

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, February 1, 2000**

7:30 a.m. – 8:30 a.m.	Commissioners' Staff Meeting.
8:30 a.m. – 9:00 a.m.	Work Session – Planning & Permit Center Work Program.
*T 9:00 a.m. – 10:00 a.m.	<u>Board of Health – Peter Browning, Director.</u> <ol style="list-style-type: none">1) Introduction of New Environmental Health Specialist.2) Discussion – Partners in Drinking Water Supply, State Department of Health.3) Presentation – Nutrition Report.4) Presentation – Communicable Disease Statistics for 1999.5) Discussion – Coordinated Prevention Grant for 2000 and 2001.6) Miscellaneous.
10:00 a.m. – 10:30 a.m.	Parks Projects Update.
10:30 a.m. – 11:00 a.m.	Facilities Projects Update.
11:00 a.m. – Noon	Appeal by the Washington Environmental Council, et al., of the Hearing Examiner's Decision in the Matter of the Appeal by Donald R. Clark of an Administrative Interpretation of Conditional Use Permit #170 regarding Clark's Skagit River Campground (PL99-0697).
2:00 p.m. – 3:00 p.m.	Public Hearing – To Consider Testimony regarding the re-adoption of the Critical Area Ordinance (CAO), #17595, which replaced Ordinance No. 17522. This is for the purpose of extending the interim status pursuant to RCW 36.70A.390.

The Skagit County Board of Commissioners met in regular session on Tuesday, February 1, 2000, with Commissioners Harvey Wolden, Robert Hart, and Ted W. Anderson present.

BOARD OF HEALTH – Peter Browning, Director.

1. Introduction of New Environmental Health Specialist.

Peter Browning, Director, introduced Steve Olson, new Environmental Health Specialist for the Health Department.

2. Discussion – Partners in Drinking Water Supply, State Department of Health.

Ken Willis, Environmental Health Supervisor, introduced partners from the State Drinking Water Program at the Department of Health. He introduced Joy Emmons, Manager of the Northwest Regional Office Drinking Water Program, Nancy Fagan, Regional Engineer, and Dennis Campbell, Local health Liaison Officer. Mr. Willis stated that the long-standing partnership has been formalized in a Joint Plan of Operation (JPO) tailored for Skagit County

Ms. Emmons, who recently joined the Department of Health, stated that she previously had been with the Island County Health Department for 10 years and therefore understands localized health issues such as solid waste and drinking water safety. She stated that the mission is to assure safe drinking water for all of the citizens of the State, and to prevent contamination problems before they occur. She commented on the joint effort necessary

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among purveyors, citizens, and government. She briefly discussed the need to temper regulatory burdens without compromising public health. Ms. Emmons noted that Skagit County has a good well protection system in place, which interfaces with GIS. She also complimented the work of the County's Environmental Health Staff.

Ms. Emmons advised that there now is a 24-hour public health hotline available to the public by calling 1-877-481-4901.

Nancy Fagan, Regional Engineer in the Seattle Office of the Department of Health, reviewed her background and education. She explained that her duties include reviewing plans for new water systems or expansion of existing systems, with the goal being a 30-day turnaround. She also conducts sanitary surveys and inspections of water systems, trying to troubleshoot potential problems. She stated that her priorities are to work cooperatively with partners, to share information to allow for informed decisions, and to provide educational opportunities to water purveyors and the public.

Dennis Campbell, Local Health Training & Liaison for the Department of Health, reviewed his environmental health background, stating that he has now been with the Department of Health for 7 years following 24 years as an Environmental Health Specialist. He explained the basic duties of his job, which helps local Health Departments address their needs while meeting State requirements.

Commissioner Anderson asked about a recent survey regarding water systems that serve migrant farmworkers. Mr. Willis responded that in Skagit County, all labor camps are connected to large water supplies, so there is no nitrate problem as has been identified in other areas of the State.

Commissioner Hart noted the Board's appreciate for the continued cooperation and work of the Department of Health.

3. Presentation – Nutrition Report.

Alex Von Cube, Health Assessment Coordinator, and Jennifer Sass, Nursing Director, reviewed a recent Nutrition Report that has been released and is being distributed. Mr. Von Cube thanked the Island Hospital Health Foundation and Island/Skagit Medical Society, who helped pay for printing and distribution costs. He also thanked the many people in the community who contributed and provided materials for the report. Mr. Von Cube reviewed the contents of the report page by page, discussing the value of good nutrition.

