

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Wednesday, February 3, 1999**

Special Meeting

1. Reconsideration of the vote taken on February 1, 1999, adopting the recommendation of the Planning Commission regarding the definition of "Legal Lot of Record" in the Comprehensive Plan.
2. Reconsideration of the Adoption of Ordinance No. 17296 clarifying the definitions of "Agriculture Land" and "Ongoing Agriculture" in Chapter 14.06 Critical Areas Ordinance.

The Skagit County Board of Commissioners met in special session on Wednesday, February 3, 1999, with Commissioners Ted W. Anderson, Harvey Wolden, and Robert Hart present.

1. Reconsideration of the vote taken on February 1, 1999, adopting the recommendation of the Planning Commission regarding the definition of "Legal Lot of Record" in the Comprehensive Plan.

Mike Woodmansee, County Administrator, stated that yesterday's Work Session with the Planning Department and legal staff brought to light that there were some decisions made which put the County in direct contradiction with itself. This left the County in an indefensible position before the Western Washington Growth Management Hearings Board (WWGMHB) and left the County at risk of upsetting a fairly crucial exemption to the Critical Areas Ordinance (CAO). This matter was discussed among Staff and legal counsel, and this special meeting was scheduled as one of the items must be submitted to the WWGMHB tomorrow, and the other item has already been submitted. The latter item has already had an appeal filed against it for invalidity. Consequently, time was of the essence. Mr. Woodmansee clarified that a special meeting of the Board of County Commissioners can be held upon 24 hours notice, and that on many occasions over the years, such special meetings have been scheduled. He stated that truly these decisions were the Board's to make as a group of three, and have already been made by them in one sense. Such decisions are before the Board today for reconsideration of previous decisions made in open session.

Mr. Woodmansee explained that the issue on the "legal lot of record" is simply that the action as it was taken on Monday directly contradicted what was told to the WWGMHB in writing as to what action the County would take. Consequently, the Board's action has put the County in an indefensible position before the WWGMHB. Consequences are unknown, but there is little doubt on how the WWGMHB will treat this issue.

John Moffat, Chief Civil Deputy, reviewed this matter from a procedural standpoint, outlining the history of the agreement before the WWGMHB. He stated that the argument was that the definition of legal lot of record did not track the definition in the zoning code. The County conceded that point and agreed to fix the definition so that both definitions were consistent, and the WWGMHB was informed that the County would comply. The option was to change the Comprehensive Plan definition to make it consistent with the zoning code. Mr. Moffat explained that this recommendation was published in the paper and the public had an opportunity to comment on this matter before the Planning Commission. He stated that the Planning Commission disagreed and chose to make a recommendation that makes the County contrary to the WWGMHB. If approved, the County would be right back where it was a year ago. Mr. Moffat indicated that the County agreed in briefing that we would make the change, but we have not made the requested change.

Mr. Moffat commented on a letter received from Tom Ehrlickman, discussing this matter.

Commissioner Hart reviewed a bill pending before the Legislature (5244) that may offer the County some assistance in this regard. He stated that he understands the problems and frustrations of some individuals, but he does not see how he can support the recommendation from the Planning Commission.

Commissioner Wolden noted that the County just cannot get there from here without taking this particular action to satisfy the appeal before the WWGMHB. He stated that it will take longer for us to get through this critical path if we do not rescind what we did the other day and go forward to the WWGMHB with our agreed-upon changes. He indicated the need to address this particular issue through the development of our County codes. He stated that the Planning Commission made a decision based upon what was in the Comprehensive Plan, but that the changes made were not defensible. He noted the need to right this wrong and move forward.

Commissioner Wolden moved to rescind the motion adopting the recommendation of the Planning Commission regarding the definition of "Legal Lot of Record" in the Comprehensive Plan, and to further overturn the recommendation of the Planning Commission. Commissioner Hart seconded the motion.

Commissioner Anderson apologized to the Planning Commission for the misunderstandings that have occurred. He called for the question. Commissioners Hart and Wolden voted for the motion. Chairman Anderson voted "nay." The motion passed. **(Ordinance No. 17305)**

2. Reconsideration of the Adoption of Ordinance No. 17296 clarifying the definitions of "Agriculture Land" and "Ongoing Agriculture" in Chapter 14.06 Critical Areas Ordinance.

