

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, April 11, 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> 1) Discussion – Washington State Physical Activities Campaign. 2) Dental Van Update. 3) Discussion – Zoonotic Disease Vectors. 4) Discussion – National Infant Immunization Week. 5) Miscellaneous.
11:00 a.m. – Noon	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).

The Skagit County Board of Commissioners met in regular session on Tuesday, April 11, 2000, with Commissioners Harvey Wolden, Robert Hart and Ted W. Anderson present.

BOARD OF HEALTH – Peter Browning, Director.

1. Discussion – Washington State Physical Activities Campaign.

Mr. Browning introduced Heidi Keller of the Washington State Department of Health and members of the Physical Activities Coalition to the Board.

Ms. Keller reported. She explained that she was present today to talk about physical activity as a health issue, and what is being done to improve things at both the state and local level.

Health underwent a revolution in thinking in the early 90's when an article in the Journal of the American Medical Association encouraged health professionals to think differently about the causes of death in America. The leading causes are heart disease, stroke, etc. They encouraged looking at the real causes of death behind the statistics. The leading killer is tobacco use. Following close behind are diet and activity levels, which contribute to those diseases. She then reviewed some graphics from the Center for Disease Control showing the percentage of obesity by state. Washington State is not doing that well and yet there is a lot known about preventing obesity, heart disease, cancer and stroke.

A breakthrough came in 1996 with the release of the Surgeon General's report. It is known that being active at aerobic levels three times a week has many health benefits. Everyone knows it is good for them, but they are not doing it. Scientists began to look to see if lower levels of physical activity can help and they found that they do contribute to tremendous health benefits. Exercising 30 minutes five times a week, at least 10 minutes at a time, has remarkable health benefits. Such forms of exercise as brisk walking, hiking, gardening or yard work and heavy housework, which can be fit into everyday life. The Surgeon General said that exercise does not have to be vigorous to improve health. There are not only physiological benefits, but also a reduction in feelings of anxiety and depression along with burning calories and controlling and/or losing weight. It increases the chances of living longer and more independently.

With the release of the Surgeon General's Report, it brought out the education community and hospital based health promotion programs. In Skagit County, Affiliated Health Services, along with the Skagit County Health Department and the State Department of Health, has been sponsoring programs, etc. A community can do a lot

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to promote physical activity. Skagit County's program changed their focus to look at the three main things: tobacco, exercise and diet. The Skagit County Physical Activity Coalition sprang out of that and serves as a model for other communities mobilizing around this issue.

At the state level, many people from this community and others got together to form a state coalition. The purpose is to get together and pool information to make a difference. When Congress makes money available the County wants to be ready. The State Coalition, which began four years ago with the first meeting and with representatives around the state, has been remarkable.

One of the earliest decisions was to choose a project the Coalition could work on. They chose to increase awareness about the new recommendations for moderate physical activity. Mount Vernon and Spokane were chosen as pilot communities for this campaign. They adopted a social marketing approach, looking at different age groups and testing out who in the population would be the most ready to change based on a communications intervention. They talked to people who were not currently active, but believed in exercise and wanted to increase their physical activity level. The focus group had a hard time believing the moderate exercise idea, but once they were convinced that the information came from the Surgeon General, they felt it would be worth it for the results.

Ms. Keller reviewed the campaign material and the profile of the people they were trying to reach, age 50 to 70. They would like to reach everyone, but needed to start somewhere.

Ms. Keller noted a public on-line resource is BeActive.org, which carries a lot of information and has fact sheets from the Surgeon General's report. There is a Skagit County button on that website, which shows Skagit County programs and trails, etc.

The early implications, after one week of surveying, are that it is already beginning to make a difference right here in Skagit County.

Liz McNett-Crowl, YMCA Fitness Coordinator and Coalition leader in Skagit County, reported.

So much of the way everyone lives these days is inactive, thus increasing the health risk of so many people in Skagit County and throughout the U.S. The County Coalition focuses on promoting health through physical activity, using the Surgeon General's message of 1996 to try to do that.

She reviewed some of the statistics in Skagit County relative to physical activity, noting that about 20 to 25% of the population is physically active enough to receive health benefits, with 50% inactive and 25% totally inactive. When you look at a population that will be aging in staggering rates in the next couple of decades it is important to look at changing behaviors to make changes.