4. Presentation – Communicable Disease Statistics for 1999.

Maryl Skjei, Public Health Nurse, presented an overview of the communicable disease reports turned in for Skagit County residents. She reviewed the particulars of the list noting the importance in educating people regarding hand-washing when ill and proper preparation of food. She stressed the importance of early identification.

5. Discussion – Coordinated Prevention Grant for 2000 and 2001.

Britt Pfaff, Environmental Health Specialist, discussed the Coordinated Prevention Grant from the Department of Ecology (DOE) for solid waste activities. She advised that DOE provides \$100,000 over a two-year period to help support solid waste activities, permitting, illegal dumping incidents, and education of people who are handling chemicals about proper disposal. This grant funds 40% of activities in the solid waste division.

Commissioner Anderson commented that a big difference has been made in the area of illegal dumping.

Ms. Pfaff asked the Board to approve the Grant Agreement in this regard.

Commissioner Hart moved to approve the Coordinated Prevention Grant for 2000 – 2001. Commissioner Anderson seconded the motion, which passed with a unanimous vote. **(Contract No. 04745)**

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6. Miscellaneous.

There were no miscellaneous items for discussion.

PARKS PROJECTS UPDATE.

David Fair, Director, asked to set up a work session to discuss in detail projects and other topics of concern to the Parks & Recreation Department. The Board indicated their approval for having such a work session, and directed Mr. Fair to contact Staff to arrange some agenda time.

Mr. Fair first spoke to a recent letter received from the Sportsmen's Club regarding the progress of the Frailey Mountain Shooting Range. Mr. Fair indicated, upon query from the Board, that Paul Reilly, Civil Litigator, is gathering information to respond to the letter.

Mr. Fair introduced Patrick Dillon, Projects Manager, and explained that Mr. Dillon has been assigned the task of developing an inventory and detailed review of each of the County Parks, in an effort to assist the Department and the Parks & Recreation Advisory Board. In this regard, Mr. Dillon stated that the first park he had reviewed was the Howard Miller Steelhead Park. He reviewed the materials he had prepared, including a site map. Mr. Dillon gave a brief overview of the various areas of the park and the proposed park development for the future. He also reviewed photographs of the park, and areas of historical significance.

Peter Mayer, Operations Manager, discussed with the Board the Bald Eagle Festival to be held February 4, 5 and 6 at Rockport, and the utilization of Howard Miller Steelhead Park and Concrete High School.

Mr. Mayer next discussed the particulars of the Snowmobile Trail Grooming Program and possible partnerships with Whatcom County.

Mr. Mayer reviewed work being done on the Swinomish Boat Launch Project, including a cost estimate to be received from the consultant, aquatic lease development, and biological assessment by the Corps of Engineers. He noted the slow action by the Corps due to the uncertainty of various salmon issues. He indicated that he would be meeting with the consultants on Monday to discuss in more detail these pending items.

Mr. Mayer discussed activities at the Fairgrounds, including the Sports & Outdoors Show and the establishment of a caretaker agreement. He stated that the house for the caretaker is being prepared for occupancy.

Mr. Mayer advised that a new playground structure will be installed at the Guemes Island park, and that the Department is currently making modifications to the park layout to accommodate the equipment chosen by the local citizens. He stated that the Department is looking at cost-effective methods to improve parking and access.

Mr. Mayer discussed the work being done to the Skagit Valley Dreamfield Outfield fence and the improvements to the interior turf area.

Mr. Mayer discussed the Clear Lake Swim Beach and preparations for the opening in June.

Mr. Mayer discussed a proposed meeting with Parks Operations Managers from Whatcom County, Bellingham, Burlington, and Anacortes, in an effort to meet quarterly to exchange information and communicate more effectively. Topics will include such things as contract methods, leases, and other areas of mutual interest.

FACILITIES PROJECTS UPDATE.

