

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, June 2, 1998**

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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. – 9:30 a.m. | <u>Public Works Department – Chal Martin, Director.</u>
1) Public Hearing – Consideration of Vacation of a Portion of Unused County Right-of-Way known as Robertson Road, #582.
2) Miscellaneous. |
| 9:30 a.m. – 11:00 a.m. | <u>Planning & Permit Center – Tom Karsh, Director.</u>
1) Deliberation and Possible Action on the Interim Ordinance for Personal Wireless Service Facilities.
2) Continuation – Deliberation and Possible Action on Interim Ordinance No. 16941 implementing the City of Mount Vernon's Development Standards within the Urban Growth Area.
3) Continuation – Deliberation and Possible Action on Interim Ordinance No. 16942 implementing the City of Anacortes' Development Standards within the Urban Growth Area.
4) Signature – Resolution Calling for a Public Hearing for the Short CaRD (Conservation and Reserve Development) Interim Ordinance.
5) Signature – Resolution Calling for a Public Hearing for the Mineral Resource Overlay Interim Ordinance.
6) Introduction of Interns:
A) George Tenborg – Intern from Labor and Industries Training Program.
B) Western Washington University Student Interns working with the Critical Areas Section.
7) Discussion - Growth Management Act, Comprehensive Planning, and Development Regulations Work Program.
8) Miscellaneous. |
| 11:00 a.m. – Noon | Appeal by Kaaland Mill (Don Kaaland) of Hearing Examiner's Decision Denying 24-Hours-A-Day Operation at Kaaland Mill, 3092 So. Healy Road, Sedro Woolley (PL97-464.REC and SLD890001.REC). |
| 1:30 p.m. – 2:30 p.m. | Work Session – Emergency Management Issues:
1) Review and Critique - Texaco Oil Spill Drill May 11-14, 1998.
2) Skagit River/Day Creek/Cascade Riverbank Erosion – Mitigation/Prevention and Process. |

The Skagit County Board of Commissioners met in regular session on Tuesday, June 2, 1998, with Commissioners Robert Hart, Ted W. Anderson, and Harvey Wolden present.

PUBLIC WORKS DEPARTMENT – Chal Martin, Director.

1. Public Hearing – Consideration of Vacation of a Portion of Unused County Right-of-Way known as Robertson Road, #582.

Steve Flude, County Engineer, reviewed the Engineer's Report and the exact location of the unused County Right-of-Way known as Robertson Road, #582. He confirmed on query from Chairman Hart that no property would be landlocked, and that the Department is recommending approval of the proposed vacation.

There being no public testimony forthcoming, Commissioner Wolden moved to close the public hearing. Commissioner Anderson seconded the motion, and it passed unanimously. The public hearing was closed.

Commissioner Wolden moved to approve the vacation of unused County Right-of-Way known as Robertson Road, #582, for the cost of \$75. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution will be provided by Staff at a Later Date).**

2. Miscellaneous.

There were no miscellaneous items for discussion.

PLANNING AND PERMIT CENTER – Tom Karsh, Director.

1. Deliberation and Possible Action on the Interim Ordinance for Personal Wireless Service Facilities.

Tom Karsh, Director, reviewed with the Board the final draft of the Interim Ordinance for Personal Wireless Service Facilities dated June 2, 1998.

Commissioner Wolden indicated that he has an uneasy feeling about the administration of this Ordinance and he would like to spend a little more time reviewing the proposed language. He noted that Commissioner Anderson has been out of town, and would probably need additional time to absorb the proposed changes as he was not present for the discussion last week.

Commissioner Anderson asked for clarification on the timeline for adopting the proposed Ordinance. Mr. Karsh indicated that we have fulfilled the requirements of the RCW's, and that it is somewhat vague in State law as to how much time we have to adopt findings. He indicated that the interim ordinance is still in place. Mr. Karsh stated that if there is a need to better understand the proposed ordinance, an additional week would not cause a problem.

Chairman Hart stated that there are some simple premises that the proponents of personal wireless facilities have and that there is also concern of opponents regarding location specifications. Chairman Hart stated that it is always a concern that these things have to be so complex and filled with "legalese." He stated that he has no objection to waiting to finalize this ordinance, although he did not know if further review is necessary. He stated that the notes and comments received during the public hearing have been addressed in the draft ordinance to his satisfaction.