The Coalition is focusing on awareness by supporting the state campaign and promoting messages that support being physically active, as well as how to do it in Skagit County. Skagit County is blessed with many opportunities to be physically active. The County Coalition chose the media to get the message out and has been working on it the last couple of years. The Coalition is also supportive of pathway development and planning. They are also interested in focusing on kids and are looking at instituting a Walking School Bus in the next couple of years.

The Coalition has been funded for 5 years through a grant, which Linda Wright helped to obtain through Affiliated Health Services. It is hoped that through this work there will begin to be changes seen in Skagit County and people increasingly benefiting from being physically active.

Commissioner Wolden talked about some of the interactive things the Commissioners have done with the schools in terms of helping with funding of tracks, skate board parks, etc.

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Mr. Browning concluded by saying how lucky the County is to have someone with Ms. McNett-Crowl's enthusiasm. She is a great ambassador for exercise.

2. Dental Van Update.

Kim Van Epps will provide an update on the dental van at the next Board of Health meeting.

3. Discussion – Zoonotic Disease Vectors.

Polly Dubbel, Environmental Health Specialist, talked about some "critters" being tracked in Skagit County that spread human disease. The main reservoir for rabies in Skagit County is bats. Five to 10% of the bats in Washington State do carry rabies. She stressed the importance of being tested if bit by or exposed to a bat. Also, there is a concern for dog bites.

Another deadly disease is the Hanta virus, which is in the deer mouse. The deer mouse is furry down to the tail and has a white underbelly. Anyone cleaning up feces should be very careful as the disease is carried through the air. The Health Department has recommendations and handouts about this.

Another disease they watch for is psittacosis and salmonella. Anyone who gets a tick should come into the Health Department where they will be sent to the state for the testing program at Ft. Lewis.

Another timely issue now is the transmission of salmonella from chicks and ducks to children at Easter time. Also, it should be noted that reptiles carry salmonella.

Ms. Dubbel stated that anyone can call the general Environmental Health telephone number if they have any questions and talk to her or to Joanne Lynn, who are the main people who work in the infectious disease area. Alternatively, they can talk to other staff members who are also knowledgeable. The telephone number is 360-336-9380.

4. Discussion – National Infant Immunization Week.

Linda Speck, Immunization Clinic nurse in the Health Department, provided a short historical perspective on immunizations and how smallpox has been eradicated. Children should receive diphtheria, tetanus, whooping cough, polio, hepatitis B, measles, mumps, and rubella, vaccines, etc. The child's first dose of vaccine is given right at birth. By the time a child enters kindergarten, approximately 20 doses of vaccine have been given. Each day in the United States, approximately 11,100 babies are born, so the job is never done.

Skagit County immunization rates are nearing the 90% goal, with polio nearing eradication. The battle in the Eastern Hemisphere is still being fought. She introduced Bernice Fallis, the microbiologist in the Skagit County Health Department Water Lab.

Ms. Fallis stated that she was present to help emphasize the importance of polio vaccination. She contracted polio at age 4 and was paralyzed from the waist down. Although she regained her health, she was left with a problem with one leg, which has recently begun causing her problems again. She said she wanted to emphasize that given the fact that the vaccine is there, she hopes that people will take advantage of it.

Ms. Speck concluded, emphasizing that people should review their children's immunization records before beginning kindergarten.

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5. Miscellaneous.

There were no miscellaneous items on the Board of Health agenda.

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

Dan Downs, Shorelines Administrator, reviewed the provisions of Section 8.04 of the Shorelines Master Program contained in the Skagit County Code. He stated that the matter had been before the Board on February 29, but that there were questions about proper notice, necessitating today's re-hearing of the matter. He further reviewed the provisions of the Staff Report that was submitted to the Hearing Examiner. He emphasized that the initial proposal was to extend the proposed building outside of the existing foundation, but that those proposed two wings have been pulled back to be included in the outline of the existing foundation. He stated that this was a significant modification done by the applicant. The particular setbacks and ordinary high water mark levels were reviewed.

Mr. Downs advised that several comment letters from neighboring property owners had been received and reviewed by the Hearing Examiner as part of the public hearing process.