Roger Howard, Facilities Director, reviewed the following projects:

1. Emergency Generator. The contract was terminated effective January 4, 2000, based on the electrical consultant's recommendations. Mr. Howard explained that there are situations which warrant expedient

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- solutions so that the generator installation can be completed. He stated that some of the items left to be done are quite time sensitive and require immediate action. Therefore, he asked the board to waive the bidding requirements for work to correct these unsafe conditions. Commissioner Hart moved to waive the bidding requirements for completion of the Emergency Generator project. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. 17747)**
2. Superior Court Judge's Benches and Clerk's Reception Counter. Mr. Howard presented a Resolution for a Call for Bids for these items. Commissioner Hart moved to approve the Resolution calling for bids for the construction of the Superior Court Judge's Benches and the Clerk's Reception Counter. Commissioner Anderson seconded the motion, which carried with a unanimous vote. **(Resolution No. 17748)**
 3. E911 Center Water Line. Mr. Howard advised that P.U.D. No. 1 has recommended that they install a new shutoff valve at the end of the line, and Mr. Howard agreed that this would be the most cost-effective solution for the County.
 4. Road Oil Tank Project. Mr. Howard indicated that a contract amendment with the consultants who worked on the fueling facilities upgrade would be prepared so that work can begin on the road oil tank project.
 5. Clerk's Office Remodel Project. Mr. Howard reported that the work is going well, and that he is meeting weekly with the contractor to resolve questions or concerns.
 6. Mental Health Building. Mr. Howard stated that there are continual concerns about the air quality of the building, and that he is working with the Northwest Air Pollution Authority and others to obtain samples for testing.
 7. Search & Rescue Building. Mr. Howard advised that the auction for this building has been scheduled for February 11, 2000, at 10:00 a.m.
 8. Fueling Facility Upgrade. Mr. Howard stated that there will be no further claims regarding this project as the contractor has agreed to settle for the original contract amount.
 9. Commissioners' Office Remodel. Mr. Howard indicated that he would review the consultant's plan and costs, and obtain pricing for an alternative plan in February, with the work scheduled for March.
 10. Parks & Recreation Office Remodel and New Shop. Mr. Howard stated that he has discussed the improvements to the Parks & Recreation Office and a proposed new shop.
 11. Jail Toilets and Sinks. County crews will replace toilets and sinks in the County Jail beginning February 7, 2000. Additional units will be ordered and installed as directed by the Sheriff.
 12. Towing Contractor for County Facilities. Mr. Howard discussed with the Board the need to get a towing contract in place for County parking lots in Mount Vernon, and for County Parks Facilities. A discussion ensued regarding the difficulties of jurors in finding parking spaces with the road construction in downtown Mount Vernon. The Board indicated their approval of proceeding with getting a towing contractor on board as soon as possible.
 13. New Telephone Switch. Mr. Howard indicated that the new telephone switch would be in by the end of February or early March.
 14. City of Mount Vernon – Third Street Realignment Project. Mr. Howard reported that the County's Courtyard Parking area would be closed on Friday, February 4, to pour concrete sidewalks and driveway entries.

APPEAL BY THE WASHINGTON ENVIRONMENTAL COUNCIL, ET AL., OF THE HEARING EXAMINER'S DECISION IN THE MATTER OF THE APPEAL BY DONALD R. CLARK OF AN ADMINISTRATIVE INTERPRETATION OF CONDITIONAL USE PERMIT #170 REGARDING CLARK'S SKAGIT RIVER CAMPGROUND (PL99-0697).

Tom Karsh, Director, reviewed that this is an appeal of the Hearing Examiner's decision issued on October 27, 1999, which was an appeal of an Administrative Interpretation of a special use permit. Mr. Karsh indicated that the history and background of this case is detailed in the Administrative Interpretation.

Chairman Wolden stated that the entire record had been made available to the Board for their review.

Mr. Karsh reminded those present that the hearing is a closed record appeal, and would consist of a staff presentation, appellant presentation, respondent presentation, rebuttals, and the Board's deliberations.

Mr. Karsh 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 (15) above; 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.

Commissioner Anderson announced that he would step aside due to the appearance of fairness concerns expressed by the appellants, as he wished for the proceedings to remain clean and unbiased.

Mr. Karsh explained that there are two appellants, Donald Clark being one appellant, and the Washington Environmental Council, et al., being the other.

Michael Rossotto, representing Washington Environmental Council, Skagit Audubon, People for Puget Sound, Evergreen Islands, Citizens for Sensible Development in the Upper Skagit, and Gene Kahn, began by emphasizing the narrow nature of the appeal before the Board. He stated that it was his understanding that the only item before the Board today is the appeal submitted by his clients, which is an appeal of the Hearing Examiner's decision to revoke the permit.

After a brief discussion among Staff, it was determined that a timely appeal was also submitted by Don Clark and had not been forwarded to the Board.

