

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Wednesday, February 2, 2000**

10:00 a.m. – 11:00 a.m.

Appeal by Evergreen Islands of the Hearing Examiner's Decision regarding an Administrative Interpretation issued by the Skagit County Planning and Permit Center concerning Randy Previs and Property located off Scimitar Ridge Place (PL98-0400).

The Skagit County Board of Commissioners met in regular session on Wednesday, February 2, 2000, with Commissioners Harvey Wolden, Robert Hart and Ted W. Anderson present.

APPEAL BY EVERGREEN ISLANDS OF THE HEARING EXAMINER'S DECISION REGARDING AN ADMINISTRATIVE INTERPRETATION ISSUED BY SKAGIT COUNTY PLANNING AND PERMIT CENTER CONCERNING RANDY PREVIS AND PROPERTY LOCATED OFF SCIMITAR RIDGE PLACE (PL98-0400).

Richard Mattrass, Associate Planner, reviewed the history of the subject appeal. It was believed by Staff that there had been a harvest on the property without a permit, and they imposed a moratorium. Mr. Previs appealed to Planning & Permit Center Director Tom Karsh and asked him to make an administrative interpretation. Mr. Karsh made such an interpretation based on letters received from the Department of Natural Resources (DNR). The administrative interpretation was subsequently appealed to the Hearing Examiner, and the Hearing Examiner reversed Mr. Karsh's interpretation, based about the Hearing Examiner's definition of harvest. Evergreen Islands has since entered this appeal. Mr. Mattrass explained that the basic issue stems around the definition of "harvest." That was appealed to the Hearing Examiner and the HE reversed Tom's interpretation based on what he felt was the definition of a harvest. Evergreen Islands has since entered this appeal.

Chairman Wolden clarified that this is not an appeal of the moratorium. Mr. Mattrass stated that the definition of harvest was overturned, and since it was determined there was not a harvest, there should not be a moratorium. Hence, the moratorium has since been lifted.

Rick Poulin, Attorney for Evergreen Islands, stated that he is here to fight for a correct interpretation of the law, and is concerned that the Hearing Examiner erroneously constrained the authority of the Planning & Permit Center. He stated that the key issue has been misstated. Mr. Poulin indicated that the key issue is whether the harvest that occurred required a permit and whether a forest practice permit was required. He stated that it is undisputed that there was a harvest. He reviewed language from the Skagit County Code and the applicable provisions of the Forest Practices Act. Mr. Poulin explained that when harvesting takes place without an application, a six-year moratorium must be put in place. He stated that the DNR determined that a forest practices application was required, as was evidenced by three letters from the DNR. DNR subsequently imposed a stop work order because the harvest took place without a forest practice permit. Mr. Poulin stated that Mr. Previs did not submit any paperwork of any sort in this regard. He noted that the DNR's rulings cannot be overturned by the Hearing Examiner, and that the Forest Practice Board is the only entity with jurisdiction to determine if the DNR's ruling is correct. He stated that the Hearing Examiner erred in reversing the DNR's decision, and that the Hearing Examiner does not have the proper authority to do so.

Mr. Poulin stated that the Hearing Examiner ignored the law and was persuaded by the clever argument of the defense attorney.

Mr. Poulin stated that forest practices include road and rail construction, as well as tree salvaging and brush control. He stated that Mr. Previs cannot go "scot free" in a situation where he did not submit an application.

Bob Carmichael, attorney representing Mr. Previs, stated that it is noteworthy that Mr. Karsh himself did not appeal the decision of the Hearing Examiner, nor did the County Planning Department. Mr. Carmichael explained that DNR made a mistake, and it was not supported by law. Mr. Carmichael stated that in the course of his

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representation of Crown Pacific, he has had a number of dealings with DNR, and they do make mistakes and misinterpret the law. He stated that, as the Board could determine from the materials presented, Mr. Previs was told that there was no forest practice application required, and only after several months after the activities had completely ceased, and political pressure was applied, did DNR reverse themselves. Five months after the fact, DNR said there should have been an application.

Mr. Carmichael agreed with Mr. Poulin, stating that the legal issue is whether or not a harvest occurred that required an application. He explained that what is critically important is to understand that we are talking about a specific section of the Forest Practices Act, which talks about the penalty of a six-year moratorium. He stated that road construction and brush cutting can be considered a forest practice, but do not trigger a moratorium. Mr. Carmichael explained that the trigger for a moratorium is when harvesting occurs. If the Legislature wanted to make the trigger more than a harvest, it would have said "when harvesting or road construction occurs." He stated that Mr. Poulin would like the Board to believe when "forest practices" take place without an application, a moratorium should be imposed. He stated that harvesting and road construction are entirely separate issues.

Mr. Carmichael discussed at length the purpose of the Forest Practices Act as adopted by the Legislature, and the seriousness of the imposition of a six-year moratorium. He stated that there is no authority for joining the road construction with the harvest for imposing a moratorium.

Mr. Poulin rebutted that the plain language of the statute indicates that there was harvesting on this property. He stated that the statute says that a moratorium must be imposed. He stated that if the statute is ambiguous, the laws says that you it must be deferred to the agency. Consequently, DNR responded several times in writing and at the hearing before the Hearing Examiner. He reviewed that the scope of the project was much greater than explained, that this is a real estate development.

Mr. Carmichael responded that the road was surveyed by Skagit Surveyors, was 10-12 feet in width, and that the Previs' wanted to make their home on the property. Mr. Carmichael admitted that Mr. Previs is a real estate developer, and he , of course, would consider the potential for development, but that he has not made any applications. If Mr. Previs chooses to make some sort of conversion, he would be required to get permits from the County and conversion from DNR.

Chairman Wolden stated that the record had been reviewed by the Commissioners, and asked if the other members of the Board would like to make a determination immediately, or postpone their decision until next week.

Commissioner Anderson indicated that he would prefer to move ahead at this time.

Commissioner Hart concurred with Commissioner Anderson, discussing the history of the Forest Practices Act and the moratorium provision. He stated that the moratorium provision was intended for use regarding clearcuts, not enforcement in other areas. He stated that the real test is if the Board is persuaded that the Hearing Examiner made an error, and if there was less than 5,000 board feet removed from the property. He stated that, in his opinion, the Hearing Examiner did not make an error, and he could find nothing to support overturning the Hearing Examiner.

Commissioner Anderson reiterated the definition of harvest being more than 5,000 board feet. He further discussed whether or not road construction gives the right to impose a moratorium. Commissioner Anderson stated that he thought the Hearing Examiner did a good job of digesting the facts, and that the decision appears to be an equitable solution.

Commissioner Anderson moved to uphold the Hearing Examiner's decision. Commissioner Hart seconded the motion, which passed with a unanimous vote. **(Resolution to be provided by Staff at a later date).**

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