

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, February 29, 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.
9:00 a.m. – 10:00 a.m.	Appeal by John & Marla Hovey of the Hearing Examiner's Decision Denying a Shoreline Variance for property located at 4536 South Shore Drive, Guemes Island (SL99-0550).
10:30 a.m. – 11:00 a.m.	Work Session – Hansen Creek Feasibility Study.
11:00 a.m. – 11:30 a.m.	Work Session – Samish Island Dike.
Noon – 1:00 p.m.	Brown Bag Lunch Presentation – Bill Derry of CH2M Hill: "Impacts of Urbanization on Salmonids" and "Solutions to ESA Issues" (Sauk Room, 1111 Cleveland, Mount Vernon).
1:30 p.m. – 2:00 p.m.	Bid Opening – Rental Equipment Eligibility List.
2:00 p.m. – 2:30 p.m.	Bid Opening – Procurement of Maintenance Materials.

The Skagit County Board of Commissioners met in regular session on Tuesday, February 29, 2000, with Commissioners Harvey Wolden, Robert Hart and Ted W. Anderson present.

APPEAL BY JOHN & MARLA HOVEY OF THE HEARING EXAMINER'S DECISION DENYING A SHORELINE VARIANCE FOR PROPERTY LOCATED AT 4536 SOUTH SHORE DRIVE, GUEMES ISLAND (SL99-0550).

Daniel Downs, Associate Planner, reviewed the subject appeal and stated that the applicants originally submitted a shoreline variance application to allow construction of a new residential stick-frame 2-story home where an existing foundation was previously constructed 76 feet from the ordinary high water mark. Mr. Downs advised that the Ordinary High Water Market (OHWM) had been determined to be 101.8 feet. He stated that this number is different from other calculations, but no one contested this particular measurement at the hearing before the Hearing Examiner. Mr. Downs indicated that Staff recommended approval of the requested variance. He briefly reviewed Staff's findings and the conditions listed for imposition if the variance was granted. He noted that the original foundation was constructed for a one-story modular home. Mr. Downs stated that the Hearing Examiner did not agree with the Staff Report, came up with his own findings, and denied the Shoreline Variance.

Tom Moser, Attorney for Mr. & Mrs. Hovey, 411 Main Street, Mount Vernon, stated that there are a number of issues that indicate why the Hearing Examiner's decision was in error, and why the Staff Recommendation should have been followed. He reviewed an aerial photo showing the exact location of the subject property.

Mr. Moser reviewed the history of the subject property, noting that a building permit was issued in 1991, and, at that time, County Staff determined that the shoreline setback requirement was 76 feet and the minimum was 50 feet. At the recent hearing, Oscar Graham, consultant for the appellants, stated that the County cannot come along now and make a different determination after the predecessors in interest completed the permit process, obtained a permit, and built a foundation at the 76-foot line. He stated that the County should not require his clients, who purchased the property in 1996, to proceed with other rules, when a permit and established foundation were already approved. He reviewed that the lot is 439 feet on the east side, 397 on the west side, and is 102 feet wide. These lots are very much at an angle to the shoreline and as you go further west along South Shore drive, the lots become increasingly narrower in depth, which is a topographical feature that the

RECORD OF THE PROCEEDINGS

Tuesday, February 29, 2000

Page #2

Hearing Examiner took into consideration. He reiterated that his clients had asked to use the existing foundation, and that in 1991 a setback was established and should be honored.

Mr. Moser presented a letter from 1996 written by Alan Jongsma of the Planning & Permit Center which stated that the OHWM was 66 feet. After a brief discussion, it was determined that the letter was not a part of the record before the Hearing Examiner. Mr. Moser submitted the letter into evidence, so that a reviewing court could see that he attempted to submit it at this hearing. He stated that the County cannot deny their own records in this regard. He commented that nothing has changed according to the record, the measurements are simply different numbers in 1996 and in 1999.

