons to shake mills and wood grinders, but Skagit County codes and zoning were allowable only if forestry related, so the comparison is not apples for apples. He stated that more emphasis should have been given to the impact on the neighborhood. He applauded Mr. Green's suggestion to bring all parties to the table to come up with suggestions and alternatives. Commissioner Anderson stated that *the Board should deny this application as the impact to the neighborhood has not been adequately considered.*

Commissioner Wolden clarified with the parties that the proposed site is not leased, but is a granted easement.

Commissioner Hart indicated that this process has been ongoing for some time now. He indicated that there is no question that the Board is looking at changing development code regulations regarding cell towers or other communication towers. He stated that it appears that forestry zoned sites are much more appropriate. This has been in process for some time. *There is no question that we are looking at changing under the development code regulations, however this is a process that will be on-going. We have been looking at using forestry zoned sites as being appropriate locations for cell towers or other communication towers.*

Commissioner Wolden explored the possibilities of the parties meeting to mediate.

Mr. Carson informed the Board that it is not appropriate at this point for the Board to make alternative site analysis. He explained that AT&T has invested much time and energy for this particular site and would basically be beginning *all over again*. He stated that *his client is willing to continue to talk to neighbors, but that his sense is there will be a lawsuit and at that time the dialogue will continue*. Mr. Carson stated that to delay a decision will not get the parties where they want to be., and that any proposed alternative site will garner just as much opposition..

Commissioner Anderson stated that Commissioner Hart is correct in that we have indicated that forestry zoning is the appropriate place for these towers. He restated his motion and reiterated his justifications for overturning the Hearing Examiner.

Chairman Wolden indicated that the evidence presented in both appeals has not changed, and in all fairness to both sides, stated that he feels the Board should uphold the Hearing Examiner's decision.

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Commissioner Anderson restated that a cell tower is not an acceptable use in this rural neighborhood.

Commissioner Anderson's motion died for a lack of a second.

Mr. Carson indicated his client would volunteer an additional condition regarding lighting. Commissioner Hart stated that the Board does not want to impose additional conditions at this point in time.

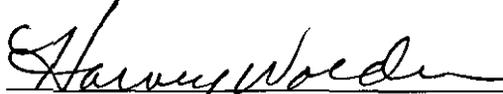
Commissioner Hart: moved to waive the \$200 filing fee previously paid by the appellants, and to uphold the Hearing Examiner. The motion was seconded by Chairman Wolden.

Commissioners Hart and Wolden voted "aye." Commissioner Anderson voted "nay." The motion passes. Staff will provide a Resolution at a later date.

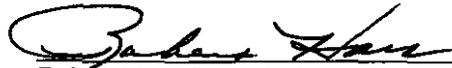
ADJOURNMENT.

Chairman Wolden made a motion to adjourn the proceedings. Commissioner Hart seconded the motion and it passed unanimously.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



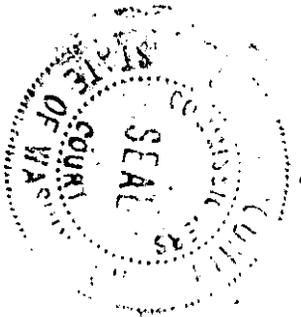
Harvey Wolden, Chairman



Robert Hart, Commissioner



Ted W. Anderson, Commissioner



ATTEST:



Patti J. Chambers, Clerk of the Board
Skagit County Board of Commissioners