Mr. Karsh stated that this is an interim ordinance and is in effect for six months. Consequently, the ordinance will be scrutinized much more during the public process before the Planning Commission. Mr. Karsh commented that it is difficult to create a brand new ordinance and truly understand how well it interfaces with other regulations.

The Board agreed to reconsider this matter on Monday, June 8, at 9:00 a.m.

2. Continuation – Deliberation and Possible Action on Interim Ordinance No. 16941 implementing the City of Mount Vernon's Development Standards within the Urban Growth Area.

Kendra Smith, Senior Planner, clarified issues raised in Friends of Skagit County's letter regarding concurrency. She noted that development agreements are in place regarding the provision of services such as sewer and water. She discussed particular situations in the annexation of these areas into the City.

Chairman Hart indicated that the County will stay in compliance with our passed Comprehensive Plan, even though some areas are being challenged.

Ms. Smith detailed specific language included in the Interim Ordinance. Specific examples and situations were discussed.

A lengthy discussion ensued

Commissioner Anderson reiterated the direction to staff to change Ordinance No. 16559 regarding his concern that rural property owners in urban growth areas should not be locked into not being able to do anything with their land without the cities providing urban services.

Upon query from Mr. Karsh, Rick Cisar, Planning Director for the City of Mount Vernon, stated that the City would utilize much of the same rationale used in the commercial areas in South Mount Vernon for proposed residential projects.

Commissioner Wolden moved to adopt an interim ordinance implementing the City of Mount Vernon's Development Standards within the Urban Growth Area. The motion was seconded by Commissioner Anderson and passed with a unanimous vote. **(Resolution No. 17004)**

3. Continuation – Deliberation and Possible Action on Interim Ordinance No. 16942 implementing the City of Anacortes' Development Standards within the Urban Growth Area.

Ms. Smith detailed the specific language changes to the Anacortes' Development Standards within the Urban Growth Area.

Chairman Hart moved to adopt an Interim Ordinance implementing the City of Anacortes' Development Standards within the Urban Growth Area. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. 17005)**

4. Signature – Resolution Calling for a Public Hearing for the Short CaRD (Conservation and Reserve Development) Interim Ordinance.

Ms. Smith presented the Board with a Call for Public Hearing for the Short CaRD (Conservation and Reserve Development) Interim Ordinance, scheduling the public hearing for Monday, June 22, 1998, at the hour of 10:00 a.m. in the Commissioners' Hearing Room. Commissioner Wolden moved to approve the Resolution Calling for Public Hearing as presented by Ms. Smith, and Commissioner Anderson seconded the motion. The motion passed with a unanimous vote. **(Resolution No. 17006)**

5. Signature – Resolution Calling for a Public Hearing for the Mineral Resource Overlay Interim Ordinance.

Gary Christensen, Senior Planner, presented the Board with a Call for Public Hearing regarding Proposed Skagit County Code 14.04.126, Mineral Resource Overlay, with the Public Hearing scheduled for Monday, June 22, 1998 at 9:00 a.m. in the Commissioners' Hearing Room. Commissioner Anderson moved to approve the Resolution Calling for Public Hearing as presented by Mr. Christensen. Commissioner Wolden seconded the motion, and it passed unanimously. **(Resolution No. 17007)**

6. Introduction of Interns.

Corey Schmidt introduced George Tenborg, an interim from the Labor and Industries Training Program.

Kendra Smith introduced Lea Forbes from Western Washington University who has been assisting with the Critical Areas section.

7. Discussion – Growth Management Act, Comprehensive Planning, and Development Regulations Work Program.

Gary Christensen, Senior Planner, reviewed a list of action items. These included completed actions in April and May, and actions scheduled to be completed in June. He stated that the Planning Commission met last week regarding amendments to the Comprehensive Plan, and he reviewed the progress that has been made.