Chairman Wolden indicated that the Board would consider Mr. Rossotto's appeal today, and would schedule another date to hearing Mr. Clark's appeal.

Mr. Rossotto reviewed a history of the Conditional Use Permit that is the subject of this appeal. He stated that the original application was made and granted in 1973. The original permit was for a simple tent and RV campground with a 50 foot greenbelt surrounding the property. Mr. Rossotto stated that the campground now being proposed was not submitted originally, and that the October 1999 Hearing Examiner's decision affirmed that current laws apply. He stated that there was also a sunset clause in the original permit, and as such, the permit would become void if the conditions thereon were not adhered to. He explained that conditional use is void if work is not begun within two years following the granting of the permit. Mr. Rossotto asserted that rather than develop the campground in a timely manner, the Clark family chose to do nothing with the permit. Mr. Rossotto stated that the vested rights doctrine is not intended to facilitate speculation. He indicated that his written brief discussed these principles in more detail. He stated that there is no legal support that CUP #170 is a permanent, flexible permit that allows the Clark's to build whatever they want whenever they want, and that they are exempt from compliance with current building codes and land use laws. Mr. Rossotto stated that twice Don Clark has brought appeals to the Skagit County Hearing Examiner and twice the Hearing Examiner has ruled that he must comply

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with current laws and regulations. Mr. Rossotto emphasized that CUP #170 allows no more than a rustic tent and campground as proposed in 1973,

Mr. Rossotto indicated that the code in effect at the time listed two separate "use it or lose it" provisions under which CUP #170 would become null and void. He reviewed the particulars of these clauses.

Mr. Rossotto advised that there is overwhelming evidence in the record that the site has never been used as a campsite, which has been confirmed by field visits, neighbors and others, and that the facility was not developed. He stated that there is also evidence that the road and trail construction that the Hearing Examiner mentioned occurred in the 1960's and early 1970's, prior to the issuance of CUP#170. He stated that no witnesses for the record could say that they had camped on the site.

Mr. Rossotto asserted that the Hearing Examiner erred, and must be reversed because the Board of Adjustment failed to follow the code in effect at the time, that the permit was originally improperly issued and is still void, and confirms no rights on the Clark's. He stated that the legislative body is required to comply with its own rules.

Mr. Rossotto stated that CUP #170 fails the tests by both the sunset clause and failure to comply with the code at the time the permit was issued. He stated that when a building permit is issued by mistake, it confirms a right to proceed with building.

Mr. Rossotto indicated that the Hearing Examiner also interpreted Section 4.2 much too narrowly, and that there was overwhelming evidence that no camping has occurred. He stated that at some point the common sense question needs to be asked as to what CUP #170 was issued for. He reiterated that if the campground was not developed and continually used within the initial two-year time period, then the permit becomes void and the petition to revoke the Hearing Examiner's decisions should be granted.

Don Clark indicated that he challenged Mr. Rossotto on every aspect of his argument. He stated that the Hearing Examiner did make errors, but not on his ruling on CUP #170. The Hearing Examiner upheld that CUP #170 is valid and vested. Mr. Clark pointed out that a contract rezone was also approved by Skagit County the same year for the subject property. He stated that the Skagit River Resort was approved by the State of Washington on November 8, 1973, which shows the intent to develop more than just a campground.

Mr. Clark explained that the group appealing the Hearing Examiner's was allowed to intervene, and the Hearing Examiner ignored both the appellant's contract law rights and vested rights, which are linked. He indicated that just as contract rezones are not open to third party intervention, neither is the Conditional Use Permit. The Hearing Examiner erred in letting newly defined parties intervene. Mr. Clark stated that these parties are 26 years too late, as they were not present when the CUP was approved. He stated that the appellants' presence now is violating the Clark's due process. The appellants should not have intervention status. Mr. Clark went on to explain in detail how the Hearing Examiner erred in allowing intervenors. He also stated that the appellants are trying to influence the Board's decision by excluding the Commissioner from Mr. Clark's district.

Mr. Clark explained that according to the Hearing Examiner's Conclusions of Law and Findings of Fact, Page 9, no time limits on the development were written into the governing ordinance, and when the Board of Adjustment failed to impose any time limits, the development period became one of potentially infinite time. He commented briefly on the lack of evidence of significant use.