Mr. Woodmansee outlined the history of this particular item, stating that the WWGMHB directed the County to clarify the definition of "Agriculture Land" and "Ongoing Agriculture" to make the exemption from the Critical Areas Ordinance (CAO) more defined or clear. He stated that the Board's previous vote left open certain categories exempt from CAO requirements in non-designated agricultural rural resource zoning. An appeal has been filed against that action and the appeal has requested a declaration of invalidity. If that were granted, Mr. Woodmansee explained, the exemption to the CAO would go away, and there would be an extreme consequence for the agriculture designated lands to use that exemption. Mr. Woodmansee stated that State law says that agriculture land is exempt from CAO. The County was asked to define agriculture land clearly, but the Planning Commission's definition goes beyond agriculture and extends to natural resource lands. He discussed the consequences of this action and the possible risks in taking this action to the WWGMHB.

Commissioner Wolden clarified that this does not come from an appeal of the Comprehensive Plan, but from the Critical Areas Ordinance. He stated that the Critical Areas Ordinance was not consistent with the Comprehensive Plan.

Tom Karsh, Planning Director, stated that the appeal and order deal with the fact that the CAO is rather vague and ambiguous when it comes to how much of an exemption agricultural activities would have throughout the County. Upon query from Chairman Anderson, he explained in detail the background of this situation. Mr. Moffat added additional insight, explaining the various consequences of including rural resource lands where agriculture activity occurs.

Commissioner Hart expressed concern about the possibility of losing the exemption, and indicated that the County is safer and better off to adopt the definition of only Agriculture Lands. He commented that a designation change could always be requested by the affected landowners.

Commissioner Hart moved to overturn the previous decision and to only designate the Agriculture and Agriculture-Natural Resource Lands Definition.

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Mr. Karsh clarified that regarding on-going agriculture, there is a reference to activities that are undertaken after adoption date of Ordinance No. 16851, and that it would be better to insert the actual date of May 13, 1996.

A discussed ensued regarding mapping errors, the Natural Resource Element to the Comprehensive Plan, and the possibility of adding some of these items to the 1998 Comprehensive Plan Amendment list.

Commissioner Hart indicated that the possibility of invalidity is not acceptable. He asked Staff if we could come back and look at a definition or identify those resource lands that are not in Agriculture-NRL, but are in continuing, on-going agriculture that could be designated to allow those people an exemption. He reviewed the problems that he anticipated would occur.

The various options open to the Board at this point were discussed.

Commissioner Hart moved to overturn the previous decision regarding the definitions of "Agriculture Land" and Ongoing Agriculture" in Chapter 14.06 of the Critical Areas Ordinance. He stated in more detail that the Skagit County Code 14.06.040(2) and (52) shall be further amended to include the following definitions of "Agriculture Land" and "Ongoing Agriculture" as follows:

- (2) "Agricultural land" means land designated as Agriculture-NRL which is primarily devoted to the commercial production of horticultural (including fiber production such as hybrid cottonwoods), viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock (including livestock raised for personal use), and that has long-term commercial significance for agricultural production. The Revised Code of Washington, for 1997, has several definitions for agriculture. The State Hydraulics Code (RCW 75.20) is necessary to implement the riparian protection section of the CAO; it requires the use of definitions of agriculture as given in RCW 84.34.020 and 36.70A.030(2).
- (52) "Ongoing agriculture" means the continuation of any existing activity on "Agricultural land" as defined in this section, including crop rotations. Activities undertaken for the first time after May 13, 1996 do not constitute "ongoing agriculture."

The motion was seconded by Commissioner Wolden. Commissioners Hart and Wolden voted for the motion, and Commissioner Anderson voted "nay." The motion passed. **(Ordinance No. 17306)**

MISCELLANEOUS.

The Board signed three resolutions that were previously approved. These are as follows:

1. An Ordinance to Revise the Mount Vernon Urban Growth Area in Response to a Final Decision and Order by the Western Washington Growth Management Hearings Board in Case No. 97-2-0060C. **(Ordinance No. 17307)**
2. An Ordinance to Revise the Sedro-Woolley Urban Growth Area in Response to a Final Decision and Order by the Western Washington Growth Management Hearings Board in Case No. 97-2-0060C. **(Ordinance No. 17308)**
3. An Ordinance to Revise the Town of Hamilton Urban Growth Area in Response to a Final Decision and order by the Western Washington Growth Management Hearings Board in Case No. 97-2-0060C. **(Ordinance No. 17309)**

ADJOURNMENT.

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



**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W Anderson

Ted W. Anderson, Chairman

Harvey Wolden

Harvey Wolden, Commissioner

Robert Hart

Robert Hart, Commissioner

ATTEST:

Patti J. Chambers

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