Mr. Christensen advised that there was a submittal of sub-area planning for the Alger Area. He explained that the Planning Commission needs clarification in the Board's directive as to whether they should be reviewing this particular area as a sub-area plan, or whether to review the area with the existing designation criteria.

Chairman Hart stated that there is no doubt in his mind that there have been many requests from all of the seven areas referred back to the Planning Commission, and that these areas need to be revisited as a group, not one a one-by-one basis.

Mr. Christensen indicated that sub-area planning requires a different level of review.

A discussion ensued on the County's ability to make annual amendments to the Comprehensive Plan.

Commissioner Wolden clarified that the Board's resolution did not ask to look at Alger's sub-area plan.

Mr. Christensen indicated the need to draft a memo to the Planning Commission from the Board clarifying these issues, as it would be helpful to the Planning Commission to receive this type of direction. The Board agreed to provide the necessary memo.

8. Miscellaneous.

There were no miscellaneous items for discussion.

APPEAL BY KAALAND MILL (DON KAALAND) OF HEARING EXAMINER'S DECISION DENYING 24-HOURS-A-DAY OPERATION AT KAALAND MILL, 3092 SO. HEALY ROAD, SEDRO WOOLLEY (PL97-464.REC AND SLD890001.REC).

Grace Roeder, Planning Staff, reviewed with the Board the exact location of the subject property. She reviewed that the Board has the following options

- 1) After examining the written request for appeal, the Board may deny the request and allow the Examiner's decision to stand;
- 2) Remand the matter for reconsideration by the Hearing Examiner pursuant to Section 14.01.057; or
- 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.

She gave a brief history of this matter, including the public hearing held on February 17, 1998, and the specifics of the current special use permit for the Kaaland Mill. Ms. Roeder advised that the applicant has requested 24-hour operation of the planer mill. The Hearing Examiner denied the extended hours, Mr. Kaaland asked for reconsideration, and the Hearing Examiner again upheld his decision to deny the extended hours.

Ms. Roeder clarified that the appeal asks for reversal of the Hearing Examiner's decision.

David Day, attorney for Mr. Kaaland, 1321 So Second, Mount Vernon, reviewed a memorandum distributed to the Board which simply highlighted the series of points to be made today. He stated that the Board is sitting in a quasi-judicial capacity to determine what the law is and what the facts are and determine whether the record substantiates the decision by the Hearing Examiner. He stated that the real issue is whether or not at the time of the hearing there was sufficient information on compliance to rescind the hours of the previously-existing operation. The Hearing Examiner deemed this consideration as pivotal or a central issue to be resolved, according to Mr. Day.

Mr. Day next discussed the noise level requirements and that noise is chief bone of contention with neighboring residents. Mr. Day advised that a number of on-site noise evaluations were done both by a private consultant and staff.

He pointed out that the Staff findings as submitted were approved by the Hearing Examiner in the record, meaning that he accepted as fact all of the contentions of staff.

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Mr. Day stated that under the present circumstances, Mr. Kaaland has no way of knowing why he was turned down for this permit. He does not know what he has not done or needs to do in order to satisfy these lawful requirements by the County. Mr. Day stated that the Board's obligation is to tell Mr. Kaaland why he did not meet the lawful requirements. Mr. Day asked that the Board reverse the decision of the Hearing Examiner as each and every contention that the Hearing Examiner relies on is in favor of Mr. Kaaland, yet he denies the application for extended hours. Therefore, it fits as an arbitrary and capricious decision. The Board should direct issuance/modification of the Special Use and Shoreline Permits.

Linda Hunger, 3094 South Healy Road, stated that the neighboring citizens do not want the mill to run 24 hours a day. The noise is too loud, and the area is zoned agricultural but by usage is residential. She commented on the effects to the neighbors' property and resale value. There are also health and welfare issues. She asked that the Board uphold the Hearing Examiner's decision.

Chairman Hart questioned why the Hearing Examiner did not have findings of fact that further clarified his decision. He stated that normally, Mr. Schofield's decisions are conclusive, but this one appears to be quite vague. He indicated that he would like to ask the Hearing Examiner to list what findings were discovered at the public hearing in more detail.