Mr. Rossotto rebutted that the issue of intervention had been briefed extensively. He stated that the Hearing Examiner's reasoning is clear and is completely based and supported by the law. He further stated that throughout the proceedings, Mr. Clark has invoked the notion that this matter is bound by contract law, but "contract zoning" has largely been discredited. He explained that the County agreed to a zoning change in exchange for the applicant performing certain tasks that are the condition of the rezone. He indicated that the Hearing Examiner's reasoning is pretty clear and is completely based and supported by the law. Mr. Rossotto stated that the conservation groups were all participants in the MDNS on the enlarged project, and therefore have standing.

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Mr. Clark reviewed the history of the activities on the subject property since 1973. He stated that Mr. Rossotto has failed to describe that the Clark's cannot fully complete their campground until this issue has been resolved, and they have tried desperately for years to get answers to the question "can we finish the campground as permitted." He stated that the answer is not what have we done, but what have we tried to do. He urged the Board to throw out this appeal and uphold the Hearing Examiner.

The Board indicated that they would like to review the record and make a decision at a later date. Upon consultation with Staff, they advised that they would render their opinion on Monday, February 7, at 9:00 a.m.

The question of hearing the appeal of Mr. Clark was also raised, and after discussion among the parties, it was agreed that Mr. Clark's appeal would be heard on Tuesday, February 8, at 3:00 p.m.

Mr. Rossotto indicated that he had no objection to this schedule, but noted that if his appeal is granted, the appeal of Mr. Clark would be moot.

PUBLIC HEARING – TO CONSIDER TESTIMONY REGARDING THE RE-ADOPTION OF THE CRITICAL AREA ORDINANCE (CAO), #17595, WHICH REPLACED ORDINANCE NO. 17522.

Chairman Wolden opened the public hearing.

Kendra Smith, Assistant Director, reviewed the history of the Critical Area Ordinance since its adoption in August. Amendments were made to the August ordinance, and a new ordinance was adopted in October. She stated that the proposed ordinance before the Board today is exactly as adopted in October, and does not include sections .095 and .096. She stated that four comment letters were received, and detailed the concerns from each of these letters.

Chairman Wolden opened the public hearing.

Doyle McClure, 7827 Parker Road, Sedro Woolley, commented that there was an error in the legal notice as the notice stated that the hearing would be on the complete critical area ordinance known as 17595. He reviewed his comment letter and the attachments. He asked that this material be included in Mr. Moffat's statement of actions index, which is due before the Hearings Board on February 3. He stated that he has supported a balanced protection of critical areas and natural resources lands from the outset. He believes that the County has not met these requirements. Mr. McClure stated that there is evidence of erroneous material in the CAO and that it interferes with the rules of the Growth Management Act. He commented briefly on "best available science."

There being no further public testimony forthcoming, Commissioner Anderson moved to close the public hearing. Commissioner Hart seconded the motion, which passed unanimously. The public hearing was closed.

Commissioner Hart moved to readopt the Critical Area Ordinance as presented by Staff, with the exception of .095 and .096 of Chapter 14.06. The motion was seconded by Commissioner Wolden. Upon call for the question, Commissioners Wolden and Hart voted in favor of the motion and Commissioner Anderson voted "nay." The motion passed. **(Resolution No. 17749)**

MISCELLANEOUS.

1. Staff presented a Resolution containing a Request for Assistance Proclamation regarding an economic disaster due to losses incurred by businesses, families, and individuals due to various road closures on State Route #20. A letter to Governor Locke was also submitted for the Board's consideration in this regard. Commissioner Anderson motioned to approve the Request for Assistance Proclamation and accompanying letter. Commissioner Hart seconded the motion, which passed with a unanimous vote. **(Resolution No. 17750)**

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2. Staff presented an Equipment Purchase/Software License Agreement with Elections Systems and Software, Inc. for the purchase of equipment and software for an election management and tabulation system. The total purchase price is \$141,338.13. Commissioner Anderson moved to approve the Agreement as presented by Staff, and Commissioner Hart seconded the motion. The motion passed unanimously. **(Contract No. 04746)**

3. Staff presented a Resolution approving annexation of additional properties into the Dunbar Sub-Flood Control Zone, as approved following a public hearing held on August 9, 1999. Commissioner Anderson moved to approve the Resolution as presented by Staff. Commissioner Hart seconded the motion, which carried unanimously. **(Resolution No. 17751)**

ADJOURNMENT.

Chairman Wolden made a motion to adjourn the proceedings. Commissioner Anderson 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