Mr. Downs stated that the Department recommended approval of the variance as requested by the applicant. The Hearing Examiner denied the variance in his decision on January 26, and Mr. Downs read from the Conclusions of Law of said decision. Mr. Downs explained that the Hearing Examiner felt that the variance was requested simply for the convenience of the applicant, and that there was no special circumstance justifying the variance.

Tom Moser, attorney representing the appellants and original applicants, 411 Main Street, Mount Vernon, reviewed that the decision the Board made on February 29 was sufficient and believed that this hearing was not necessary.

Mr. Moser reviewed the exact dimensions of the subject lot, and the history of the ownership of said lot. He stated that the foundation of the home was built pursuant to a permit issued by the County in 1991. He stated that his clients are simply asking that the County allow them to use the existing foundation that is on their property. He stressed that his clients relied upon this determination made by the County in 1991. In this regard, he reviewed a letter dated October 8, 1996 in which a determination was made by a Plans Examiner which established the ordinary high water mark. He advised that the adjacent neighbors, the Brunners, built in 1995 and are 89 feet from the shoreline.

Mr. Moser reviewed an aerial photograph of the subject property. The appellant, Mr. Hovey, pointed out to the Board where the existing foundation is located. Upon query from the Board, he indicated where the property lines are and the existing driveway.

Mr. Moser stated that the Hearing Examiner ignored the constraints of the lot due to topography and location of the existing well, septic tank, septic reserve area, and the road. He reported that the lots become shorter and smaller in depth as they proceed to the west. He reviewed a site plan in this regard, showing the existing art studio, garage, reserve area, septic tank location and well. The drawing was prepared by Oscar Graham, and Mr. Moser advised that Mr. Graham was present if the Board had any questions. Mr. Moser reviewed a cross-hatched area which showed the area of constraint not considered by the Hearing Examiner. Mr. Moser pointed out that the Hearing Examiner did not mention the reserve area in his findings. This is an error at the time of making the decision and from the established record. Mr. Moser stated that from this reason alone, this decision should be reversed.

Mr. Moser reviewed an exhibit that was prepared by the one the neighbors and was included in the record of the Hearing Examiner during the public hearing process. Mr. Moser explained that this document reveals that at least on two occasions the County has made the determination that the setback was either at the 66 or 76 foot level.

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Mr. Moser further explained that the foundation was there and present when neighbors built on their property, and that they cannot say that they were unaware when they built where the existing foundation was.

Mr. Moser reiterated that the hardship was not of his client's making. He reviewed again the topography of the land, and the fact that the lots become smaller the further west that they go. The foundation was already permitted, and when his clients checked with the Permit Center in 1996, they thought they had permission because of the adherence to the setback requirements. Also, the septic tank and reserve areas were all installed prior to this time and consequently, were not hardships of his client's making. Mr. Moser stated that no special privilege would be granted if this house would be in line with the other homes and would not block any views. He stated that his clients are seeking a reasonable use of the property that would be denied by denial of the variance request. He asked the Board to reaffirm their decision of February 29 and overturn the decision of the Hearing Examiner.

Dietrich Brunner, who owns the home immediately to the east of the appellants, stated that he is opposed to the shoreline variance. He introduced several other neighbors who were in attendance. He indicated that opposition to this variance is well established. He commented on the clear provisions of the Shoreline Master Program, which has been in effect since 1976. Mr. Brunner stated that the February 29th hearing allowed a number of statements to be made that went unchallenged. He asked the Board to re-examine this situation today to consider all of the information.

Mr. Brunner indicated that it is his belief that the Hearing Examiner provided precise and exact findings of fact, and that his decision deserves to be upheld. He stated that the appellants have provided no information that is of any substance that invalidates the positions taken by the Hearing Examiner. He stated that Mr. Moser implied that the old mobile home foundation has legal standing. Mr. Brunner stated that this directly contradicted the staff findings.

Mr. Brunner stated that there is no explanation why the existing building permit was approved by Skagit County, pointing out that a variance should have been required in order to allow the placement of the mobile home foundation so close to the bank. He stated that the 1994 building permit to the subsequent owners to build on the existing foundation should not have been allowed.