Commissioner Anderson stated that in his experience with special use permits, the applicant has the burden to provide the proof of why this should be granted. He stated that the noise factor is the overriding factor. He indicated that when you have noise, you can almost always mitigate it. He stated that he would like to have Mr. Kaaland able to run his mill, but he understands the aggravation of the noise such extended operation would generate.

Commissioner Wolden acknowledged that there would have to be a lot of mitigation to knock out the noise factor for the neighbors.

Commissioner Anderson stated that if the Board remands this back to the Hearing Examiner, he could take a look at mitigation for the noise, but the Board also has the option to make their own findings. He stated that he does not want to lose sight of the fact that this is a special use permit, utilizing the property for purposes other than what it was zoned for.

Chairman Hart commented on remanding this back to the Hearing Examiner for a determination of what basis was used for his decision. He further stated that he does not feel comfortable that the staff recommendation on noise is acceptable. He indicated that it is appropriate for the Hearing Examiner to more fully explain his decision, keeping in mind that there would have to be a pretty strong determination that the noise will not disrupt the adjoining property owners if the extended hours were allowed.

Paul Reilly, Civil Litigator, concurred on query from the Board that the Hearing Examiner's ruling is rather ambiguous and needs to be clarified. He briefly commented on the difficulties with the issue of establishing noise levels.

Chairman Hart moved to remand this matter back to the Hearing Examiner to state the findings of fact on which he based his decision, and to determine whether it is possible to mitigate the noise consideration for the adjoining property owners, who have the permitted use of their property. This gives the applicant an opportunity to mitigate noise issues with his adjoining neighbors. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution to be Provided by Staff at a Later Date)**

MISCELLANEOUS.

1. 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, June 2, 1998, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

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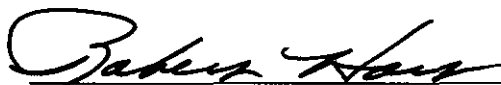
Warrant numbered 2183 from Clearing Fund 696 in the total dollar amount of \$88,685.75 (Transmittal No. C-35-98).

- 2. Staff presented a Resolution – Declaration of Sole Source Purchase for a Facility Management Software Application. It was explained that the current software product utilized to manage facilities and recreational activities does not meet many of the business functions required by the County, nor does it meet current technology standards. Escom Incorporated provides the only facility management software that interfaces to the SFG financial system and meets Microsoft Windows 95 compliance standards. Commissioner Anderson moved to approve the Resolution declaring a sole source as presented by Staff. Commissioner Wolden seconded the motion, which passed unanimously. **(Resolution No. 17008)**
- 3. Staff presented an out-of-state travel request for Paul Reilly to attend a PLI Telecommunications Seminar in San Francisco, California April 1 through 4, 1998 for an estimated amount of \$1,000. Commissioner Wolden moved to approve the Out-of-State Travel Request for Paul Reilly. Chairman Hart seconded the motion, and it passed unanimously. **(Approved)**
- 4. Staff presented Amendment No. 1 to Interlocal Agreement with the Skagit Conservation District. This amendment merely extends the term of the agreement through July 31, 1999. The original amount of the contract remains at \$167,328.00. Commissioner Anderson moved to approve the Amendment as presented by Staff. Commissioner Wolden seconded the motion, which passed unanimously. **(Contract No. 03241)**

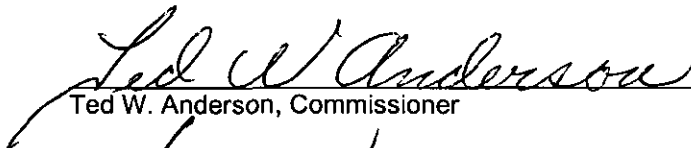
ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



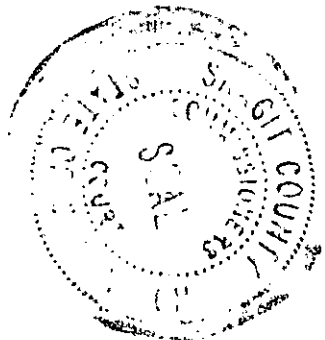
Robert Hart, Chairman



Ted W. Anderson, Commissioner



Harvey Wolden, Commissioner



ATTEST:



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