Mr. Moser noted that one of the people who object to the variance lives immediately to the east, built his home in 1995, and is located 89 feet back from the shoreline. He reviewed a picture of the neighbor's home, and noted that the unique features of the shoreline would not block the neighbor's view if the shoreline variance of the Hovey's was granted.

Mr. Moser reviewed an exhibit showing that the original permit was issued and had a 76-foot setback. He also reviewed that Permit No. 27986 was issued for this property (for owners named Fabian) and had a 66-foot shoreline setback. He stated that this is the number that his clients relied upon when they purchased the subject property.

Upon query from Commissioner Anderson, the Hearing Examiner's file was checked for photos of the subject property looking from various directions.

Mr. Moser stated that the hearing Examiner totally ignored the constraints that his clients have to deal with in building on this lot. He reviewed the location of the septic tank and the reserved area, stating that the Hearing Examiner apparently did not grasp the importance of the septic reserve area and location of septic tank. He also spoke regarding the hundred foot well protection area required. Mr. Moser indicated that what the Hearing Examiner is proposing is that his clients build over the septic tank or try to relocate it. A drawing of the location of the septic tank and reserved area was reviewed.

Mr. Moser stated that this hardship imposed on his clients is not of their own making, but is a result of the topological features of the land, noting that the lots become smaller as they go to the west. He stated that the appellants checked with the Permit Center in 1996, and the septic system had already been installed. His clients are not asking for a special privilege and the proposed house will not block any views and is not beyond the 50-foot minimum. He stated that his clients are only seeking a reasonable use of the property consistent with what other individuals have and would be granted. He asked that the Board follow the recommendation of their Staff and grant the requested shoreline variance.

Commissioner Hart confirmed that there is nothing in the proposed residence, including decking, that would obstruct the neighbors' views

Commissioner Anderson indicated that if the denial of the variance totally hinged on obstructed view, then he thought it would have been unfair to overturn the Hearing Examiner. He stated that the dense shrubbery to the west is going to impact the view more than the proposed structure. Commissioner Anderson noted that the well is in place, as well as the septic tank and reserve area, and that forcing the appellant to move the septic tank would be a hardship. He stated that he is having a difficult time seeing that there would be adverse impacts on the existing neighbors.

Commissioner Hart reviewed the location of the property and the unique topography of the shoreline. He stated that he had a problem that the location of the septic tank was not considered in the Hearing Examiner's decision, and that the relocation of the septic tank would be prejudicial to the appellants.

Commissioner Hart indicated that he was hesitant to override the Hearing Examiner, but that the issue of the location of the septic tank was somehow overlooked, and because of the constraints of the septic tank location,

RECORD OF THE PROCEEDINGS

Tuesday, February 29, 2000

Page #3

the Board would be justified in overturning the Hearing Examiner and granting the variance as recommended by Staff, with the conditions as stated in the Staff Report. He moved to overturn the Hearing Examiner's decision as so stated. The motion was seconded by Commissioner Anderson, who added that it had been determined that there would be no view obstruction to the neighbors by the granting of this variance. The motion passed with a unanimous vote. **(Resolution to be provided by Staff at a later date).**

BID OPENING – RENTAL EQUIPMENT ELIGIBILITY LIST.

Cliff Butler, Road Operations Division Manager, opened the bids to establish a Rental Equipment Eligibility List as attached hereto on Exhibit "A."

BID OPENING – PROCUREMENT OF MAINTENANCE MATERIALS.

Steve Cox, ER&R Coordinator, opened the bids for the Procurement of Maintenance Materials as attached hereto on Exhibit "B."

MISCELLANEOUS.

Staff presented for the Board's approval Amendment "B" to a Personal Services Agreement with Mark G. Honeywell and Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. The amendment would increase compensation rates which have remained the same for over eight years. Mr. Honeywell's rate would increase from \$150 per hour to \$175 per hour. Mr. Honeywell and his firm provide legal counseling and representation for Skagit County on insurance issues. Commissioner Hart moved to approve the Amendment "B" as presented, and Commissioner Anderson seconded the motion. The motion passed with a unanimous vote. **(Contract No. 02421)**

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