Mr. Brunner demonstrated differing methods of achieving the measurement of the ordinary high water mark and related setbacks. He further reviewed the confusion regarding these varying measurements. He stated that the October 8, 1996 letter was written by Al Jongsma, who was not familiar with the provisions of the Shorelines Management Act, and was not in a position of authority to make such a decision.

Mr. Brunner reported that former Shoreline Administrator, Gregor Myhr, let the Hovey's know in 1996 that a variance would be required, finally breaking the chain of permits. He stated that the Hovey's knew then that they could not build on the existing foundation without a variance. He reported that potential buyers of the property did not buy it because of the uncertainty of the old foundation, which was for a mobile home and is not suitable for a real home. He noted that the entire area is zoned rural. Despite the early knowledge of setback concerns on this site, the Hovey's went ahead and added decks to their existing residence.

Mr. Brunner reported that the Hearing Examiner did not take issue with the position of the Shorelines Administrator. Mr. Brunner quoted from the Hearing Examiner's findings. He reviewed a photograph, which purported to show that there exists an "L" shaped area alongside the current residence and toward the current foundation that would allow for a substantial home to be built. Mr. Brunner stated that the application is very vague as far as the constraints that are alleged by Mr. Moser. He reviewed in more detail the exact location of the septic tank location, noting that there is adequate room to construct a home. He reviewed the setbacks.

Mr. Brunner stated that the Hearing Examiner made it clear that denying the variance did not preclude the reasonable use of the property. Mr. Brunner indicated that they would not object if they thought the Hovey's would not have the reasonable use of their land.

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Mr. Brunner stated that the positioning of a house on the existing foundation would significantly impact the view of the neighbors. He reiterated that the Hearing Examiner looked at the property, and determined that such a variance would grant a special privilege as no other shoreline variances have been granted in this area under comparable circumstances. He stated that granting this variance would be detrimental to the public interest, opening the possibility of future variances to place homes closer to the shoreline using this as a precedent.

Mr. Brunner asked the Board to uphold the Hearing Examiner's decision and deny the appeal of Mr. & Mrs. Hovey.

Mr. Moser rebutted that it is a matter of record that the County has repeatedly allowed the use of the existing foundation. The foundation has repeatedly been reaffirmed by the County, contrary to Mr. Brunner's statements that the foundation has no legal standing. He stated that the findings of the Hearing Examiner do not state what they need to state. The Hearing Examiner did not consider all of the constraints to the property and did not address those in Finding No. 8.

Mr. Brunner stated that the foundation did not have any bearing on where they positioned their home. He indicated that the previous owners, the Fabians, were aware of the problems of the sub-standard foundation and knew it would have to be torn out. The foundation was never inspected. Mr. Brunner stated that the entire building permit was declared null and void, and that the Shorelines Administrator found correctly that the foundation did not possess any legal standing.

Chairman Wolden asked for clarification on whether the foundation was declared null and void.

Mr. Downs replied that time simply ran out on the building permit, not on the foundation itself.

Commissioner Hart indicated that whether the foundation is adequate for a new building or not, the site has already been disturbed. He stated that the septic reserve area cannot be used and is a definite constraint on the use of the property. He pointed out that the septic tank area is marked on the site plan and was not referenced in the Hearing Examiner's findings, which is an error.

Commissioner Anderson concurred with Commissioner Hart's remarks, noting that the reserve area should have been considered by the Hearing Examiner. He stated that the foundation has been on the property for a long time, and whether the house foundation was new or for a remodel does not matter. He stated that in reviewing the line of the structures, they are not all exactly uniform on the setbacks, and they happened at different times. He discussed the inability to locate a building on top of the septic tank. He spoke to the reasonable use of the subject property. Commissioner Anderson stated that he was unsure of Mr. Brunner's contention that there is enough room elsewhere on the lot to build a home.

Chairman Wolden indicated that the picture of all of the properties is revealing, showing that all of the homes are built square to the road, not to the shoreline.

Commissioner Hart moved to overturn the Hearing Examiner's decision, as he was not convinced that there is a reasonable use of the property. He added that the Hearing Examiner did not consider the constraints posed by the septic tank, septic reserve area and well. The motion was seconded by Commissioner Anderson, and passed with a unanimous vote. **(Resolution to be presented by Staff at a Later Date)**

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ADJOURNMENT.

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